

# Suspending, delaying or reducing s95 payments and back payments of support

September 2018

Factsheet 15

## In this Factsheet:

- Delayed start for s95 financial support
- What can be taken into account
- Income/assets or support no longer available
- Suspension of support
- Section 4 support

## The legal basis for delaying or reducing s95 payments

The standard level of s95 support is £37.75pw for each individual in the household. It is provided on an ASPEN card, which works like a debit card. The Home Office has the power to reduce this amount, depending on income, assets<sup>1</sup> and support from other sources available to the household. This power is contained in regs 12(3) and 16 of the Asylum Support Regulations 2000 (2000 Regs).

Support levels might be varied if applicants declared they had cash when entering the UK or applying for asylum support. They may still qualify as destitute under the statutory destitution test, if the cash is not sufficient to cover their accommodation and essential living needs for the next 14 days. However, having assessed them as eligible for support, the Home Office must then decide the levels of support to provide. In doing so it is obliged to take into account income, asset or support available to applicants, reg 12(3) 2000 Regs. This broadly phrased duty allows the Home Office to set the levels of support to reflect the circumstances of individual applicants.

Reg 16 of the 2000 Regs gives the Home Office the discretionary power to give support at the full level and then ask the person to pay money to the Home Office by way of contributions. However, in practice there is no system for collecting contributions and instead the Home Office delays or reduces the first payment(s) of asylum support.

Regs 17 and 18 of the 2000 Regs give the Home Office the power to recover sums from s95 recipients, if they have assets, which were not capable of being realised at the time they applied for asylum support, but later become realisable. The 'recoverable sum' is whichever is lower; the monetary value of their asylum support or the monetary value of the asset concerned.

## What if the income/asset is no longer available at the point the s95 accommodation starts?

If an asylum applicant requests emergency (s98) accommodation they will be asked what

<sup>1</sup> Only the assets listed in AS Regs 2000 reg 6(5) can be taken into account.

## ASAP

## Factsheet 15

assets they have. If they have sufficient money at that stage not to be destitute, they will be told to live off their resources. Alternatively, if their resources are insufficient to prevent their destitution, they will be admitted to an Initial Accommodation (IA) centre, and the amount they have at that time will be recorded.

They are then informed by Migrant Help (MH) in the IA (orally and via interpreters, if necessary) that as IAs are full-board, they should not spend any money they currently might have<sup>2</sup>. MH assists them in completing the ASF1, and if the figure they give for assets is lower than the one they have already given to the Home Office, then they are invited to explain the reduction. For example, they may have bought essential items such as winter clothing. The Home Office will decide whether or not this is reasonable expenditure. If the Home Office decides that it is, then this amount will be deducted from the amount of resources the Home Office now deems them to have.

Any unreasonable expenditure, plus any money the applicant still has, will be reduced from the initial s95 payment(s). Unreasonable expenditure may be deducted at the level of £1-£5 pw, depending on individual circumstances (eg families with young children or health issues). The Home Office will record in the s95 grant letter the total figure to be deducted and the weekly amount. If these figures seem unfair (for example the Home Office has not taken into account factors it reasonably ought to have done) then it is important to raise this as quickly as possible with MH and the Home Office.

If the matter cannot be resolved satisfactorily and fairly, judicial review is unlikely to be an appropriate remedy due to the sums involved. A formal complaint may be worth pursuing.

### Obtaining back payments of s95 support

New s95 recipients may experience a delay in receiving their ASPEN cards after they have been moved from IA into self-contained accommodation. In this situation, the accommodation contractors (eg G4S, Serco) provide them with emergency tokens, and there should not be a gap in their support.

However, those who have applied for subsistence-only support frequently experience a delay between receiving the positive grant decision, and receiving their ASPEN cards. A back payment to the date of the positive decision should be requested, and pursued until it is obtained. The Home Office has stated that subsistence-only payments will be backdated to the date of grant, not to the date of application.

