

BULLETIN NO. 2

Asylum Support Bulletin April 2016

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.

THE IMMIGRATION BILL

Part 5 of the Immigration Bill seeks to reduce refused asylum seekers' legal entitlements to accommodation and food (asylum support). The Government's aims are to save money, to encourage refused asylum seekers to go home, and to deter future asylum seekers without genuine claims for asylum from coming to the UK. The bill is likely to become law around May 2016. Much of the detail will be contained in regulations and so the asylum support sections will not come into force until these have been written.

It is unclear when the regulations will be ready but it is likely to be early 2017. When the bill comes into force there will be a transition period so anyone currently getting asylum support under the old system will continue to receive it for some time. We do not know for how long. What we do know is that the bill will contain the following drastic changes.

1. SUPPORT FOR ASYLUM SEEKERS

The legal definition of an asylum seeker will be expanded. So, in addition to those with an asylum or Article 3 claim or appeal outstanding, the following two groups will become eligible for Section 95 support:

- 1) Refused asylum seekers who have made further submissions (also known as a 'fresh claim') – these must be submissions based on new evidence which ask for protection on asylum or Article 3 grounds
- 2) Refused asylum seekers who have been granted permission to proceed with a judicial review challenge against a refusal of further submissions.

Those in the first group will only become eligible for Section 95 support when their further submissions have been outstanding for a certain period. The Home Office has indicated that this could be 2-5 days. The intention is that a decision on the further submission can be made before the Section 95 decision so that both can be rejected simultaneously.

Currently, there is no right of appeal against a decision to end Section 95 support when an asylum seeker becomes appeal rights exhausted (ARE). Under the new regime, there will also be no right of appeal when Section 95 support is stopped because further submissions or a judicial review challenge has come to an end. The only Section 95 decisions that will be appealable will be decisions to deny support for reasons of destitution or breach of conditions.

THE LAW: IAA 1999 AMENDED.

2. SUPPORT FOR REFUSED ASYLUM SEEKERS

Section 4 support, for refused asylum seekers, will be completely abolished and replaced with a new form of support called Section 95A support. The Home Office is presenting this as 'the new Section 4 support'. However, this is misleading since a large proportion of people who currently qualify for Section 4 support will not qualify for Section 95A support.

- **Section 95A support will be available to refused asylum seekers who are destitute and have a 'genuine obstacle' to leaving the UK.** What is meant by a genuine obstacle is yet to be defined but is expected to be limited to people with medical conditions that prevent them from travelling and people who are taking all reasonable steps to leave the UK.

- Unlike with Section 4, there will be **no right of appeal** against the refusal of an application for Section 95A support.

- The most radical and restrictive element of Section 95A support is that **it will only be possible to apply for it within a 'grace period'** after becoming ARE. For single people this will be 21 days, for those with children it will be 90 days. In practice, this means that most people who have a genuine obstacle to leaving the UK will be made destitute, since this obstacle is unlikely to occur and be evidenced within the grace period. As an example, of the 105 applications for support made in 2015 for 'genuine obstacle' reasons (i.e. medical or voluntary return), only 6 were made within the grace period.

THE LAW: SECTION 4 IAA 1999 WILL BE REPEALED. SECTION 95A INSERTED INTO IAA 1999. THE GRACE PERIOD REQUIREMENTS WILL APPEAR IN REGULATIONS.



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<< 3. SUPPORT FOR FAMILIES WITH CHILDREN

Refused asylum seeker families who had a child under 18 before their asylum claim came to an end will no longer be entitled to stay on Section 95 support, as is currently the case. Their Section 95 support will stop 90 days after they become ARE. If they have a 'genuine obstacle' to leaving the UK they can apply for Section 95A support, but must do so within the 90 day grace period.

They will no longer be entitled to support from local authorities under the Children Act Section 17 solely because they are destitute; they will have to show additional care needs.

Instead, new powers are being created to allow local authorities to provide support to these families in certain prescribed circumstances – this is known as para 10A support. Families cannot be supported by local authorities if they are entitled to either Section 95 or 95A support.

To qualify for para 10A support a family will need to satisfy one of the following, five conditions, a) to e):

a), b) or c) – they have an outstanding immigration application or appeal

d) – they are 'ARE' and have **not** failed to cooperate with Home Office attempts to remove them from the UK

e) – provision of support is necessary to safeguard and promote the welfare of a child in their family.

The Home Office wants local authorities to apply case law which states that families can avoid destitution by returning to their home country. So although condition e) appears quite generous the premise will be that families should return home to avoid destitution and if they aren't attempting to do this they could be ineligible for support under e).

The Home Office has also made it clear that local authorities have no obligation to support those without any immigration status. How local authorities will interpret their duties remains to be seen.

THE LAW: SECTION 94(5) IAA WILL BE REPEALED. CHANGES MADE TO PARA 10A IN SCHEDULE 3 NIAA 2002.

ASYLUM SUPPORT NEWS AND TRENDS

RESIDENCE TEST VICTORY

The government's attempt to introduce a residence test for legal aid was finally defeated in the Supreme Court on 18 April, to the great relief of everyone working in the migrant and refugee sector. The test would have denied legal aid to anyone without 12 months' lawful residence in the UK and applied to most areas of law, with some key exclusions, such as asylum.

The legal challenge to the residence test was taken by the [Public Law Project](#), which was represented by [Bindmans](#). ASAP's chair, Alison Pickup, was one of the barristers acting in the case.

