

Research by the Asylum Support Appeals Project (ASAP)
September 2015

DESTITUTION: UNCHECKED, UNBALANCED

HOME OFFICE
DECISION MAKING
ON ASYLUM SUPPORT



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About ASAP

ASAP is a small national charity specialising in asylum support law. Our aim is to prevent the destitution of asylum seekers and refused asylum seekers by defending their legal entitlement to food and shelter.

We do this by running a full-time duty scheme at the First-tier Tribunal (Asylum Support) in East London, which provides free legal advice and representation to destitute asylum seekers and refused asylum seekers who have been refused housing and subsistence support or had support withdrawn.

We also run an advice line and training on asylum support law for advice workers and legal practitioners, and engage in policy work, advocacy and litigation to influence and change policy and practice.

Set up in 2003, ASAP staff and pro bono legal advocates now assist about 600 asylum seekers at the Tribunal every year, significantly increasing their chances of securing support.

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Executive summary

Background

This report is the latest in a series of related publications produced by the Asylum Support Appeals Project (ASAP). The series primarily looks at the quality of Home Office decision making on destitution. Previous reports are:

- 'Not Destitute Enough: A report documenting UKBA's failure to apply the correct legal definitions of destitution in asylum support decisions' (December 2008). This revealed that the UK Border Agency ('UKBA', as it was known) routinely failed to apply the correct legal definition of destitution when determining an applicant's eligibility for asylum support. The data indicated that 70% of decisions on support applications based on destitution were overturned on appeal.
- 'No Credibility: UKBA decision making and Section 4 support' (April 2011). This returned to the issue in greater depth, identifying further problems relating to the UKBA's decision-making process. Notably, the rate of applicants succeeding in 'destitution appeals' at the First-tier Tribunal (Asylum Support) (the 'Tribunal') had climbed to 82%.
- 'UKBA Decision Making Audit – One year on, still no credibility' (May 2013) examined what progress the UKBA had made in the light of ASAP's findings and recommendations. While the percentage of refused applicants who went on to succeed at appeal had fallen slightly, it remained remarkably high (80%). The 2013 audit also indicated that UKBA caseworkers were still failing to apply the correct legal test for destitution, that the evidence supplied by applicants was not being dealt with in a satisfactory way, and that applications were routinely subject to long delays.

This picture was concerning, particularly given that all asylum support applications are subject to a destitution assessment (see Appendix 2 for the legal framework). ASAP has now revisited this important topic, analysing a new study sample and looking at recent trends on destitution relating to asylum support applications, Home Office decision making and Tribunal appeals. A total of 15 case files were included.

Findings

ASAP was encouraged to find that the Home Office had made progress in the quality of its decision making in destitution cases. Although the rate of successful appeals was still high, at 60%, there were substantial improvements. We note that:

- The evidence submitted to support applications for support was fully considered in nearly half of the cases we looked at. In previous reports this had happened in only 20% of cases.
- The tone of decision letters was more professional and measured. We found no examples of the sometimes hostile and personal attacks present in previous studies.
- The reasons for refusing or discontinuing support were easier to identify.
- Delays in decision making had improved, although half the cases surveyed waited longer than the 5 days laid down in the Home Office's policy.
- The form used to apply for support (ASF1) has been revised and contains fewer questions than the preceding version.

However, our study still raises some concerns:

- ASAP has previously recommended that the destitution test should be clearly and accurately referenced in decision letters. Setting the legal test out in this way would give clarity to applicants and their advisers. It would also act as a reminder to caseworkers to consider the relevant law. But we are disappointed to find that this still has not happened in any of the decisions in our sample.
- Despite the improvements in considering the evidence submitted by applicants, this is still not happening systematically. In just over half of the applications the caseworkers did not appear to consider some or all of the evidence attached to the application. This was the case even when caseworkers specifically requested further information from the applicant.
- Although the ASF1 is shorter there are still problems with some of the questions. We also noted some discrepancies between the form and the accompanying guidance that could lead to incomplete applications and unnecessary delays.
- The format and content of decision letters still lacked consistency.
- In none of the cases concerning children did the Home Office explain how it had met its statutory obligation to consider the best interests of the child when making decisions.

Prior to publishing this report we revisited the success rates in destitution cases and have found that the proportion of allowed appeals has increased again. ASAP statistics from the first quarter of 2015/16 show that 74% of appeals were allowed. Further study would be needed, but this is concerning as it indicates that the improvements noted in this study may have been short-lived.

