

# Appealing to the Asylum Support Tribunal

October 2020

Factsheet 3

## In this Factsheet:

- What is the First Tier Tribunal (Asylum Support)?
- Who can appeal?
- Who cannot appeal?
- What sort of issues can the Tribunal deal with?
- Time Limits for Making an Appeal
- Completing an Appeal Notice
- What happens after an Appeal Notice is submitted
- Invalid Appeals
- Strike Outs
- Tribunal Freephone
- Useful Resources

**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 specialist tribunal which deals with appeals against decisions to refuse or discontinue financial support and accommodation, otherwise known as asylum support. This is support provided under s95 or s4 of the Immigration and Asylum Act (IAA) 1999. The Tribunal does not deal with immigration or asylum claim appeals. It is independent from the Home Office (HO).

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 the Import Building (formerly Anchorage House) in East London. Since April 2020 the Tribunal has been operating remotely with many staff and Judges working from home.

The Tribunal is governed by a set of regulations. An amendment to the Tribunal rules in April 2020 has meant that the Tribunal can decide to determine with appeals without a hearing. Many appeals are now decided on the papers. Appeals that have hearings, are conducted over the phone. You can find a link to these regulations and amendments 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 and the conditions that should be met in order to dispense with a hearing. 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 HO to *refuse* or *discontinue* asylum support can appeal to the Tribunal, with certain exceptions (see below).

A *refusal* of support is when an asylum-seeker, who has applied for s95 support or s4 support, receives a negative decision from the HO. A *discontinuation* of support is when the HO decides that an asylum-seeker, who is currently receiving asylum

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

support, is no longer eligible for that support. The decision letter sent by the HO caseworker to the asylum seeker should give reasons why support is being refused or discontinued. 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 HO decision letter. The appeal form can also be downloaded from the gov.uk link below. See Factsheet 4 and Factsheet 4a for guidance on how to fill in the Notice of Appeal.

### When is there no right of appeal to the First-tier Tribunal (Asylum Support)?

Whether a decision is appealable or not is contained in statute.<sup>1</sup> Therefore it is not something that the HO 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.

There is no right of appeal where someone's s95 support is terminated because their asylum claim has been fully decided.<sup>2</sup> This is the point at which they become 'appeals rights exhausted' (ARE). However, there is a right of appeal if their support has been terminated prematurely i.e. they are not yet ARE, but are still an asylum-seeker.

There is a right of appeal against the discontinuation of s4 support.<sup>3</sup>

There is no right of appeal to the Tribunal for asylum-seekers who are refused support because the HO believes they have not claimed asylum 'as soon as reasonably practicable'. These are known as 'Section 55' decisions.<sup>4</sup> However, as a result of a ruling in May 2005, known as the *Limbuela* case, the HO can only refuse to support asylum-seekers under s55 if it is satisfied that the individual has some other source of accommodation or support available to them.<sup>5</sup> Therefore, in practice, the HO generally only considers making s55 decisions when an applicant applies for 'subsistence only' s95 support. (See Factsheet 1 on Section 95 support).

There is no right of appeal if the HO refuses an application under s57 of the Nationality, Immigration and Asylum Act 2002. Section 57 allows the HO 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 HO enquiries for further information. Section 57 only applies to s95 support applications. See our [2016 briefing note on s57](#) for more details.

### What issues can the Tribunal consider?

Appeals are limited to the decision by the HO to refuse or discontinue support. The Tribunal will not look at the type of support given, or whether the level of asylum

<sup>1</sup> IAA Act 1999 s103

<sup>2</sup> IAA 1999 s103(2)

<sup>3</sup> IAA 1999 s103(2A)

<sup>4</sup> Nationality, Immigration and Asylum Act 2002 s55

<sup>5</sup> R (Limbuela and others (Shelter intervener)) v SSHD [2005] UKHL 66

support is adequate. It is not possible to appeal against the location or type of accommodation. Decisions which are not appealable can potentially be challenged by judicial review.

It is not the Tribunal's role to consider appellants' asylum claims; these are heard by a different court, the First-tier Tribunal (Asylum and Immigration).