Chapter 15 of the [Home Office's main policy on s95](#) headed 'Overpayment of Asylum Support' covers, in general terms, when consideration will be given to granting a back payment to asylum seekers already on support, when they have missed receiving some payments. It sets out that applications should be considered within 5 working days and that the overriding principle is one of fairness.

<sup>2</sup> In Scotland, those in IA are given cash with which to purchase food, but the principle remains the same.

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

Generally, the refusal to grant a back payment is not something that can be appealed to the Asylum Support Tribunal (AST). However, very occasionally, it may arise within an existing appeal, as it did in a [2002 decision of Principal Judge Storey](#), which is on the Asylum Support decisions database. She awarded 37 weeks of back payments. He had applied for s95 subsistence-only support.

And Chapter 15 of the above Home Office policy states:-

#### *15.6 Appeal cases*

*A requirement to make back payments may arise from an appeal or Judicial Review. If an Asylum Support Adjudicator or Judge substitutes his decision for the Home Secretary's, he may also require back payments to be made.*

Therefore, where an applicant has applied for s95, not been put in IA, refused support and then wins on appeal, consideration should be given to requesting that the AST judge awards a back payment. This is a complicated area, and therefore please call ASAP's advice line on individual cases.

#### **Obtaining back payments of s4 support**

The Home Office is very unlikely to agree to backdate s4 support, if there is a delay between the grant and the support is starting. It is likely to maintain that the person has managed to survive in the intervening period. However, currently there are often lengthy delays in making decisions, or providing support following a positive decision. Cases should be referred to solicitors specialising in asylum support.

#### **Suspending or discontinuing support**

The 2000 Regs reg 20 gives the Home Office the power to suspend or discontinue s95 for a number of listed reasons. The reasons include concealing financial resources, failing to reside at the address, bad behaviour and failing to comply with a relevant condition.

Reg 20 does not specify whether support should be discontinued or suspended, and the Home Office's [Breach of Conditions policy version 8](#) gives no explicit guidance either. If support is discontinued, then the person has a right of appeal to the AST. The right of appeal regarding the cessation of s95 support is contained in the Immigration and Asylum Act s103(2) and states that a person can appeal 'if the Secretary of State decides to stop providing support'. Strictly speaking, this right of appeal does not extend to a suspension of support<sup>3</sup>. But depending on the circumstances, an appeal could potentially be lodged, even if the Home Office letter uses the word 'suspension'<sup>4</sup>. Alternatively, if the suspension cannot be categorised as the cessation of support, the only remedy would be judicial review. Clearly, if at all possible, the request made by the Home Office should be complied with so the suspension can be lifted.

<sup>3</sup> But note Ch 6 on p11 of the Breach of Conditions policy in fact implies there is a right of appeal against suspension.

<sup>4</sup> For example if the suspension is indefinite.

The Home Office cannot *reduce* the rate of support to an individual who they suspect has breached the conditions of their support. Therefore it could not lower the payments to incentivise an individual to provide them with copies of bank statements. However, the Home Office can suspend or discontinue support to an individual who fails to comply with a request for information regarding their asylum support (reg 20(1)(e)). Therefore failure to provide bank statements, when requested to do so by the Home Office, could arguably be deemed a breach of conditions, which could result in a suspension of support. However, the Home Office should take into account any 'reasonable excuse' for a breach of conditions.<sup>5</sup> For example if an individual tried their best to get hold of the bank statements but were unable to, support should not be suspended.

#### **Can the level of section 4 support be varied or suspended?**

These rules do not apply to s4 support so the Home Office is unable to reduce support amounts to take into account assets and income and support that the applicant or their dependants have. As long as they are deemed destitute they should receive the full amount of asylum support. Section 4 support can be discontinued, for breach of conditions. There would be a right of appeal to the AST.

---

<sup>5</sup> See para 3.5 of the Breach of Conditions policy and the wording of the regulation. It is the policy, not the regulation, which refers to 'reasonable excuse'