Summary of key recommendations

Based on our research, ASAP makes the following recommendations:

1. Caseworkers should properly deal with all the evidence submitted as part of an application for support.
2. Small changes to the ASF1 and guidance could improve the quality of the initial application, leading to fewer destitution appeals.
3. Every Home Office decision letter should clearly set out its reasoning and refer to the legal test and evidence submitted. ASAP would be happy to work with the Home Office to ensure that letters are consistent in style by suggesting amendments to existing pro-forma letters.
4. The Home Office should keep to its target of deciding applications for asylum support within 5 days.
5. All decisions concerning children should include a detailed assessment of how the caseworkers have met their duty under Section 55 of the Borders, Citizenship and Immigration Act 2009 and considered the best interest of the child.

Applying for asylum support

To obtain asylum support, destitute asylum seekers and refused asylum seekers are required to complete the application for asylum support form ('ASF1')¹ and submit supporting evidence.² All applicants must prove³ that they are destitute, with refused asylum seekers also needing to demonstrate that they meet at least one of the relevant criteria⁴ specific to Section 4 support.

This section examines the evidence that was provided by applicants in the study sample and how this appears to have been dealt with by the Home Office. It also considers the current version of the ASF1 form and Home Office guidance.

Evidence provided by applicants

The quantity and quality of evidence provided by applicants was broadly consistent with the findings of ASAP's 2013 audit. Despite the challenges applicants faced in gathering evidence, only one appeared not to have sent any supporting documents to the Home Office; 11 of 12 'refusal'⁵ cases provided such documents to accompany their application, with 8 of these 11 cases including letters from friends or family explaining that they could no longer provide support, while other types of submitted evidence included passport photos, a birth certificate and a MATB1 form.⁶

Nearly all of the applicants provided additional evidence and information to the Home Office after making the initial application or in response to a Home Office request. However, this is unsurprising given the framework in place. The Home Office can make specific requests for further information before entertaining an application,⁷ or should outline in the decision letter what missing evidence resulted in the application being refused. Also, once an appeal is lodged the Tribunal will issue a directions notice, identifying what additional evidence the appellant (and the Home Office) should provide.

All the applications were mostly complete, although the majority were missing at least one piece of information. For example, 3 applicants failed to include bank account details,⁸ while in one case the Tribunal held that the applicant had submitted incorrect information and drew adverse inferences about his credibility.

Due to the difficulties⁹ faced by asylum support applicants, it is unrealistic for the Home Office to expect faultless applications. Nonetheless, it is important that applicants (and their advisers) recognise the value of providing as much information as possible with the initial application.

Evidence taken into account

The way in which Home Office caseworkers deal with the evidence provided by appellants has been a long standing concern for ASAP. Both our 2011 report and the 2013 audit found that evidence was fully taken into account in only 20% of applications. In these studies evidence was not taken into account at all in 45% of cases. Where evidence was partially considered, the Home Office decision maker referred to evidence selectively and ignored key aspects of the case. The new study sample suggests that Home Office practice has improved since 2013:

- In 7 cases (47%) evidence appeared to be fully taken into account
- In 6 cases (40%) at least some evidence was taken into account
- In 2 cases (13%) there was no indication that any of the evidence had been considered.

Clearly, the Home Office should aspire to analyse all evidence submitted with an application. As a result, the fact that the case files suggest this only happened in less than half of the surveyed cases is still disappointing. Although the study number is comparatively small, it would be concerning if this finding is representative of the Home Office's general practice. One possible explanation is that caseworkers are not communicating their analysis in sufficient detail (as opposed to simply ignoring evidence). However, if a decision letter fails to refer to a piece of supporting evidence, the applicant might (justifiably) be left with the impression that it has been ignored.

Recommendation: *The Home Office should ensure that all evidence submitted as part of an application is taken into consideration and referenced in the caseworker's decision letter.*

Case examples

The three examples that follow illustrate the variation in quality of Home Office practice in setting out how evidence provided has been considered as part of the decision-making process. The appeal numbers are from our list of 15 (see Appendix 4).

