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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.

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 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 as to why the income and assets declared on their visa application are no longer available to them. The evidence required to demonstrate this will be case-specific, but could include up to date bank statements, proof they are no longer employed and not owed any further wages, letters from family members and evidence as to why assets are no longer available. If the information on the visa was false, then evidence of the person's true financial situation should be provided. For those who are living in private rented accommodation, the rental agreement and any requests to leave the property. Asylum-seekers and refused asylum-seekers may not have the right to rent. The HO assessing destitution policy states that asylum-seekers and refused asylum-seekers who satisfy one of the reg 3(2) conditions are normally granted permission to rent. However, asylum-seekers and refused asylum-seekers may still encounter problems with getting the 'right to rent' and this can be pointed out to the AST.¹
- 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. I opened this account in 20XX. I last used the account in Month Year. The bank card for this account is..... The balance on the account is £x".

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.

¹ Home Office 'Assessing Destitution' (2019), Version 3, p.15
<<https://www.gov.uk/government/publications/assessing-destitution-instruction>> accessed 20 December 2019. See also ASAP's June 2018 Right to Rent Briefing Note: <http://www.asaproject.org/resources/briefing-notes>

The guidance state that 'If they have been present in the United Kingdom for a prolonged period before seeking support it will usually be a reasonable assumption that they have had access to alternative forms of accommodation or other forms of assistance during the period. An explanation of why this accommodation and assistance is no longer available will therefore usually be required'².

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 they were last on government support.

If someone has previously supported themselves by working without permission, they cannot be expected to continue to do so in order to avoid destitution. It is a criminal offence under the Immigration Act 2016 to work without having permission to do so. We are not aware of anyone who has been prosecuted as a result of disclosing working without permission in an application for asylum 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?

² Home Office 'Assessing Destitution' (2019), Version 3, p.10

<<https://www.gov.uk/government/publications/assessing-destitution-instruction>> accessed 20 December 2019.

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Those that have recently arrived in the UK might be asked:

- How did you fund your journey to the UK?
- How have you spent the money you had when you arrived in the UK?
- What was your financial situation in home country?
- What are your family members' financial situation and can your family members support you?
- To account for any discrepancies between the ASF1 and the application for a visa to the UK.
- If the assets declared on the visa are no longer available, to account for this.
- If the visa was false to explain your true financial situation.
- If you are unable to get relevant documents from your home country, why are you not able to and what have you done to try access these documents?

Those that have recently arrived might be asked questions about how they have been supporting themselves in the UK if they have not already been admitted to IA. Applicants should not be expected to provide certified translations of documents.³

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 will have an impact on the outcome of the hearing.

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 for the client to prove their destitution (to the Home Office, and then to the Tribunal), on the balance of probabilities.

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.

³ ZN v Secretary of State for the Home Department[2017] AST (37288), Para 35