However, issues concerning the appellant's asylum claim can be relevant, for example when a refused asylum-seeker has made a fresh application for asylum and this has yet to be considered by the HO. 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 asylum support judges cannot make a decision on this new asylum application, they can dismiss the asylum support appeal if they believe the new claim is 'manifestly unfounded' or 'hopeless or abusive'. Therefore, the appellant needs to show that the new application does not simply repeat material that has previously been submitted to the HO. (See Factsheets 2 and 12 on Section 4 and on Section 4 and Human Rights).

### 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 HO letter refusing or discontinuing asylum support (or five working days from the date the letter was posted) in which to, email their appeal documents to the Tribunal.<sup>6</sup> Failure to meet this deadline may result in the appeal being considered invalid.

However, it is possible to submit an out-of-time appeal under certain circumstances. The Tribunal will allow out-of-time appeals to proceed if it is in the interests of justice, and very often accepts out of time appeals. Reasons accepted by the Tribunal include:- HO decision letter received late, advice needed to complete the form, health problems making it difficult to meet the deadline and not receiving 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 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 Notice of Appeal returned to the individual. The notice of appeal should include the grounds for appealing the HO decision and if appropriate give reasons why the appeal should have a hearing rather than be determined on the papers. For more information on requesting an appeal hearing and filling in the notice of appeal see factsheet 4 and 4a.

<sup>6</sup> Although it is possible to send the appeal by post or fax, as the tribunal is still operating on a remote basis with many staff working from home, they strongly advise that all correspondence is sent to them by email.

### What happens after submitting the Notice of Appeal

If the Notice of Appeal is accepted by the Tribunal, they will email the person appealing and their representative if they have one, giving notification of receipt of the appeal.<sup>7</sup> If the judge decides to list the appeal for a hearing, they will email a notification of appeal giving the time and date when the hearing will take place. In Tribunal documents, the person appealing is referred to as the appellant and the HO is referred to as the respondent.

The Tribunal will direct the HO to send the appellant and their representative the appeal bundle. The bundle is a very important set of documents. It should contain the evidence the HO relied upon to decide to discontinue or refuse asylum support.

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. The direction notice will be sent 4 working days after the appeal has been received by the Tribunal. The appellant and/or their representative will have 5 working days to respond to the directions notice. If the Judge has decided that the appeal is to be determined on the papers, then the directions notice will also inform the appellant of this decision and give the date by which the Judge will make a decision. When responding to the directions notice you can request that a paper appeal is given a hearing. If successful the hearing may be listed on the decision date or else at a later date (see factsheet 4a). The direction notice will also normally include a request for 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. An appeal should normally be decided 7-9 working days after the Notice of Appeal has been submitted.

### 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 HO's decision letter, failure to include the HO reference numbers, failure to include the grounds for the appeal and late submissions of the Notice of Appeal. 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.

### Strike Out

Under r8 of the Tribunal rules the AST can strike out a case, which means that a case is dismissed without a hearing. The Tribunal can strike out an appeal in several

---

<sup>7</sup> See FN 6

circumstances, including where they believe that the appeal has no reasonable prospect of success. If a Judge decides to strike out an appeal, they should first invite the appellant to make written submissions on the issue of the absence of merit. If the Judge then decides not to strike out the appeal, they will then determine if the case should be decided on the papers or hold an oral hearing.

**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, the Tribunal cannot 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:

<https://www.gov.uk/appeal-first-tier-asylum-support-tribunal>

The Notice of Appeal:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/885850/t200-eng.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/885850/t200-eng.pdf)

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)

The Tribunal Procedure (Coronavirus) (Amendment) Rules 2020:

<https://www.legislation.gov.uk/uksi/2020/416/article/4/made>

AST Arrangements during the Pandemic:

<https://www.judiciary.uk/wp-content/uploads/2020/10/Asylum-Support-Guidance-Note.02October2020.FINAL .pdf>

AST Help for Users Guide:

<https://www.judiciary.uk/wp-content/uploads/2020/10/AST-Website-Help-for-Users-Guide-2.pdf>