EVIDENCE FULLY TAKEN INTO ACCOUNT – APPEAL 8

Mr T was granted Section 95 support in February 2012. In January 2013, the Home Office wrote to him asking for further information about his financial circumstances, including previous employment. In November 2013, the Home Office notified Mr T that his Section 95 support was to be terminated. The decision letter quoted extracts of the relevant ASF1, referred to conditions of the support agreement, listed the information he provided in response to the January 2013 request and contrasted that with the results of the Home Office's own investigations. In September 2012 the Home Office issued a third discontinuation letter which did address the issue of 'all reasonable steps' (to leave the UK). However, his appeal was allowed because the Home Office had not informed the appellant what steps he should be taking in addition to the ones he had already attempted.

1 Application for asylum support form: <http://bit.ly/1RfS1qt>

2 See Appendix 2 for further information about evidence required for asylum support applications.

3 The evidential threshold is 'in the balance of probability' (i.e. more likely than not).

4 As set out in regulation 3(2) of the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005 ('2005 Regulations').

5 Where the Home Office has decided to refuse support rather than terminate it.

6 Relevant to pregnancy cases, this form evidences the expected due date of delivery.

7 Under Section 57 of the Nationality Immigration and Asylum Act 2002 ('2002 Act').

8 The ASF1 and guidance notes could be made clearer to ensure applicants are aware that current bank account details should be submitted.

9 For example, a lack of financial resources, fixed accommodation, English language proficiency and understanding of the asylum support system.

EVIDENCE PARTIALLY TAKEN INTO ACCOUNT – APPEAL 4

Ms M applied for Section 4 support in October 2013. She had previously been awarded support in January 2005 (terminated in March of that year). Ms M had subsequently requested support in August 2012, but her application had been refused. To accompany the 2013 application, Ms M provided 3 supporting letters from her uncle, her mother and a Ms S (all of whom explained they were unable to support her). In the refusal letter, the Home Office stated that Ms M had not exhausted all avenues of potential support from family members (apart from her uncle). The same point had been raised in the 2012 refusal; specifically, that Ms M had failed to provide evidence that her mother was outside the UK and unable to support her. The latest refusal letter did not explain how the new evidence from Ms M's mother (included in the 2013 application) had been taken into account.

ALL EVIDENCE SEEMINGLY IGNORED – APPEAL 14

Mr J applied for Section 4 support in May 2014. His application included 2 letters: one from a Mr S that stated he had provided Mr J with accommodation but could no longer do so, and another from a GP confirming that Mr J suffered from rheumatoid arthritis. Mr J's application was refused. The Home Office decision letter stated that Mr J was ineligible for Section 4 support because he had yet to receive a substantive response to his asylum claim. However, it also stated that the Home Office did not accept that Mr J was destitute, because he had lived in the UK for 8 years and had failed to confirm how his circumstances had changed from the point he had been able to support himself. The decision letter did not refer to either of the letters Mr J had included with his application.

Requests for further information

In 5 of the 15 cases, the Home Office requested further information from applicants before making a decision. As highlighted in the 'Still No Credibility' report, appropriate requests for further information are potentially beneficial to applicants and caseworkers given the high number of refusals for lack of evidence, and the cost of appeals. Yet as in 2013, the latest study sample reveals that more must be done to ensure that all evidence provided in response to such a request is fully considered. In 4 of the 5 relevant appeals, this did not appear to have taken place.

The application form and Home Office guidance

In 2013, ASAP's 'Still No Credibility' report highlighted that the ASF1 was a difficult document for applicants to navigate. The ASF1 has since been revised and we are encouraged that our comments regarding the length of the form appear to have been taken on board. The new form is shorter than the previous version and has 33 sections. The previous form contained 91 questions for a Section 95 application, 20 questions for a Section 4 application, and 22 annexes. But some aspects of the form are still confusing. Simple changes might lead to more complete applications being submitted, avoiding unnecessary requests for further information.

The form begins with a destitution message. The wording is ambiguous as it indicates that support may be provided to "asylum seekers, dependants of asylum seekers or failed asylum seekers". But support is available to asylum seekers and failed asylum seekers as well as the dependants of both these groups.

Recommendation: *This introductory destitution message should be drafted to clearly set out the entitlements.*

Applicants are required in section 3 of the form to provide their current and previous addresses. The corresponding guidance says applicants should list past addresses during the previous 6 months. However, the form does not specify this timeframe. It may be helpful to do this otherwise there is a risk that caseworkers apply too high a standard if they don't have

guidance notes to hand or that applicants do not go back far enough in the past.

Recommendation: *Specify in section 3 of the form that previous addresses should be provided for the past six months.*

Section 8 of the form is about the applicant's employment history. It includes the request, "Tell us about any previous employment you have had" (emphasis added). But the guidance indicates that the default timescale period is the previous 6 months. Further information may be required in exceptional circumstances.

