

Research by the Asylum Support Appeals Project (ASAP)
September 2014

THE NEXT REASONABLE STEP

RECOMMENDED CHANGES TO
HOME OFFICE POLICY AND
PRACTICE FOR SECTION 4
SUPPORT GRANTED UNDER
REG 3(2)(a)

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About ASAP

ASAP is a small national charity specialising in asylum support law. Our aim is to prevent the destitution of asylum seekers and refused asylum seekers by defending their legal entitlement to food and shelter.

We do this by running a full-time duty scheme at the First-tier Tribunal (Asylum Support) in East London, which provides free legal advice and representation to destitute asylum seekers and refused asylum seekers who have been refused housing and subsistence support or had support withdrawn.

We also run an advice line and training on asylum support law for advice workers and legal practitioners, and engage in policy work, advocacy and litigation to influence and change policy and practice.

Set up in 2003, ASAP staff and pro bono legal advocates now assist about 600 asylum seekers at the Tribunal every year, significantly increasing their chances of securing support.

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Executive summary

The focus of this report is on the quality of Home Office decision-making, in particular on the content and application of its policy for Section 4 support under the 'all reasonable steps' criteria¹ (explained in 'The legal dimension', page 4).

The report analyses a selection of appeals to the First-tier Tribunal (Asylum Support) (the 'Tribunal') which challenged the Home Office's decision to discontinue Section 4 support. The research methodology is described in Appendix 3.

All of the appellants were represented in their appeal by a member of ASAP's duty scheme. In each appeal the Home Office considered that the supported person was not taking 'all reasonable steps' to leave the UK.

How the 'all reasonable steps' clause is interpreted by the Home Office affects refused asylum seekers' access to housing and welfare support, potentially causing destitution among those who fail to meet the standard set by the decision-maker. Since 2008, the Home Office has developed its policy on 'all reasonable steps' cases and ASAP has been following its impact on refused asylum seekers.

In June 2008, ASAP published the report 'Unreasonably Destitute'. It concluded that refused asylum seekers were placed under an unreasonable burden to prove eligibility under the 'all reasonable steps' criteria and that the UK Border Agency (as it was then known) displayed a 'one size fits all' approach to decision-making. The report also identified the difficulties refused asylum seekers faced in proving ongoing entitlement, warning that the UK Border Agency's approach could lead to support being unfairly withdrawn.

In 2013, ASAP carried out research on 'all reasonable steps' discontinuations in support of an application for judicial review. That research strengthened the impression gained from previous monitoring work in 2012² that the Home Office's decision-making process often failed to take account of an appellant's particular circumstances.

Taking that research as a starting point, 51 relevant case files were reviewed to determine whether this impression was evidenced across a broader study sample (see Appendix 4 for a list of appeal references). An initial review confirmed that the success rate for these appellants was higher than for ASAP's general casework. The research which forms the basis of this report was carried out to determine what (if any) factors might explain this.

It is important to recognise that 'all reasonable steps' cases can turn on matters outside of the Home Office's control. In addition, caseworkers might not have access to all of the information which is presented to the Tribunal. However, our latest research suggests that decision-making in this area could be improved. ASAP considers that certain adjustments

to Home Office policy and practice would bring greater efficiency and clarity to the Home Office's administrative practice, potentially reducing a number of avoidable appeals. In addition, these changes would reduce the number of people being unfairly exposed to the risks associated with destitution.

Key findings

Overall, we found that 'all reasonable steps' appeals remain inherently complex and extremely fact-sensitive. Nevertheless, we were concerned to find that:

- In **75%** of appeals, the Home Office's decision to discontinue support was overturned or reconsidered³
- In **82%** of appeals concerning the **top three nationalities**⁴ in the study (Iranian, Palestinian and Somali), the Home Office's decision to discontinue support was overturned or reconsidered
- The majority of appellants received generic rather than tailored guidance about the steps they were required to be taking while on support
- The frequency and quality of Home Office case reviews were inconsistent
- In a number of cases Home Office paperwork contained factual errors.

Key recommendations

ASAP recommends that the Home Office:

- Provides applicants with detailed, tailored guidance about the steps they should be taking to leave the UK
- Informs applicants about all potential resources available to them (in particular, additional Section 4 payments)
- Offers applicants greater practical assistance in difficult cases
- Ensures that adequate case reviews are performed prior to any discontinuation of support
- Adopts a more fact-specific approach to decision-making.

