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Factsheet 3

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**This Factsheet looks at the Appeal Process to the First Tier Tribunal (Asylum Support)**

### Our telephone advice line:

If you still have questions or need further information and advice *after* reading this factsheet, please contact our advice line on 020 3716 0283. It is open Mondays, Wednesdays and Fridays from 2pm to 4pm. Please note, this is a 'second-tier' advice line. This means that we can give advice to other advice workers but not to individual clients.

### What is the First Tier Tribunal (Asylum Support)?

The First Tier Tribunal is a special tribunal which deals with appeals against decisions to refuse or withdraw financial support and accommodation, otherwise known as asylum support. This is support provided under s95 or s4 of the Immigration and Asylum Act 1999. The Tribunal does not deal with immigration or asylum claim appeals. It is independent from the Home Office.

It is the only tribunal in the UK that deals with asylum support appeals. It is run by the Ministry of Justice and is located at Anchorage House in East London. It is governed by a set of regulations. You can find a link to these regulations at the end of this factsheet. They set out the procedures surrounding the appeal itself, such as the time frame in which appeals should be made. The judges who hear and make decisions on appeals at the Tribunal are called Tribunal Judges.

### Who can Appeal to the First Tier Tribunal (Asylum Support)?

Anyone who has received a decision by the Home Office to *refuse* or *withdraw* asylum support can appeal to the Tribunal, with certain exceptions (see below).

A *refusal* of support would normally apply to an asylum-seeker who has applied for s95 support or s4 support and received a negative decision from the Home Office. A *withdrawal* of support normally takes place when the Home Office decides that an asylum-seeker, who is currently receiving asylum support, is no longer eligible for that support. The decision letter sent by the Home Office caseworker to the asylum seeker should give reasons why support is being refused or withdrawn. Where the person has a right of appeal to the Tribunal, an appeal form, known as the *Notice of Appeal*, should be included with the decision letter sent to them by the Home Office. The appeal form can also be downloaded from the gov.uk link below.

The information contained in this Factsheet is intended for guidance only. While every effort is made to ensure it is correct at the time of publication, it should not be used as a substitute for legal advice. For client specific advice please contact ASAP

### Who cannot appeal to the First Tier Tribunal (Asylum Support)?

Appeals to the Tribunal can only be made by people who have been refused s95 support or s4 support or who have had their support withdrawn. There is no right of appeal where someone's s95 support is terminated because their asylum claim has been fully decided. There is a right of appeal against the discontinuation of a refused asylum-seeker's s4 support.

Whether a decision of the Home Office is appealable or not is contained in statute. Therefore it is not something that the Home Office has the power to grant or not. If the decision letter does not state that there is a right of appeal but you consider that there should be, then lodge an appeal anyway and/or contact ASAP.

If someone has been granted some form of 'status', for example, discretionary leave to remain, their asylum support should not be withdrawn before they have received their biometric residence card and their National Insurance Number. If their support is withdrawn before these documents have been received, they should appeal to the Tribunal.

There is no right of appeal to the Tribunal for asylum-seekers who are refused support because the Home Office believes they have not claimed asylum 'as soon as reasonably practicable'. These are known as "Section 55 cases". However, as a result of a ruling in May 2005, known as the *Limbuela* case, the Home Office can only refuse to support asylum-seekers under s55 if they are satisfied that the individual has some other source of accommodation or support available to them.

There is no right of appeal if the Home Office refuse an application under s57 of the Nationality, Immigration and Asylum Act 2002. Section 57 allows the Home Office to refuse an application for support if it is not satisfied that the information provided by the applicant is complete or accurate, or that the applicant is co-operating with Home Office enquiries for further information. Section 57 only applies to s95 support applications.

### What issues can the Tribunal consider?

Appeals are limited to the decision by the Home Office to refuse or withdraw support. The Tribunal will not look at the type of support given to an asylum seeker, or whether the level of asylum support is adequate. It is not possible to appeal against the location or type of accommodation they are given. The correct way to challenge a decision that is not appealable is by judicial review.

The Tribunal will not usually take into account grounds of appeal that solely relate to an asylum-seeker's claim for asylum, or any concerns they may have about their safety were they to be returned to their country of origin. This is because the appeal to the Tribunal only covers the right to asylum support. Matters relating to someone's asylum claim are heard by a different court called the First Tier Tribunal

(Asylum and Immigration).