Recommendation: *Section 8 of the form should reflect the guidance notes and request information on an applicant's employment in the past 6 months.*

Section 9 of the form concerns monetary assets. The form asks the applicant only to disclose savings accounts in the UK. However, ASAP is aware that a failure to disclose current accounts is often held against applicants.

Recommendation: *The request to disclose savings accounts should be amended so it asks applicants to disclose all bank accounts (current and savings) in the UK.*

Some of the guidance that deals with assets appears not to have been updated since the change of form. Paragraphs relating to cash and jewellery refer applicants to 'section 6/9/12'. However, sections 6 and 12 of the form no longer deal with assets.

Recommendation: *References to sections 6 and 12 of the form in the paragraphs of the guidance note headed 'Section 9 – Monetary Assets' and 'Section 10 – Material Assets' should be removed.*

Section 10 of the form is about material assets. The form asks applicants to explain why they are not able to liquidate any property or land they own. However, the same enquiry is not

made about jewellery, electrical goods and vehicles, although the applicant is asked whether these assets can be liquidated. It is not clear why this inconsistency exists. A possible explanation could be because these items, with the exception of cars and vehicles, are not assets that the Home Office is entitled to take into account when deciding destitution.¹⁰ But in this case it's not clear why they are part of the form at all.

Recommendation: References to assets which the Home Office is not entitled to take into account (i.e. jewellery and electrical goods) should be removed from the form. Or, the form should be amended to give applicants an opportunity to explain why any asset declared can't be liquidated.

Section 21 of the form asks the applicant to explain what help they have received from friends and family. The Home Office routinely requires applicants to submit evidence from those who have been supporting them to back up the statements made in the form. This requirement does not appear on the form or in the guidance.

Recommendation: Section 21 should include a specific direction about the need to obtain written evidence from the person who is unable to support the applicant any longer. Alternatively the form could ask the person to provide an explanation about why such evidence cannot be obtained.

Section 32 looks at previous applications for support. The guidance states that an explanation as to why support was previously discontinued should be provided. But the form does not give any space for the applicant to give reasons. In the decision letter for Appeal 1 of our study sample, the caseworker picked up on the applicant's failure to provide this information in refusing the person support.

Recommendation: The form should include a space for an explanation as to why a person's support was previously discontinued.

¹⁰ See Regulation 6 of the Asylum Support Regulations 2000.

Home Office decision making

Previous reports revealed various failings in the Home Office's decision-making process on destitution. In particular, the Home Office's decision letters indicated that caseworkers did not apply the correct legal test for destitution and failed to deal satisfactorily with applicants' evidence

We undertook a similar analysis of the new study sample to evaluate the Home Office's current practice in respect of the following six points:

- Whether decision letters were consistent in format and content
- The application of the destitution test
- What reasons were given for a refusal
- Delay in making decisions
- The application of duty to safeguard the best interest of the child under Section 55 of the Borders Act 2009
- Comparing the Tribunal's approach on appeal.

Consistency of decision letters

Of course, the precise content of a decision letter is determined by factors that are specific to each application. However, there was a surprising variation in the format and content of decision letters in the study sample.

At the lower end of the spectrum, letters exhibited a lack of reasoning to explain the caseworker's ultimate decision in respect of destitution. In other cases, applicants were arguably asked to provide a disproportionate amount of information. For example, in Appeal 1, the Home Office comprehensively set out in a three page letter the evidence that the applicant was expected to provide. However, this included a full work history and supporting evidence for him and his partner covering their entire time in the UK – a period of almost 12 years.¹¹

In terms of structure, a uniform 'house style' was not followed in every case, although nearly all the letters raised points that were relevant to the issue of destitution.

The destitution test

In order to apply the legal test in a correct and transparent fashion, ASAP considers that all decision letters should contain the following information relating to destitution:

- Relevant statutory provision(s)
- What constitutes 'adequate accommodation' (considering and referring to evidence provided on this point)
- What constitutes 'essential living needs' (again, considering and referring to evidence provided on this point)
- The applicable time period under consideration for the purpose of the test.

Setting out this information gives the applicant clarity. In addition, a caseworker is less likely to apply a part of the test incorrectly (or simply not take it into consideration). Given that the Home Office's decision letters we reviewed collectively referenced the 4 points above, the Home Office acknowledges that each is relevant.

