



DEFENDING ASYLUM SEEKERS
LEGAL RIGHTS TO FOOD AND SHELTER

MEMORANDUM

Written evidence to the Home Affairs Select Committee Inquiry on Asylum

About ASAP

1. The Asylum Support Appeal's Project (ASAP) is a registered charity that provides specialist advice on asylum support law. We run a full-time duty "representation scheme" at the First-Tier (Asylum Support) Tribunal (the Tribunal), where our staff and pro-bono solicitors and barristers give advice and representation to over 400 appellants a year. We run a second tier advice line and regular training sessions on asylum support law for refugee community organisations. Our third area of activity is advocacy and policy work based on the evidence gathered at the Tribunal and through our links with a large constituency of organisations working directly with asylum seekers.

Executive Summary

2. We are grateful for the opportunity to submit evidence to the Home Affairs Select Committee. We will address the following question:

Whether the system of support to asylum applicants (including section 4 support) is sufficient and effective and possible improvements.

3. In our view, the support system is neither sufficient nor effective. We have selected four examples from our experience at the Tribunal to illustrate this. These are:
 - The **quality of decision making** is poor resulting in unnecessary appeals which are stressful for the individuals concerned. It also undermines confidence in the system and creates extra expenditure.
 - The **criteria for Section 4 support are restrictive** which mean that certain individuals are excluded from support despite being unable to leave the UK. This is particularly true of certain categories of people taking steps to return home, and those with medical problems.
 - Some families are at a particular disadvantage as the rules prevent them from living together.
 - The **Home Office are failing in their legal obligation to provide support** to those granted Section 4 support on the day of their appeal by making accommodation available only in London.

Quality of decision making

4. ASAP has long been concerned that the asylum support system is not run effectively because of poor decision making in this area. This has been highlighted in a number of ASAP reports, the most

recent of which, *No Credibility: UKBA decision making in Section 4 support*, was published in April 2011¹. We surveyed 55 decisions of the Home Office to refuse support to asylum seekers because they were not considered to be destitute.

5. 82% of the decisions we considered were overturned on appeal². In the majority of cases we found that Home Office caseworkers were not applying the correct legal tests and ignoring the evidence submitted. Letters were poorly and sometimes unprofessionally drafted. In decisions involving children, there was no evidence that the caseworker had considered the Home Office's duty to safeguard the welfare of children³.
6. Following up on *No Credibility* we carried out some further research in July 2011 and then again in January 2012⁴. This smaller sample of 20 cases revealed that 80% of decisions were overturned and that the Home Office were still not applying the correct legal tests. Although a slight improvement, we still consider this to be an unacceptably high overturn rate. There was still no evidence from these decisions that the Home Office were complying with their duty to children.
7. ***Case study: An appellant submitted written evidence from social services that they would be discontinuing his support on a certain date because his age meant he was no longer entitled to leaving care support. The Home Office refusal letter did not acknowledge this written evidence and instead stated that records showed he had alternative support available from social services, and therefore he was not destitute, despite the fact that this was clearly coming to an end within the specified time period. His appeal was allowed.***
8. When we presented our finding to the Home Office in a stakeholder meeting, they acknowledged that they did not have a system for auditing the quality of decision-making. They have only recently put this in place, however to our knowledge an audit has yet to take place.
9. Recommendations:
 - That the Home Office provide regular and comprehensive training to their caseworkers to ensure they apply the correct legal tests and consider evidence supplied.
 - That regular quality audits are undertaken with published results.
 - All decision letters regarding applications for support by families should set out how the welfare of dependent children has been safeguarded and promoted in the decision-making process.

Restrictive Section 4 criteria

10. A destitute person whose claim for asylum has been refused can only obtain Section 4 support in limited circumstances. ASAP is concerned that the application of the Section 4 criteria is too restrictive and as a result vulnerable individuals who are unable to leave the UK are left destitute.

Reasonable steps

¹ We have attached the report to this submission. As our website is about to be re-launched we are unable to provide a web link to this and other ASAP reports, however our concerns were also raised in our 2007 report *Failing the Failed* and again in 2008 in *Not Destitute Enough*.

² This is a higher overturn rate than appeals overall. Looking at all the appeals we represented in 2011-2012, 54% were allowed and 11% were remitted back to the UKBA for a new decision.

³ Section 55 Borders, Citizenship and Immigration Act 2009

⁴ In all these cases, the UKBA had concluded that the applicant was not destitute.

