

## **Briefing Note: Mental health and eligibility for section 4 support**

The following are examples of arguments used by ASAP advocates in appeals for clients with psychological health problems. Please do not reproduce any of these submissions word for word but rather tailor your arguments to your client's particular circumstances. **Any claims made about the impact of a client's mental health on their ability to leave the UK must be supported by evidence from a medical professional.** Please call ASAP's advice line to discuss individual clients.

### Risk of suicide or self-harm

A client's medical evidence may indicate that they present a risk to themselves and/or others because of previous self-harm or suicide attempts relating to their (subjective) fear of return to their home country. They may therefore be 'unable to travel' because the prospect of return could trigger a suicide attempt.

This might apply to a scenario where someone could physically board a plane but there are unacceptable risks in doing so. If a medical practitioner has highlighted a serious threat to their patient's life, it could be argued that while they are not physically unable to travel, they may nonetheless be unable to leave the UK 'for some other medical reason'<sup>1</sup> such as a mental health condition.

Subjecting someone to an experience so distressing that it would drive them to attempt suicide arguably breaches their right under Article 3 ECHR because it would involve 'intense physical or mental suffering'.<sup>2</sup> This is more likely if the Home Office have suggested that they need to be physically restrained or sedated during a flight to prevent self-harm/disruption to other passengers.

### Limited ability to pursue voluntary return

A client's mental health problems may limit the steps they are able to take to return to their home country voluntarily, such as re-documentation. For example, they may have difficulties with memory, organisation or communication which make it harder for them to make the necessary arrangements. What steps could someone in these circumstances *reasonably* be expected to take to return to their home country and how would this differ from someone without a mental health condition? Unless and until appropriate measures are in place to enable them to leave the UK safely and humanely, for example with the assistance of a medical escort provided by the Home Office, failure to provide support may breach Article 3 ECHR.

### Questions to ask yourself:

1. Is the Home Office's medical evidence written by someone with the appropriate specialism? Is the appellant's medical evidence written by someone who is more appropriately qualified to comment on their specific condition?
2. How well does each medical professional providing evidence know the appellant? In most cases the Home Office should prefer the evidence of a medical practitioner who has had the opportunity to examine the patient.<sup>3</sup>
3. If a Section 4 appeal is challenging a discontinuation of support (where support was previously awarded for medical reasons) have the Home Office discharged their burden of evidence to demonstrate that the appellant's health has significantly improved to the extent that they are now able to travel/take steps to return voluntarily?
  - Has the appellant's medication decreased? Have they stopped having therapy?
  - If so, what are the reasons for this? If stable and secure accommodation has led to an improvement in their mental health, how might destitution affect this?
  - Whose evidence/opinion is it that they have improved? Is it the view of a medical professional?

<sup>1</sup> reg 3(2)(b) Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005

<sup>2</sup> *Pretty v United Kingdom* 35 EHRR 1,33 (para 54)

<sup>3</sup> *Shala & Anor v Birmingham CC* [2007] EWCA Civ 624 (para 22)