Caseworkers' application of the test is an issue ASAP has highlighted previously. In the 2013 sample (which comprised 20 case files) only one of the reviewed letters explained the destitution test correctly, while 10% attempted an explanation that was incorrect, and 85% did not attempt to explain the test, instead simply concluding that the applicant was not destitute. In the new sample:

- No letter contained an explanation which satisfied all 4 requirements listed above
- In 8 cases the caseworker attempted an explanation that was partially correct
- In 7 cases there was no attempt to explain the destitution test (although 3 cases contained potentially mitigating circumstances).¹²

Out of the letters that attempted an explanation, 2 referred to 3 of the 4 items; 3 letters mentioned 2 factors, while another three only listed 1. The Home Office's inconsistent approach is typified by the fact that the omitted information varied from case to case. For example, in Appeal 4, the decision letter explained all of the highlighted information except for the relevant statutory references, whereas Appeal 7's decision letter only expressly referred to the issue of 'essential living needs'. It is unclear why different information was provided in these cases.

This inconsistency prevents applicants from experiencing a level playing field. Moreover, if the Home Office were to adopt ASAP's recommended approach, it should reduce the chances of the type of error seen in Appeal 11. In that case, the refusal letter focused on the applicant's financial situation but failed to address the issue of adequate accommodation. In the resulting appeal (in which the appellant was successful), the Tribunal Judge noted that the Home Office had not challenged the appellant's case in respect of his living situation.

Recommendation: Decision makers should set out in their letters why the applicant fails to meet the destitution test, following the 4 stage approach outlined above.

Reasons given for refusal

In previous studies the applicant's destitution was not believed, mainly because:

- They had been without state assistance for such a long time that it was considered they could continue to rely on existing networks
- It was not believed that their family would stop supporting them
- They didn't supply enough evidence of destitution
- Some aspect of their application or past conduct cast doubt on their credibility.

Much the same reasons were identified in this study. In 7 out of 15 cases, the caseworker judged that insufficient evidence

¹¹ Page 7 of the Home Office guidance states the standard period to be evidenced is 6 months, with further information required in exceptional circumstances.

¹² These were: (a) the refusal was made under Section 57 powers; (b) support was terminated for a breach of conditions; and (c) the applicant had applied for the incorrect form of support.

had been provided. In 3 cases the applicant's credibility was questioned, although in 2 of these cases this was done indirectly. In 2 cases the length of time without support was the main reason for refusal. In only 1 case were family ties cited as a reason to disbelieve destitution. The remaining 2 cases in the study concerned cases where destitution was not considered in the decision letter.¹³

In contrast to the previous report, it was much easier to identify clear reasons why support was being refused. The caseworkers were more direct and clear in reaching their conclusions. ASAP welcomes this change as we believe this lends more credibility to the Home Office's decision process.

Delay

Given what is at stake, it is crucial that the Home Office processes applications for asylum support quickly. The importance of timeliness has been recognised by the High Court¹⁴ and is reflected in Home Office policy.¹⁵

Our findings on delay in 2013 were troubling: 70% of applicants had to wait more than 2 weeks for a decision – an increase of 14% since our 2011 report. Out of these, 55% waited between 2 and 8 weeks, while 15% waited between 9 and 21 weeks. The overwhelming majority of delays were caused by administrative factors (i.e. not something which could be explained by Home Office policy).

The latest research indicates that Home Office practice has improved – 14 of the 15 case files contained details of the appellant's most recent application, and only 4 of these applicants waited more than 2 weeks for a decision. Furthermore, in 3 of the 4 cases delay arose due to the Home Office requesting further information (in some cases this was exacerbated by applicant's failure to respond). In the 4th case the delay was minor, with a decision being issued 15 days after the application was submitted.

In theory, all support applications should be determined within 5 days (and within 2 for high priority cases). On this basis, the Home Office met its target in 7 of the 14 cases, in that the Home Office's initial response (either a decision or a Section 57 request for further information) was issued 5 days or less after the application had been submitted. The time in the other 7 cases ranged from 6 to 15 days.

Recommendation: All decisions should be made within 5 days of receiving the application in line with the Home Office's own target.