In some cases issues concerning asylum may be relevant to an asylum support appeal, for example when a refused asylum-seeker has made a fresh application for asylum and this has yet to be considered by the Home Office. Their asylum support appeal would therefore be on the grounds that removal of support would be a breach of their human rights, because they still have an outstanding claim in the UK. Although it is not for the First Tier Tribunal (Asylum Support) Judge to make a decision on this new application, they can dismiss the asylum support appeal if they believe the new claim is 'manifestly unfounded'. Therefore, the appellant needs to show that the new application does not simply repeat material that had previously been submitted to the Home Office.

### **Assistance with getting to the Tribunal**

To ensure the person making the appeal is able to attend the Tribunal, the Home Office will normally send travel tickets to the address on the appeal form. Where necessary, they will also provide overnight accommodation on the night before the hearing. This is normally given to those who live outside London if it would be difficult for them to get to the hearing on time. If the person has difficulty travelling to the Tribunal (e.g. because of health problems) they can request that the appeal be heard by video link from a court near where they live.

### **Time limits for making an Appeal**

There is a very short timeframe for submitting an appeal. Appellants have only three working days from the date they received the Home Office letter refusing or discontinuing asylum support (or five working days from the date the letter was posted) in which to fax, email or post their appeal documents to the Tribunal. Failure to meet this deadline may result in the appeal being considered invalid.

It is possible to submit an out-of-time appeal under certain circumstances. The Tribunal will hear the appeal if they think it is in the interest of justice to do so. Reasons accepted by the Tribunal include situations where the person received the Home Office decision letter late, needed advice about completing the form, where there were health problems which made it difficult to meet the deadline and where the person did not receive a copy of the appeal notice in time. If the appeal is late, the reasons should be explained in the Notice of Appeal. If there is a clear explanation and the delay is less than a week, the Tribunal will normally extend the deadline.

### **Completing the Appeal Notice**

The Notice of Appeal can be downloaded from the Tribunal website (see useful resources). The form must be completed in full and in English. Failure to do so can result in it being considered invalid and the Appeal Notice returned to the individual. Both the person appealing and their representative can complete the

Notice of Appeal but it must be signed by the person appealing. (See ASAP Factsheet 4 for filling in Notice of Appeal).

### **What happens after submitting the Appeal Notice**

If the Notice of Appeal is accepted by the Tribunal, they will write to the person appealing and their representative if they have one, giving them the time and date when the hearing will take place. An appeal should normally be heard 7-9 days after the Notice of Appeal has been submitted. In Tribunal documents, the person appealing is referred to as the Appellant and the Home Office is referred to as the Respondent. Both parties will receive a letter called a Directions Notice - a list of documents and/or information the Tribunal asks the Appellant and the Respondent to provide prior to the hearing. These normally include any evidence that is relevant to the appeal. For example, if the person appealing has medical problems they may ask them to provide up to date letters from their doctor. Any extra documents requested usually need to be sent no later than noon of the day before the hearing, although the Tribunal will usually accept evidence brought by the appellant on the day of the hearing.

### **What happens if the Appeal is considered invalid**

If the Tribunal decides that a Notice of Appeal is invalid they will write to the appellant and their representative explaining why. Reasons why an appeal will be considered invalid include failure to include a copy of the Home Office's decision letter, failure to include the Home Office reference numbers, failure to include the grounds for the appeal and late submissions of the Appeal Notice. It is possible to write to the Tribunal and request that they reconsider their decision not to hear the appeal. This would need to be accompanied by a letter outlining why the form was submitted late or was incomplete.

**Tribunal freephone number :** 0800 681 6509 (Monday-Friday, 9am-5pm)

The Tribunal has a freephone number for asylum seekers or their representatives who have practical questions regarding their hearing, for example, the stage of appeal, when it might be listed, as well as general information on how appeal hearings are structured and what information they may be required to provide to the Tribunal. However, this service is unable to provide information on how to fill out the appeal form or advice on whether an appeal is likely to be successful.

### **Useful Resources**

For more information on the work of the Tribunal go to their website <http://www.justice.gov.uk/tribunals/asylum-support>

The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 can be obtained from the following:



[http://www.justice.gov.uk/downloads/tribunals/asylum-support/consolidated TP FtT SEC Rules2008 291110.pdf](http://www.justice.gov.uk/downloads/tribunals/asylum-support/consolidated_TP_FtT_SEC_Rules2008_291110.pdf)