HOME OFFICE SPOTLIGHT ON ASYLUM SUPPORT APPLICANTS WHO ARRIVED ON VISAS

In an attempt to uncover suspected asylum support fraud, the Home Office has increased its scrutiny of destitution evidence in the last six months. In particular, financial information on visa applications is closely compared with that on asylum support applications. Any property or assets abroad are expected to

be sold to fund living costs in the UK, unless there is evidence to show that this cannot be done.

It now appears to be routine for the Home Office to run credit checks on all new support applicants. We have even seen cases where foreign banks have been contacted. Requests for additional financial information are becoming increasingly common and, as a consequence, waiting times for support decisions have grown to months instead of weeks.

At ASAP we have seen a significant rise in the number of Section 95 appeals where destitution is contested: 9% in the last financial year, 2015/16, compared with 3% in 2014/15. The cases are also increasingly complex and time-consuming, presenting capacity issues which we are sure the whole sector must be struggling to respond to.

HOME OFFICE PAYS DOCTORS' FEES FOR COMPLETING SECTION 4 MEDICAL DECLARATIONS

Since ASAP discovered that the Section 4 team pays doctors' fees for completing Section 4 medical declaration forms we

asked the team to make this practice explicit in a written policy. We are pleased that this now appears on page 13 of the [Section 4 Policy and Process Instruction](#).

Doctors, surgeries or hospitals should send the completed medical declaration form and invoice to Section4nationalteam@homeoffice.gsi.gov.uk for the attention of the manager Steve Smyth.

NEW 'DISPERSAL' GUIDANCE ON RE-LOCATING PREGNANT WOMEN

In February, the Home Office issued new [guidance](#) for its caseworkers on whether, when and how many times pregnant women and new mothers receiving asylum support should be moved around the country to different addresses. This improved guidance is the result of many years of coordinated lobbying from [Maternity Action](#) and [Refugee Council](#) following research they carried out which illustrated the negative impacts of dispersal on health and wellbeing of pregnant women and newborn children.



DECISIONS OF THE FIRST-TIER TRIBUNAL (ASYLUM SUPPORT)

FRAUDULENT VISA APPLICATION (1)

AS/15/12/34645 21 December 2015

The appellant came to the UK on a visitor's visa in June 2014 with £3,300 in cash. Six months later she claimed asylum. By the time of her Section 95 appeal hearing she had run out of money and had been living in accommodation provided by a charity for the last two months but was required to leave. Two previous applications for Section 95 support had been refused. The Home Office did not accept that she was destitute because she had not provided sufficient evidence:

- (1) Of how she had spent the £3,300
- (2) Of her address history since arriving in the UK
- (3) That she did not have access to the bank account used to obtain her visa.

The judge was satisfied with the evidence the appellant provided in relation to the first two points. However, for the third, she had nothing. She claimed that she had used an agent to apply for her visa who had provided false financial information, including details of a bank account that was not hers. The judge accepted her explanation, noting that she would be unlikely to be able to produce documentary evidence to prove that she did not have access to the bank account or provide a detailed explanation of how the fraud took place.

Comment: In an earlier appeal against a refusal of Section 95 support a different judge did not find this appellant's account of her visa fraud to be credible.

FRAUDULENT VISA APPLICATION (2)

AS/15/12/34614 22 December 2015

The appellant had made two unsuccessful visit visa applications before travelling to the UK clandestinely with the help of an agent and claiming asylum on arrival. Her application for Section 95 support had been refused by the Home Office because she was not believed to be destitute. In her visa applications she had managed to portray herself as wealthy with the help of friends who had put money into her husband's bank account, which was later returned to them. She admitted that she had created an inaccurate impression of her financial circumstances to improve her chances of securing a visa.

Although the Home Office had refused her visa applications, it now sought to rely on them to show that she had the means to support herself and her children in the UK. The judge disregarded the bank statements provided in support of the visa application as unreliable. He commented that he could not rely on new bank statements she had provided, in light of her previous deception, but he did allow the appeal, largely on the basis of her oral evidence.

PTSD DIAGNOSIS NOT BELIEVED

AS/15/05/33112 12 February 2016

The appellant argued that he was entitled to Section 4 support. First, because his immigration solicitor was preparing further representations, and second, because he was not able to leave the UK voluntarily due to his mental health problems, including post-traumatic stress disorder (PTSD), for which he was receiving treatment from a psychological therapist at Freedom from Torture (FFT).

Since there was no evidence to suggest that he would be submitting further representations imminently, the judge found, uncontroversially, that he was not eligible for support on that basis. In respect of the second argument, although the judge acknowledged that there could be a low risk of suicide if an attempt was made to enforce his return to Ethiopia, she found that his mental health problems did not prevent him from leaving the UK voluntarily.

Significantly, she went further to find that he did not suffer from PTSD, as diagnosed by two psychiatrists who had treated him, but rather from situational depression. She doubted the truth of his account of traumatic events that had occurred to him prior to his arrival in the UK, taking into account that at his asylum appeal in 2006 the immigration judge (IJ) had not found him to be a credible witness and that he had not previously disclosed these experiences. She stated that the psychiatrists' diagnosis of PTSD had been made in ignorance of the IJ's unchallenged decision.

Comment: Because this decision was made by the Principal Tribunal Judge it is considered persuasive, albeit not binding, on other judges.