11. A refused asylum seeker is entitled to support if “he is taking all reasonable steps to leave the UK or place himself in a position in which he is able to leave the UK, which may include complying with attempts to obtain a travel document to facilitate his departure”⁵. ASAP is concerned that the Home Office and the Tribunal takes too strict an approach in these cases.
12. The Home office policy stipulates that support will normally only be provided once, for a three month period⁶. In our view this policy is unlawful as the legal test is not time limited but instead considers what the individual is currently doing to leave the UK. In our experience, in certain cases, returning will take much longer than three months. In practice, the Tribunal does not seem to be applying this policy as support is usually granted beyond this period in such cases.
13. The Home Office’s policy also actively promotes Assisted Voluntary Return (AVR) through Refugee Action’s Choices project. However, there are certain nationalities for which AVR is not an option. For example, Refugee Action does not currently operate AVR to most of Somalia. Since the closure of the Iranian embassy in late 2011 it seems very difficult for undocumented Iranians to obtain a new travel document, without which they can’t access AVR. Finally, undocumented Eritreans and Palestinians have significant difficulties in proving their nationality so also find it difficult to redocument themselves. Home Office policy does not specify what a person who cannot access AVR should do beyond leaving “independently through other means”⁷.
14. In 2012, 70% of reasonable steps appeals we assisted in, concerned nationals of these countries. Our statistics show that nearly half of these appeals fail and we believe this is mostly due to a lack of information⁸. Ironically, this situation does not assist the Home Office either. It seems common practice for their caseworkers and presenting officers to come up with a list of additional steps that they consider to be reasonable shortly before or at the hearing itself. In these cases we find that appeals are allowed on the ground that the appellant has not been given proper notice of a particular step.
15. ***Case study: We recently assisted an Iranian man who was living in a makeshift shelter throughout winter. Despite these difficult circumstances he had kept in touch with the Home Office and had approached Refugee Action for assistance but was told they couldn't help him. When he applied for support, instead of writing to him to suggest he take certain additional steps to qualify for support, his application was refused on the grounds that contact with Refugee Action was not sufficient to meet the criteria for support. The decision letter then contained a list of additional steps he should take. His appeal was allowed.***
16. Moreover, steps are sometimes suggested without any evidence to show that they will enable the person to return home. This can cause considerable confusion and make a destitute individual take a step which is essentially futile. For example, in August 2012 the Home Office suggested in an appeal that Iranians could approach the Omani Embassy. This revelation came as a surprise to us

⁵ Regulation 3(2)(a) Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005.

⁶ See Section 4 Support instructions at

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/asylumsupport/guidance/section-4-support-inst.pdf?view=Binary>

⁷ The Home Office have published a policy on Palestinians although this does not appear to be on their website.

⁸ In 2012 47% of reasonable steps appeals we represented were refused. This is significantly higher than the refusal rate in all appeals. For the same period 32% of appeals we represented were refused.

and it was not evident at the time why this step would be reasonable. It became clear some time later that the Sultanate of Oman had been appointed as a protecting power for Iran and their embassy was able to provide some consulate services. We have never been able to get a clear answer as to what those services might be. However, by January 2013, again during a hearing, a Home Office presenting officer confirmed that they no longer considered this to be a reasonable option.

17. Another problem is that the Home Office continually submits that the onus is on the individual, not on them, to take reasonable steps. However, they have considerable information and financial resources to hand that are not available to destitute asylum seekers and voluntary sector agency. This is particularly vital as Section 4 support is a cashless system and access to cash is necessary in order to pay for phone calls, faxes and travel to embassies. In a recent decision relating to Palestinians, the Principle Tribunal Judge commented that the Home Office should play a more active role in assisting people in returning⁹.
18. The Home Office have the facility to provide additional funds for travel and phone calls¹⁰. However, none of these provisions relate to costs incurred in taking reasonable steps, so applications would have to be made under the “exceptional specific needs” category. This category is not defined by the Home Office so individuals and agencies are not always aware that they can access this help¹¹.
19. ***Case study: An Indian national was granted support outside London but not told he could apply for additional payments¹². His accommodation was given to him in a town that he had never visited and in which he had no connections. He abandoned the accommodation as he needed to be in London to pursue his passport application. Having no accommodation he ended up living on the streets.***
20. Finally, certain individuals are caught in a circle of continually taking futile steps only to have their support periodically terminated but the decision being overturned at appeal. This causes tremendous stress for them, but also unnecessary public expenditure.
21. ***Case study: The Home Office had tried to discontinue an Eritrean appellant's support four times, the latest appeal taking place in March 2013. Every time, she won her appeal having continued to take significant steps with the personal and financial assistance of a volunteer who was helping her. In a letter to the Tribunal he wrote: "I labour these points not to whine about personal costs but merely to demonstrate than an asylum applicant receiving Section 4 financial support via the Azure Card¹³ would, without the assistance of volunteers like me, find it almost impossible to comply with the criteria of taking all reasonable steps to leave the UK".***
22. Recommendations
 - That the Home Office publish a clear policy, including country specific information, on what it means to take reasonable steps.