Consideration of duty to children

Under Section 55 of the Borders, Citizenship and Immigration Act 2009, the Home Office is under a duty to safeguard and promote the welfare of children. Their interests should be the primary although not the only consideration in cases involving children. This duty is mentioned throughout Home Office asylum support policy. For example, policy states that in some

cases support can't be discontinued without local authority support first being put in place. Discontinuation letters should explain that the decision to stop support is consistent with the Section 55 duty.¹⁶

None of the decision letters involving applicants with children dealt with Section 55, which suggests that this duty was not considered by the Home Office when it refused or stopped a family's support.

Recommendation: The Home Office should explain how any decision to refuse or discontinue support to families with children is consistent with its duties under Section 55.

The Tribunal's approach on appeal

Appeal outcomes

In the 15 appeals, 9 were allowed, 1 was remitted (i.e. the Tribunal directs that the Home Office looks at the case again) and 5 were dismissed. Accordingly, the majority of appellants (60%) successfully appealed against the Home Office's decision to refuse them support. However, not all initial refusals were flawed. For example, in Appeal 6 the Tribunal Judge stated:

"I am satisfied – based upon the submissions and evidence that I have seen – that the monies have been reduced and that, whilst it may have been entirely correct for the Home Office to refuse the appellant's application for Section 95 support as at 24 October 2013, this is now no longer the case when I look at the situation as at today... In the circumstances, I am prepared to accept – as it is now largely accepted by the Home Office – that the appellant is, from this date, destitute and so entitled to support in terms of both accommodation and subsistence."

Also, when set in context against our findings in 'No Credibility' (82%) and 'Still No Credibility' (80%), fewer appellants overturned the Home Office's initial refusal decision.

Tribunal's nuanced approach

As illustrated in the above example, by the time a case reaches the Tribunal for an appeal hearing, matters have often progressed since the caseworker made the decision to refuse support. Accordingly, it could be argued there is limited merit in directly comparing the decision of the Tribunal to a caseworker without acknowledging that a Tribunal Judge will typically have access to more evidence. A Tribunal Judge also has the ability to ask questions of the appellant and any witnesses. Nevertheless, it is interesting to note how the Tribunal Judges' approach contrasts with some of the trends emerging from the Home Office's decision letters. For example:

- The Tribunal applies the legal test in full, considering adequate accommodation and/or essential living needs
- A minor inconsistency is not fatal to an appellant's credibility, with the standard of proof being the balance of probabilities. This can be contrasted with the tendency of caseworkers to assume the worst and apply what appears to be a higher evidential standard.

¹³ In one case support was being stopped because the person had received leave to remain and in the other because of a breach of support conditions.

¹⁴ See the case of MK and AH v SSHD [2012] EWHC 196 (Admin). The High Court determined that the Home Office's policy of deliberately delaying decisions on Section 4 support applications (for a minimum of 3 weeks) while a fresh claim was being decided was unlawful.

¹⁵ See the last two paragraphs of 1.15 Further Submissions, in: Asylum support, section 4 policy and process. <http://bit.ly/1JuWtI9>

¹⁶ Para 1.22 in: Asylum support, section 4 policy and process. <http://bit.ly/1JuWtI9>

APPENDIX 1: APPELLANTS' CIRCUMSTANCES

The case files included information on an appellant's personal profile, asylum history, how they survived without Home Office support and their vulnerability. The summary below provides a snapshot of their circumstances.

Nationality

The highest represented nationality was Iraqi (4 cases). In keeping with our 2013 audit, the appellants originated from the Middle East (40%), Africa (33%) and South and Central Asia (27%).

Age

The appellants' average age was 34. The age range was broadly consistent with our previous study samples, with the youngest 22 and the oldest 52. Just under half (47%) were aged between 25 and 34.

Gender

About 40% of applicants in the latest sample were women. This is a slight increase from our 2013 audit and higher than the UK-wide statistics (latest published statistics show that in 2013 28% of asylum seekers were women). One woman was pregnant and another 2 suffered from mental health problems. In the other 3 cases the appellants had children (although in one of these the daughter was not listed as the applicant's dependant).

Families and children

A total of 7 of the 15 applicants were part of a family unit that included dependent children (another applicant was living with her adult daughters); 3 of these applicants were separated from their partners but still had contact with their young children.

English language proficiency

Under half (47%) of the appellants were described as having a working knowledge of English (these appellants were able to conduct their pre-hearing interview with the ASAP representative in English). All the other appellants gave their oral evidence at the appeal hearing via an interpreter.

