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Factsheet 5

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This Factsheet focuses on the evidence someone requiring s95 or s4 support should provide to the First-tier Tribunal (Asylum Support) (the 'Tribunal') to prove they are destitute.

What is the destitution test?

The destitution test is the same whether the person has applied for s95 support (support given to asylum-seekers whilst their asylum claims are being considered by the Home Office) or s4 support (support given once the asylum process is at an end). See ASAP Factsheets 1 and 2.

A person applying for support will be considered destitute if they do not have access to 'adequate accommodation' or they cannot meet their 'essential living needs' now or within the next 14 days.

It is important to note that in order to show that they are destitute, the person does not need to show that they are currently or are at risk of becoming 'street homeless'. It is enough to provide evidence that they will not have adequate accommodation or that they will not be able to meet their basic living needs within the next 14 days.

Also if someone has previously been supported under s95 and applies for s4 support within 21 days of their s95 support ending, they should be accepted as being destitute.

Evidence required prior to an appeal

About three days before the appeal is due to take place, the Tribunal will send out a Directions Notice to both the respondent (the Home Office) and the appellant (person appealing). The Directions Notice is a list of evidence the Tribunal expects the parties to provide for the hearing. Advice workers who have assisted clients to complete the appeal notice form and included their contact details on the form will also be sent a copy of the Directions Notice.

In relation to destitution, the Directions may ask appellants to provide the following types of information:

- Evidence about their most recent accommodation, where this was and why this accommodation is no longer available. This will usually be in the form of a letter from the person who has been supporting them.
- A list of prior addresses, with details of how long the appellant stayed at each address and why this support can no longer continue.

- Evidence of any charitable support the appellant has received, and/or their attempts to seek charitable support.
- Evidence relating to assets outside the UK including bank accounts and property held abroad.
- Copy of any bank / credit card statements for the last 6 months.
- Lone parents may be asked for evidence of attempts to seek maintenance from the father / mother of the child.
- Those who previously had permission to work or have worked illegally may be asked for their latest P60 and/ or wage slips, plus evidence that they are no longer entitled to work.
- Those that have recently arrived in the UK may be asked to provide evidence from their previous employers showing they are no longer employed or owed any money.
- For those who are living in private rented accommodation, the rental agreement and any requests to leave the property (note that, as from 1st February 2016, refused asylum-seekers have not had the 'right to rent' so this can be pointed out to the Tribunal)
- For those who have previously claimed mainstream benefits, evidence they are no longer entitled (e.g. a letter from the DWP).

If appellants are unable to obtain evidence they should write a statement explaining what steps they have taken to get the evidence and the reasons they were unsuccessful. The statement should also try to address the points which would have been in the evidence. For example, if they have been asked to provide bank statements, the statement could say "I have a bank account with x bank and the current balance is £0".

What if someone has not had support for some time?

For people who have not had support for some time, it is important to note the approach taken by the Home Office in its Assessing Destitution guidance. These are the guidance notes used by caseworkers when assessing applications for support.

The guidance state that *"if the applicant has been without support for a prolonged period, it would be reasonable for Case worker to assume that the person has had, and may continue to have, access to an alternative source of support, and therefore may not be destitute. The Case worker shall not be satisfied that a person is destitute in such circumstances unless the person can demonstrate that his circumstances have changed and that he is now without means of support"*¹.

For this reason if the client has been unsupported for some time they will often be expected to provide evidence of how they have been supporting themselves since

¹ Para 3.5 Assessing Destitution: <https://www.gov.uk/government/publications/assessing-destitution-instruction>

they were last on government support.

Questions Asked During Appeals

Oral evidence is often crucial to proving destitution. It is important appellants prepare for questions they may be asked during the appeal. The types of questions asked will vary depending on how long ago the person arrived in the UK.

Those that have been in the UK for some time might be asked:

- Why did you leave your last address?
- Why can you not continue to receive support from the individual(s) who have previously helped you?
- What are the circumstances of the individual(s) who previously helped you i.e. the type and size of their accommodation, whether they have families, their income and immigration status etc.?
- Have you ever slept outside? If so when and where?
- Where did you stay last night? Where will you sleep tonight?
- Do you have any money? If yes, how much?
- Have you received any help from charities?
- Have you any family in the UK or abroad? Why can't they support you?
- How have you managed for food since your support stopped?
- Is there anyone in your community who can offer you accommodation?
- Do you have a bank account? If yes how much money is in it?
- If you are staying with friends or family, where do you sleep? Are there adequate facilities, e.g. heating? Do you have access to the property at all times?

Those that have recently arrived might be asked similar questions but the focus of the appeal will be much more about their financial situation back home. This might include questions about their own situation (such as ownership of property, savings and investments, employment records, how they afforded to come to the UK ...etc). But they might also be asked about the circumstances of immediate family members, such as spouses or parents, who are still living in their home country. They could also be asked to explain information contained on their visa application forms, if they arrived in the UK using a visa.

Importance of consistency

When determining whether someone is destitute, the Judge at the Tribunal will also take into account whether they think the person gave an honest and consistent account of their living circumstances. If the client is reluctant to answer questions or has given contradictory accounts of how they have been surviving this could have an impact on the outcome of the hearing.

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For this reason it is important that the adviser, as far as possible, helps the client prepare for the hearing by making them aware of the evidence they will be required to give.

It is also important that all written evidence given (e.g. letters) is consistent within itself and with the applicant's oral account. For example, it can damage a client's case if he states on the form he is 'street homeless' when in fact he has been living with friends. Any inconsistencies should be explained.