⁹ See AS/12/11/29199

¹⁰ This is derived from the Immigration and Asylum (Provision of Services or Facilities) Regulations 2007

¹¹ See

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/asylumsupport/guidance/additional-services.pdf?view=Binary>

¹² This person was granted s.4(1) support on the basis that he was taking all reasonable steps to return to his home country.

¹³ The Azure Card is the payment card given to people on Section 4 support.

- That the Home Office be more pro-active in assisting people to voluntarily return and make it clear what additional funds, if any, can be obtained to assist people.

Medical cases and pregnant women

23. A refused asylum seeker can get support if they are “unable to leave the UK by reason of a physical impediment to travel or for some other medical reason”¹⁴. This phrase was interpreted by the courts that created what is referred to as the Osman Test¹⁵. To meet the test, an applicant has to show, firstly, that they are unable to travel outside the UK and, secondly, that this is for a medical reason. Unable means “not able”, not undesirable or inadvisable or indeed impossible.
24. However, this test is very restrictive and we come across vulnerable clients who suffer from serious medical conditions who are left destitute because they don’t meet this very restrictive definition.
25. ***Case studies: A young lady had provided evidence from her doctor that the treatment she was receiving for HIV was not available in her country of origin. However, as this evidence did not address the Osman test her appeal was dismissed. Another appellant had submitted evidence that he had serious mental health problems, including a history of attempted suicide. Whilst the evidence acknowledged he was able to travel it stressed there was a real risk his mental health would deteriorate were he to be made homeless. His appeal was dismissed.***
26. Within this category, support is available for pregnant women six weeks before their Expected Date of Delivery. In our experience this policy is fairly rigidly applied to women applying for Section 4 support. It fails to take into account the fact that that pregnant asylum seeking women have a high risk profile and that there is a higher incidence of pre-term births (PTB) amongst this group. This is supported by research carried out both here and in the Netherlands.
27. The Confidential Enquiries into Maternal and Child Health report ‘*The changing face of motherhood in the UK*’ identified the increased risk of complications in pregnancy in refugee and asylum seeking women, where despite only representing 0.3% of the population this demographic compromised 12% of maternal deaths¹⁶.
28. Two recent studies from the Netherlands have demonstrated, with statistical significance, that asylum seekers have a 4.5 relative risk of developing severe acute maternal complications¹⁷, and a maternal mortality rate 10 times greater than that of the Dutch population¹⁸.
29. Lastly, there is a significantly higher incidence of PTB amongst asylum seeking women. PTBs are those defined as occurring before 37 weeks gestation. This has an overall incidence of 5% in

¹⁴ Regulation 3(2)(b) Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005)

¹⁵ R(Secretary of State for the Home Department) v Asylum Support Adjudicator and Mohammed Osman [2006] EWHC 1248

¹⁶ Lewis G. (Ed.) (2007) The Confidential Enquiry into Maternal and Child Health (CEMACH) *Saving mother's lives: Reviewing maternal deaths to make motherhood safer-2003-2005*. The seventh report on Confidential Enquiry into Maternal Deaths in the United Kingdom. London. CEMACH

¹⁷ Van Hanegem N, Miltenburg AS, Zwart JJ, Bloemenkamp KWM, Van Roosmalen J. Severe Acute Maternal Morbidity in asylum seekers: a two-year nationwide cohort study in the Netherlands. *Acta Obstetricia et Gynaecologica Scandinavica* May 2011, online publication before print ISSN: 1600-0412

¹⁸ Van Oostrum IEA, Goosen S, Uitenbroek DG, Koppenall H, Stronks K. Mortality and causes of death among asylum seekers in the Netherlands, 2002-2005. *J Epidemiol Community Health* 2011;65:376-383

developed countries as opposed to 25% in developing countries¹⁹i.e. the majority of countries of origin for refused asylum seeking women.