Number of years claiming asylum

In contrast to our previous audit, most of the applicants (80%) had claimed asylum at least 4 years prior to making the application for support (our 2013 audit showed only 25% had applied for asylum more than 4 years before the application for support). However, this is not unexpected as 12 of the 15 cases concerned Section 4(2) support for refused asylum seekers (i.e. the form of support available to people who have been refused asylum).

Months without formal support

Just under half of the applicants (47%) appeared to have been without support for 18 months or more. Out of these, 57% had previously received support under Section 95 or from social services, while the rest had attempted to access support

(either under Section 95 or Section 4) but been refused. A third of the applicants in the study sample were either already receiving Section 95 or Section 4 support or living in emergency accommodation at the time of their appeal. The remaining applicants were staying with family or friends, although one was street homeless by the time of the appeal.

Vulnerability

Only 4 of the 15 appellants (26%) were recorded as having a specific vulnerability: 2 had mental health problems, 1 had physical health problems and 1 was pregnant. This is a slight contrast to the 2013 sample, in which 45% of the appellants suffered from physical and mental health problems. However, even if the other 11 appellants in the latest sample were not classified as having specific medical conditions, the papers in their files indicated circumstances of vulnerability (for example, being a single mother with a young child or having a precarious living situation).

Assistance

In all 15 cases the appellant received assistance from a charity or social services in submitting their asylum support application. In ASAP's day-to-day experience at the Tribunal, applicants who apply for support without any assistance often struggle to understand what can be a complicated administrative and legal process.

Circumstances leading to application and/or appeal

Applicants apply for asylum support as a last resort to avoid destitution in situations where support networks are unavailable to them or have collapsed. Factors cited in the latest study sample were consistent with reasons given in our previous reports on destitution about why an application had been made.

Change in circumstances

A total of 4 cases indicated a recent change in the applicant's circumstances. These were a breakdown in personal relationships, a recent arrival in the UK for the purpose of claiming asylum, and an inability to continue making rent payments.

Friends or family unable to cope any longer

Of the 14 files containing a relevant application,¹⁷ a significant majority (72%) of appellants highlighted that their family and/or friends were unable to continue supporting them.

No change in circumstances

A total of 3 of the 15 cases concerned individuals who were appealing against the Home Office's decision to terminate their support. Accordingly, these appellants had not experienced a material change in their circumstances immediately prior to their appeals.

¹⁷ The file for one of the discontinuation cases did not contain the application form that resulted in support being granted.

APPENDIX 2: LEGAL DIMENSIONS IN ASYLUM SUPPORT

Eligibility requirements for asylum support

- To qualify for Section 95 support an applicant must demonstrate that they are an **asylum seeker** (see box) who is destitute.
- To qualify for Section 4 support an applicant must demonstrate that they have been refused asylum, that they meet one of **5 criteria** (see box) on why it is unreasonable to expect them to leave the UK, and that they are destitute.
- Dependants of both asylum seekers and refused asylum seekers can also qualify for support.¹⁸

The destitution test

The law on destitution is defined in the Immigration and Asylum Act 1999 (the 'IAA'), the Asylum Support Regulations 2000 (the '2000 Regulations') and the Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 (the '2005 Regulations').

The legal test for destitution is found in the IAA and the 2000 Regulations, and applies to both Section 95 and Section 4 support.

A person is destitute if at any point in the next 14 days:¹⁹

- She or he does not have adequate accommodation or any means of obtaining it (whether or not his/her other essential living needs are met); or
- She or he has adequate accommodation or the means of obtaining it, but cannot meet his/her other essential living needs.

The test is set out and sourced in the Home Office documents 'Assessing destitution'²⁰ and 'Asylum support, section 4 policy and process.'²¹ These documents are intended for caseworkers making decisions, and are applied by the Tribunal when it determines whether a person is destitute.

Evidence to support applications

When applying for support, the burden of proof is on the applicant. Accordingly, evidence must be provided with the application to prove destitution. Typically, this consists of personal statements or statements from family or friends outlining why they cannot help; bank statements or other financial information (if relevant); and letters from charities or other organisations that have assisted the applicant.

The application form and related guidance gives some indication of what evidence is required. When someone has never been in receipt of asylum support or has not been supported for a long time, they are expected to provide evidence to show why they now have no other means of support.

ASYLUM SEEKER – DEFINITION

Defined in Section 94(1) of the IAA as someone over 18 who has made a claim for asylum that has been recorded but not yet determined. Section 94(5) expands this definition so that where an asylum seeker's household includes a dependant child under 18, s/he continues to be an 'asylum seeker' while the child remains under 18 and s/he and the child remain in the UK.