The recommendations are set out in full on page 16.

¹ Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005 SI No 930 (the '2005 Regulations'), reg 3(2)(a).

² This indicated that a significant number of discontinued 'all reasonable steps' cases continued to be overturned on appeal to the Tribunal. It appeared that people on support – particularly from certain 'problem' countries to where returns are difficult for various reasons – lacked tailored guidance on the steps they must pursue as a condition of support. This issue was considered to be significant because if it was indicative of a genuine trend, it meant that vulnerable individuals were indeed at risk of having their support terminated prematurely.

³ An appeal against the Home Office's decision to stop providing support was either allowed or remitted by the Tribunal, or the appellant received support after taking steps to judicially review their 'dismissed' appeal.

⁴ As described in the statements of reasons.

The legal dimension

Section 4 support

Section 4(2) of the Immigration and Asylum Act 1999 ('IAA 1999') allows for the provision of support to refused asylum seekers.⁵ The support consists of housing and £35.39 per week.⁶ Refused asylum seekers are not given cash but a payment card (the Azure card), which can only be used in selected supermarkets to purchase items deemed to be essential.⁷

To qualify for this support, refused asylum seekers must be destitute⁸ and meet one of a narrow set of criteria specified in reg 3(2) of the 2005 Regulations (as defined in footnote 1). These are:

- They are taking all reasonable steps to leave or are placing themselves in a position in which they are able to leave the UK, which may include complying with attempts to obtain a travel document to facilitate their departure
- They are unable to leave the UK due to a physical impediment to travel or for some other medical reason
- The Secretary of State considers there is no viable route of return to their home country
- They have been granted permission to proceed in an application for judicial review of a Home Office decision relating to their asylum claim
- Support is required to prevent a breach of their human rights (for example they are waiting to hear whether further submissions constitute a fresh asylum claim).

Section 4 support is awarded on the proviso that recipients adhere to certain conditions.⁹ These conditions can relate to maintaining specified standards of behaviour, reporting requirements, staying at a specific address and complying with specified steps to facilitate departure from the UK.¹⁰ The Home Office is required to give written notice of any conditions which attach to a person's support.¹¹

The Home Office has the power to provide extra payments to people on Section 4 support who require additional services or facilities, but the applicable rules¹² strictly limit the purposes for which extra payments may be provided over and above food and toiletries. There is no specific provision for funds to be routinely made available for obtaining travel documents, communicating with or travelling to embassies, or communicating with foreign governments or with family members abroad. However, a person can apply for an additional payment if they can demonstrate 'an exceptional need' for facilities for travel, facilities to make telephone calls, stationery and postage, or essential living needs.¹³

Reg 3(2)(a) - Taking 'all reasonable steps' to leave the UK

There is no guidance from the higher courts as to the precise meaning of 'all reasonable steps' for the purpose of reg 3(2)(a).¹⁴ The law is contained in the 2005 Regulations and how these are interpreted by the Tribunal.¹⁵

The Tribunal's approach

As might be expected, the Tribunal Judges do not always interpret similar facts in the same way. However, the study sample did not reveal a pattern of inconsistent decision-making. The Tribunal Judges' written reasons consistently emphasise that support will only continue if the appellant is taking "*all reasonable steps*" to leave the UK. They also stress that an appellant must demonstrate a "*proactive approach*" and that fulfilling the requirements of reg 3(2)(a) can be an "*evolving matter*":

"In these circumstances, the appellant should continue to take all reasonable steps to affect his departure from the United Kingdom... If he fails to do so or progress this matter, then he may be at... risk of having his support terminated once again. Although he would have a right of appeal against that decision (if it is to be made), there is no guarantee that any future appeal would be successful. He must remain proactive rather than reactive in terms of his returning home..."
(para 22, statement of reasons, Appeal 22)

In some appeals in the study sample, the Tribunal Judges listed specific steps an appellant should take to remain on or become eligible for support. These steps¹⁶ included:

- Applying to Refugee Action's Choices service for assisted voluntary return (AVR)¹⁷
- Applying for/complying with the Home Office's re-documentation process
- Requesting assistance from a Home Office caseworker
- Asking the Immigration Service for advice about return when reporting
- Contacting the relevant embassy (or embassies) to request a travel document
- Attending the embassy in person to request a travel document
- Completing an application form for a travel document
- Contacting the authorities or family members in their home country for help in obtaining necessary identification documents.