30. Case study: We represented a woman who was 28 weeks pregnant and suffered from Post-traumatic Stress Disorder, auditory and visual hallucinations, nightmares and acute anxiety. The frequency of her hallucinations had increased during her pregnancy. She was being closely monitored by the hospital and was awaiting an emergency psychiatric assessment. Her midwife had also provided a letter stating that she had a complex pregnancy due to her mental health state and would not recommend that she undertake international travel at this stage of her pregnancy. However her support was refused as her pregnancy was not sufficiently advanced. The decision was overturned on appeal.

31. Recommendations

- Broaden the criteria for Section 4 support so that those with significant health difficulties become entitled to support.
- Provide support for all pregnant refused asylum seeking women from when the pregnancy is established.

Support for families

32. We share the concerns raised by Refugee Action, Still Human Still Here and others regarding the levels of support granted to families on Section 4 support in the recent Parliamentary Inquiry into support for asylum seeking children and young people. We support The Children's Society's call for an end to the Section 4 cashless system²⁰. We would also like to highlight an additional area of concern where current law and practice affects family life and unity.

33. Section 4 support can only be provided in the form of accommodation and vouchers²¹. However, this has an adverse effect on families who have mixed immigration statuses and are therefore prevented from living together. It would also be cheaper to allow a subsistence only option in these instances.

34. Case study: Following a successful appeal, an appellant requested to be housed as close as possible to his partner and two children who lived in London. However, he was offered accommodation in Cardiff. The Home Office initially refused to back down even though it was pointed out to them that it was their policy to provide accommodation within walking distance of his family in these cases. Instead, they offered to pay for his weekly travel back to London. Once the case was referred to a solicitor, the Home Office provided him housing in London.

35. Recommendation:

- Bring levels of Section 4 support completely in line with Section 95 support. Or at least, amend the wording of Section 4 so it is possible for a subsistence only option to be granted.

Accommodation post appeals

¹⁹ Steer P. The epidemiology of preterm labour. *BJOG* 2005; 112 Suppl 1:1-3.

²⁰ See <http://www.childrenssociety.org.uk/what-you-can-do/campaign-join/end-forced-destitution>

²¹ See the case of MK v Secretary of State for the Home Department [2011] All ER (D) 158 (Court of Appeal)

36. ASAP has always argued that the Home Office are legally obliged to provide support on the day of a successful appeal. For clients on Section 95 support²² this is not a problem as emergency accommodation is available through Initial Accommodation (IA). However, a large number of those granted Section 4 Support have to wait several weeks for help after a successful appeal. This is due to the fact that IA is not available under Section 4 and the Home Office's contracts with accommodation providers stipulate a delay of several days before accommodation has to be provided.

37. In 2009, following significant lobbying on our part, the Home Office decided to provide accommodation after successful Section 4 appeals. However, this would only be offered on the day of the appeal in the London IA, despite the fact that there are IAs in other parts of the country. This is not an effective solution and ASAP believes that the Home Office are still failing to meet their legal obligations to provide support on the day of the hearing. Individuals and their advisers are in the majority unaware that this option exists as the Home Office are not prepared to inform them of it in advance of hearings. Appellants turn up to the tribunal expecting to return to where they have previously resided leaving behind their belongings, medication and families. If they win, they are effectively given 5-10 minutes to decide whether to take up this option or continue to be destitute until accommodation is sorted out. The vast majority choose the latter option and those who don't, often make the choice to move to London very reluctantly.

38. ***Case study: We recently successfully assisted a couple who, having spent all their savings, were now living in a homeless winter shelter. They described this as a very difficult place to stay as they slept in separate dorms. During the day they were not allowed in the shelter so spent their time in public libraries and parks. The wife had developed serious mental health problems and was receiving regular counselling on which she depended. The husband had started a volunteering position in a local organisation and felt he was making a positive contribution to the area. On learning that the only option for them was support in London, they reluctantly decided to take this up. The prospect of having to wait several days, if not weeks, for accommodation was too much to bear for the wife. However, by moving to London they were giving up all the support networks on which they depended.***

39. Recommendation:

- Make Section 4 support available after successful appeals in all IA in the UK not just London.

²² Support provided to asylum seekers.