SECTION 4 CRITERIA

The 5 criteria are:

1. The person is taking all reasonable steps to leave the UK
2. There is a medical reason why they cannot travel back to their country of origin
3. They have permission from the courts to pursue a judicial review of a Home Office decision relating to their asylum claim
4. To deny support would breach their human rights, for example because they have a fresh asylum claim outstanding
5. The Secretary of State declares there is no viable route of return to the relevant country.

¹⁸ For more information see ASAP Factsheet 16. <http://bit.ly/1y7RIwD>

¹⁹ Or 56 days if the person is already receiving support from the Home Office.

²⁰ Assessing destitution: instruction. <http://bit.ly/1OOuA7M>

²¹ Asylum support, section 4 policy and process. <http://bit.ly/1JuWtI9>

APPENDIX 3: METHODOLOGY

Identifying case files

The study sample was selected by searching ASAP's AIMS database (which stores details of our client files). The search was run with the following parameters:

- The appeal took place in either November 2013 or June 2014
- The Home Office disputed the appellant's claim to be destitute
- An ASAP duty scheme advocate represented the appellant in the appeal hearing.

The months of November and June were selected so that the study sample covered a comparatively broad timespan. Other than satisfying the criteria noted above, the cases were picked at random.

Information recorded

For each of the identified cases, the following information (to the extent available) was recorded:

- Appellant's details (including nationality, gender, age, family unit, language, any vulnerability, the length of time (i) spent in the UK and (ii) being without formal support)
- Dates of the relevant application and Home Office response
- Reason stated for making the application
- Evidence submitted with the application
- Whether the application was complete
- Whether the application was completed with assistance
- The Home Office's reason for refusing or terminating support
- How the destitution test was explained in the refusal/termination letter
- Extent to which the applicant's evidence appeared to be considered
- Quality of the Home Office decision letter
- Appeal outcome
- Submissions made by the Home Office at appeal
- Any additional evidence submitted by the appellant at appeal
- The basis of the Tribunal Judge's decision

A chronology of key facts (including immigration and support histories) was produced in respect of each appellant. This information was consolidated and analysed for trends relating to the quality of applications being submitted, and Home Office decision making.

Limitations

At only 15 cases, the study sample is a relatively small portion of the asylum support decisions on destitution since the 'Still No Credibility' report of 2013. However, we consider that it contains sufficient data to provide an accurate 'spot check' on the concerns highlighted by our previous reports on destitution.

APPENDIX 4: CASE NUMBERS

STUDY SAMPLE	TRIBUNAL APPEAL NUMBER
Appeal 1	AS/13/10/30569
Appeal 2	AS/13/10/30582
Appeal 3	AS/13/10/30610
Appeal 4	AS/13/10/30606/SB
Appeal 5	AS/13/10/30542
Appeal 6	AS/13/11/30616
Appeal 7	AS/13/10/30602
Appeal 8	AS/13/11/30649
Appeal 9	AS/13/11/30648/ZM
Appeal 10	AS/14/05/31449
Appeal 11	AS/14/05/31464
Appeal 12	AS/14/06/31511
Appeal 13	AS/14/06/31523
Appeal 14	AS/14/06/31537
Appeal 15	AS/14/06/31571

Research by the Asylum Support Appeals Project (ASAP)

About ASAP

ASAP is a small national charity specialising in asylum support law. Our aim is to prevent the destitution of asylum seekers and refused asylum seekers by defending their legal entitlement to food and shelter.

We do this by running a full-time duty scheme at the First-tier Tribunal (Asylum Support) in East London, which provides free legal advice and representation to destitute asylum seekers and refused asylum seekers who have been refused housing and subsistence support or had support withdrawn.

We also run an advice line and training on asylum support law for advice workers and legal practitioners, and engage in policy work, advocacy and litigation to influence and change policy and practice.

Set up in 2003, ASAP staff and pro bono legal advocates now assist about 600 asylum seekers at the Tribunal every year, significantly increasing their chances of securing support.

Other research reports

- The next reasonable step: Recommended changes to Home Office policy and practice for Section 4 support granted under reg 3(2)(a) (2014)
- ASAP audit on UKBA decision making: One year on still 'no credibility' (2013)
- Barriers to support appeals for asylum seeking women (2011)
- No credibility: UKBA decision making and Section 4 support (2011)

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