⁵ Section 4 support can also be provided under section 4(1) of IAA 1999, but the scope of this report is limited to the relevant criteria relating to section 4(2).

⁶ The housing and card payment comes as a package which cannot be separated.

⁷ Download the conditions of use at: <http://bit.ly/1u9crr1>

⁸ Under the legal test someone is destitute if they do not have adequate accommodation or have adequate accommodation but do not have a way to meet their essential living needs (i.e. pay for food, clothes etc.) at any point in the next 14 days (or 56 if already receiving support). For more information see ASAP Factsheet 5 – Proving Destitution: <http://bit.ly/1t7sYg8>

⁹ Reg 6 of the 2005 Regulations.

¹⁰ Reg 6(2).

¹¹ Reg 6(1)(b).

¹² Immigration and Asylum (Provision of Services or Facilities) Regulations 2007 ('2007 Regulations').

¹³ Reg 9 of the 2007 Regulations.

¹⁴ In three of the study sample cases the issue of 'all reasonable steps' was due to be considered by way of judicial review. The High Court (and in one case, the Court of Appeal) had granted permission for the applicants (all three of whom had lost their support) to proceed with their case. However, where such permission was granted, the Home Office settled proceedings by consent.

¹⁵ Tribunal Judges are not bound by their colleagues' decisions (although decisions by the principal Tribunal Judge are 'persuasive').

¹⁶ These steps are similar to the eligibility criteria contained in the Home Office's 'Section 4 Support' instruction (see section on Home Office guidance, page 6).

¹⁷ See Appendix 1 for a summary of the AVR process.

In principle ASAP welcomes the Tribunal providing this type of guidance to an appellant because it is tailored to the specific facts of the appeal. As explained on pages 8 to 15, this is not always the case for the information provided by the Home Office.

However, a suggestion made by a Tribunal Judge can potentially produce unwitting consequences. For example, the study sample included a case where the Judge in a previous hearing had suggested it would be reasonable for the appellant (who was a disputed national) to obtain a language analysis report as a step towards proving his nationality. The Tribunal Judge presumably intended such a report to be commissioned by an immigration lawyer as part of an immigration case. However, the client did not have a lawyer and it transpired in the subsequent appeal that he was not able to afford to do this as he had been told it would cost £3,000.

In other cases, on the basis of submissions made by the Home Office to the Tribunal, some Tribunal Judges suggested that undocumented Iranian nationals should request assistance from the Omani embassy in London. But in light of a High Court decision¹⁸ in February 2014, it seems that this step was bound to fail.

Accordingly, there may be circumstances where appellants (through no fault of their own) are unable to comply with a step the Tribunal has directed them to take. ASAP requests that when caseworkers conduct a review after an appeal, they do not assume that all directions given by the Tribunal are reasonable in light of all relevant circumstances. Due to subsequent developments there may be a valid reason why a particular step has not been taken.

ASAP's view

ASAP suggests that an action should only be regarded as being a 'reasonable step' if:

- It has a realistic prospect of facilitating an applicant's departure from the UK¹⁹
- It is reasonable to expect an applicant to take it, bearing in mind the resources and practical opportunities available to them
- An applicant knows that they are expected to take it (or should reasonably know that they are expected to take it bearing in mind their specific circumstances, including their standard of English and the advice and information available to them).

Realistic prospect of facilitating departure

ASAP considers it unreasonable to expect an applicant to take steps that have no prospect of facilitating their return. For example, an applicant should not be expected to apply for AVR if Refugee Action's Choices service is unable to facilitate returns to the relevant country.

Where there is an obstacle to return, the nature of that obstacle is significant. If the problem concerns identification, the person may need to contact family members in their home country. But if the problem concerns a lack of cooperation by an embassy to issue a travel document,²⁰ then contacting family members may be futile. There may come a point where there is nothing more a person can reasonably do to obtain a travel document.

Available resources and practical opportunities

People applying for Section 4 support are often without any resources at all. As noted above, those receiving Section 4 support are only provided with accommodation and support to purchase items for their essential living needs. Home Office guidance suggests that people on Section 4 support can apply for extra payments to cover the cost of contacting and travelling to embassies in the UK or contacting people and/or institutions abroad, but there is no data which confirms whether such payments are routinely provided for this purpose.²¹ In any event, it is important that caseworkers consider all the practical implications of the steps they suggest a destitute refused asylum seeker can reasonably take.

Reasonable step bearing in mind a person's knowledge (real or assumed)

If a step has not been communicated effectively to the person at an appropriate time, it may not be reasonable to expect that person to have taken it.

¹⁸ *R (on the application of JM) v Secretary of State for the Home Department* [2014] EWHC 4430 (Admin). Although this case concerned the lawfulness of detention and prospects for enforced removal, it contains information which is also relevant to voluntary returns. See Appendix 2 for more details.

¹⁹ i.e. a person should not be expected to take a step that has no realistic prospect of resulting in their departure.

²⁰ See Appendix 2 for an example about Eritrea.

²¹ A Home Office response (dated 16 July 2014) to a request made under the Freedom of Information Act 2000 revealed that the reasons why additional Section 4 payments are made are not centrally recorded.

Home Office guidance

This section summarises relevant Home Office guidance (at the time of writing). Given the focus of this report, it concentrates on the procedure for reviewing and discontinuing support granted under reg 3(2)(a). However, to provide the necessary context it also refers to information and guidance on the eligibility criteria.

Section 4 asylum instructions

The asylum instructions titled 'Section 4 Support'²¹ and 'Section 4 Review Instruction'²² set out the approach caseworkers should take when dealing with applications for support and eligibility reviews. They contain the criteria to be applied in 'all reasonable steps' cases.

Reg 3(2)(a) policy

The current version of the Section 4 Support instruction expects people taking steps to leave the UK voluntarily to depart within 3 months. In June 2009 this instruction was amended to include a policy limiting the provision of support under reg 3(2)(a) to one occasion, unless the applicant proves that a "legitimate barrier" or "exceptional circumstances"²³ prevented departure during the previous period of support. In that case, support may be provided for a "second and final time".

Eligibility factors

The Section 4 Support instruction highlights the following factors which caseworkers must consider to determine an applicant's eligibility for support:

- Whether the applicant has applied for AVR
- Whether the applicant has fully complied with the re-documentation process
- If the applicant supplied evidence to support an application for an emergency travel document (ETD)
- Whether the applicant was invited to a re-documentation interview, and if so, whether they attended and complied with it
- If the applicant is subject to a prosecution under section 35 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004
- Whether the applicant could leave the UK sooner if they applied for AVR, rather than wait for an ETD via the Immigration Service Documentation Unit (ISDU).

Assisted voluntary returns (AVR)

The current guidance places significant emphasis on the AVR process (described in more detail in Appendix 1). Caseworkers are instructed to actively promote AVR, and to explain that in certain circumstances a person may not be eligible for Section 4 support if they haven't applied for AVR.²⁴

Once an AVR application is accepted it is valid for 3 months and the applicant will be expected to leave the UK within

this period. However, one of the "exceptional circumstances" which might justify support continuing beyond this date is if the Choices service is unable to organise a person's return (see footnote 23). A person granted support under reg 3(2)(a) is expected to maintain close contact with both their caseworker and the Choices service as a means of overcoming any difficulties they may have in obtaining the documents required to enable their return.

Conditions of support

The Section 4 Support instruction underlines the fact that support is subject to conditions imposed under reg 6(2) of the 2005 Regulations, "providing the conditions have been set out to the person in a notice in writing (the grant letter)". As noted in 'The legal dimension' on page 4, reg 6(2)(d) provides that these conditions may relate to compliance with specified steps to facilitate a person's departure from the UK. The guidance states that before support is discontinued caseworkers must give the supported person the opportunity to explain any alleged breach of conditions, and invite them to provide an explanation. Caseworkers must consider "all the available information" to determine whether the breach was justified by a reasonable excuse.

Specifically in relation to reg 6(2)(d), the guidance requires caseworkers to decide when to issue a notice of steps with which a supported person must comply, depending on their individual circumstances. Caseworkers are instructed to "decide what specified steps are appropriate on a case-by-case basis", notify the supported person in writing of the steps they are required to take, and set an appropriate deadline for when these must be completed. The guidance states that if a person is required to attend a documentation interview at an embassy or high commission, the deadline should take into account the expected time taken to arrange and attend the interview (and, if appropriate, the time taken to apply for and receive additional services under the 2007 Regulations).²⁵

When determining whether a breach of condition has occurred, caseworkers are again instructed to decide matters on a case-by-case basis. If the supported person encounters difficulties in completing specified steps, it is their responsibility to immediately notify the caseworker. If a specified step remains incomplete by the appropriate deadline and no reasonable explanation has been provided, the supported person is to be issued with a warning letter. This letter should contain a further deadline for the person to either complete the relevant step or provide a "reasonable explanation"²⁶ as to why this is not possible.

²¹ Download at: <http://bit.ly/UHO6MA>

²² Download at: <http://bit.ly/1m9eMgu>

²³ The guidance has examples of serious illness, a relevant change in circumstances such as the death of a dependant, and if Refugee Action's Choices service did not return the applicant while an AVR application was extant due to waiting for logistical/financial reasons to facilitate departures to the applicant's country of origin.

²⁴ Or that support may be discontinued if no AVR application is made.

²⁵ Section 4 Support Instruction, page 42. Download: <http://bit.ly/UHO6MA>

²⁶ The examples given in the policy are: (1) an illness (requiring evidence from the person's GP or other treating medical practitioner) (2) the eligibility criteria under which the person qualifies for Section 4 support has been changed to one where it would not be appropriate to apply the specified step as a condition.

Case review

In addition to the guidance on assessing whether a person has breached the conditions of their support, the Section 4 Support and Section 4 Review instructions set out the procedure for reviewing 'all reasonable steps' cases. Different timetables are prescribed depending on whether or not the applicant is registered under the AVR programme operated by Refugee Action's Choices service.

If an applicant is registered when support is granted, the instructions provide that the case is reviewed 6 weeks after the date of grant. A second review should take place 6 weeks after that, with the subsequent timescale for extending support to be advised by the AVR team or the Choices service.

If no AVR application is registered when support is granted, the instructions require caseworkers to check again after 2 weeks. If it is determined that the supported person remains eligible, caseworkers are instructed to continue to review as appropriate, at no longer than 3 month intervals.

The Section 4 Review Instruction states that a review must be *"a complete reconsideration of the individual case, based on the current circumstances at the date of review"* (page 3 of the instruction). In relation to the reg 3(2)(a) criteria, caseworkers are instructed to check that the supported person has complied with the re-documentation process (where possible) and has not breached reporting conditions. If they have registered with the AVR programme they must still be approved.

On the first review 6 weeks after support is granted, caseworkers can, if necessary, request further information relating to evidence of the supported person's continued eligibility. Where a supported person continues to be eligible for Section 4 support under reg 3(2)(a), the review instruction states that a review should take place every 3 weeks until the supported person has left the UK.

Key findings and trends

Analysis of the 51 case files revealed the following trends about the appellants’ profile and support history, as well as their appeals and the decision-making on their cases. A presenting officer appeared on behalf of the Home Office in 84% of appeals in the study sample.²⁷

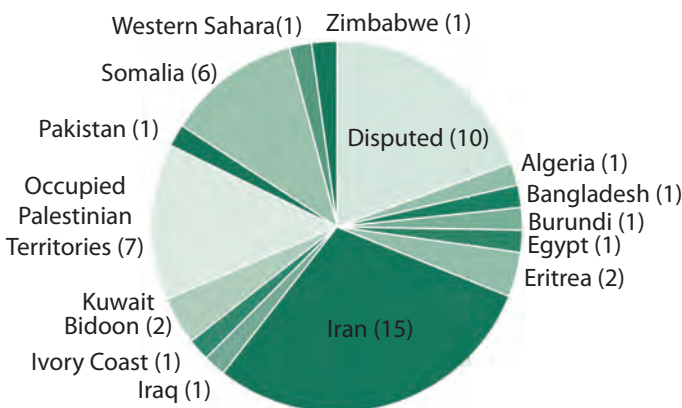
Appellants’ profile – predominantly male from ‘problem’²⁸ countries

A disproportionately high number of the examined appeals (98%) were submitted by men.²⁹ The top three nationalities of appellants were Iranian (15 appeals, relating to 13 people), Palestinian (7 appeals)³⁰ and Somali (6 appeals). These nationalities accounted for the majority (55%) of the sample.

Other nationalities featuring in the study (once, unless stated otherwise) were: Algerian, Bangladeshi, Burundian, Egyptian, Eritrean (2), Iraqi, Ivory Coast, Kuwaiti Bidoon (2), Pakistani, Western Saharan and Zimbabwean. The appellant’s claimed nationality was disputed by the Home Office in 10 (20%) of the appeals, with the disputed nationalities being Egyptian/Palestinian (2), Eritrean/Ethiopian (2), Iranian/Iraqi, Kuwaiti/Pakistani, Somali/Kenyan (3 appeals, relating to 2 people) and Syrian/Palestinian.

Only 41% of appeals involved people who were appealing to the Tribunal for the first time (see page 10 for information on previous appeals). Some of the returning cases featured appellants who had been on support for a long time, illustrating the genuine difficulties refused asylum seekers can experience when trying to return home.

APPELLANT NATIONALITY

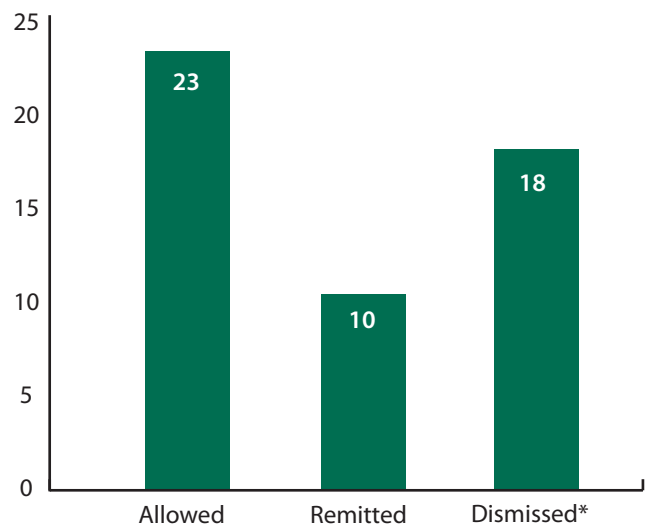


²⁷ There was no trend on the outcome of the eight appeals in which the Home Office was unrepresented: three were allowed, three dismissed and two remitted.
²⁸ The reference to ‘problem countries’ is due to the specific difficulties involved in arranging a person’s return. Appendix 2 summarises some of these difficulties.
²⁹ This compares with 74% men to 26% women for all ASAP-represented appeals in the study period. In the past 3 years about one third of ASAP’s clients have been women.
³⁰ The nationality of one appellant included in this figure is described as ‘undetermined’ in the relevant statement of reasons. However, the appellant claimed to be a Palestinian citizen and the statement of reasons does not record the Home Office expressly disputing this claim.

Appeal outcomes

Of the 51 appeals, 23 were allowed, 10 were remitted³¹ and 18 were dismissed. Factoring in the ultimate outcome of five dismissed appeals,³² in 75% of appeals the Home Office’s initial decision to discontinue support was overturned or reconsidered.³³ That was true in 82% of appeals concerning the top three nationalities (Iranian, Palestinian, Somali).

APPEAL OUTCOMES



* See footnote 32.

Basis of support prior to termination

In the vast majority of cases support was awarded under or assigned to³⁴ reg 3(2)(a) of the 2005 Regulations prior to the relevant termination. In a few cases support had been awarded under a different provision of reg 3(2),³⁵ with the appellant raising ‘all reasonable steps’ during the review process.

Applications for AVR or FRS

In a significant majority of appeals the appellant had been approved under either the AVR or FRS programmes.³⁶ Only 8 appeals³⁷ concerned people who never had an application approved, and all of these related to countries for which assistance is more limited (Iran, Occupied Palestinian Territories, Eritrea and Somalia). Indeed, all the appellants in question had applied to the Choices service but were informed they could not be assisted due to their particular circumstances.

³¹ Being discontinuation appeals, appellants kept support during the remittal period.
³² ASAP referred five of the ‘dismissed’ appellants for judicial review. In four of the five cases the High Court/Court of Appeal granted permission for the case to be heard, but the Home Office settled proceedings before any hearing took place. In the other case the appellant was given a new right of appeal to the Tribunal which remitted his case back to the Home Office on the condition that his support was maintained.
³³ During the relevant period 54% of appeals represented by ASAP (i.e. not just ‘all reasonable steps’ criteria) were remitted or allowed.
³⁴ i.e. support was first granted under one of reg 3(2)(b)-(e) and transferred to reg 3(2)(a).
³⁵ Predominantly reg 3(2)(e) of the 2005 Regulations.
³⁶ However, of the 43 cases in which an AVR or FRS application had been approved only a few remained outstanding at the date of the relevant appeal (most having passed the 3 month time limit).
³⁷ Four of these appeals related to two people.

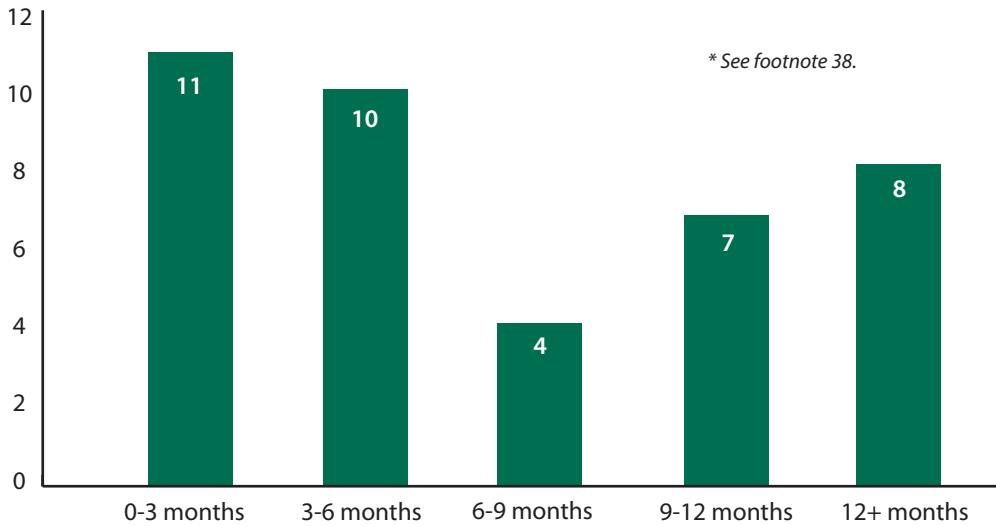
Length of time on support under reg 3(2)(a)

The average length of time an appellant remained on support was 10.4 months.³⁸ The longest an appellant remained on support was 69 months, with the shortest being 5 days.³⁹ In the six Palestinian cases where support was initially granted under reg 3(2)(a), the average length of time on support rose to 23.2 months,⁴⁰ highlighting the particular difficulties Palestinians face in arranging their return.

Previously supported under reg 3(2)(a)

The majority of appeals concerned people receiving support under reg 3(2)(a) for the first time. However, in at least 10 appeals (4 concerning 2 appellants) the individual was supported under that provision more than once (despite the Home Office’s policy of limiting access described in the section on Home Office guidance).

LENGTH OF TIME ON SUPPORT*



* See footnote 38.

Letter granting support

Of the 32 files containing an applicable grant letter⁴¹ 75% were generic in format and failed to provide any tailored guidance about the specific steps the applicant must take in order for support to continue. Typically, these grant letters simply referred to the conditions listed in reg 6(2) of the 2005 Regulations. A significant majority (75%) of the appeals which followed a generic grant letter were allowed or remitted by the Tribunal. In a handful of cases applicants were provided with relevant, tailored guidance.

GRANT LETTER CASE STUDY – APPEALS 19 & 24 (SAME APPELLANT)

In July 2011, a Somali man was awarded Section 4 support on the basis that he was taking all reasonable steps to leave the UK. The grant letter specified that he must complete a number of steps⁴² by 15 July 2011. In August 2011 the Home Office sought to discontinue support, but this was reinstated after the Tribunal allowed the man’s appeal (the Judge finding that the Home Office had decided to discontinue support prematurely, particularly given the difficulties of returning to Somalia).

In July 2012 the Home Office sought to stop providing support a second time, on the basis that the man’s ‘fresh claim’ submissions (which he had subsequently lodged) had been refused. Again, the Tribunal allowed the man’s appeal because the Home Office had failed to demonstrate that the reason support was originally granted (i.e. taking all reasonable steps to leave) no longer applied. Shortly afterwards, the Home Office issued the man with a further grant letter containing generic conditions.

In September 2012 the Home Office issued a third discontinuation letter which did address the issue of ‘all reasonable steps’. However, his appeal was allowed because the Home Office had not informed the appellant what steps he should be taking in addition to the ones he had already attempted.

³⁸ In calculating this figure, the length of time each appellant spent on support was rounded up or down to the nearest month, running from the date of grant to the date of the discontinuance letter which generated the appeal under examination for this report. Cases featuring the same appellant or where support was not granted under reg 3(2)(a) were excluded. In many cases support continued following a review or successful appeal to the Tribunal. Of the appeals which make up the 10.4 months average figure, in 24% of cases the Home Office sought to stop providing support 3 months or less after the date of grant.

³⁹ This was due to the particular circumstances of the case. The appellant had been granted support at appeal on the basis that he had a flight booked to Mogadishu in 2 days’ time; support was discontinued after he failed to take the flight.

⁴⁰ This figure includes two of the top three results in the study (69 and 38 months).

⁴¹ Some of the files in the study sample did not contain the grant letter, while others contained letters that did not focus on taking all reasonable steps because they related to support being provided on a different basis.

⁴² The steps were: (1) provide evidence from the Refugee Council that he has been accepted or refused for voluntary return (2) provide evidence that he is actively pursuing departure from the UK (3) provide evidence that he is attempting to obtain travel documents (4) provide evidence that he has approached the Somali authorities to ask if they can facilitate his departure.

Previous appeals to the Tribunal

In 59% of the study sample the appellant had previously made an appeal to the Tribunal. However, this is unsurprising given the Home Office's case review process and the right of appeal triggered by a termination of support. Of the 30 returning cases, the Tribunal had previously considered the reg 3(2)(a) criteria in respect of 22 appellants. In 64% of the 'returning' reg 3(2)(a) cases the Home Office unsuccessfully attempted to discontinue support between the relevant dates of grant and appeal. As the example below illustrates, in some cases the Home Office unsuccessfully attempted to discontinue support more than once.⁴³

PREVIOUS APPEALS CASE STUDY - APPEALS 31 & 49 (SAME APPELLANT)

In March 2011 a man of claimed Somali nationality (the Home Office considered him to be Kenyan) was awarded support under reg 3(2)(a) following a successful appeal to the Tribunal. Around 8 months later the Home Office discontinued his support. However, this was reinstated after he successfully appealed to the Tribunal. In November 2012 the Home Office issued another discontinuation letter, but once again that decision was overturned on appeal to the Tribunal.

In November 2013 the Home Office initially determined that the man's support should stop because he had failed to answer a review letter, but support was reinstated the following day after it accepted that a response had been provided. Around 6 weeks later the Home Office again decided to cease providing support on the basis that the man had failed to respond to a further review letter sent in November. This time the Tribunal remitted his appeal back to the Home Office so it could consider the response which, as before, had in fact been provided.

Case reviews

In approximately 70% of appeals a review appeared to have taken place prior to support being terminated.⁴⁴ However, while it appears that caseworkers generally carry out some form of review, the quality of practice is inconsistent (see the two case examples below). In some appeals, the case was reviewed at an appropriate time and engaged with the information provided in response. In others, either no review took place, or caseworkers made factual errors and/or failed to take relevant information into account. At least 10 case files contained evidence of a flawed review process. While the quality of review may not have been the determinative issue in each case, the Tribunal allowed or remitted all of these appeals.

CASE REVIEW – EXAMPLES

EXAMPLE 1 (HIGHER QUALITY) – APPEAL 46

In August 2013 a woman from the Ivory Coast was granted Section 4 support under reg 3(2)(a) having applied for AVR. In October she received a review letter asking for information about her contact with Refugee Action, actions taken to progress her AVR application and any difficulties experienced in attempting to return to her country of origin.

In her response, she requested that her flight to the Ivory Coast be booked after April 2014 because there would be greater unrest in the country until then. The Home Office discontinued her support, referencing the content of her response in its decision letter. The Tribunal dismissed her appeal, with the Judge stating: *"There is no evidence before me that the appellant is currently taking steps to leave the United Kingdom."*

EXAMPLE 2 (POORER QUALITY) – APPEAL 37

In December 2012 an Iranian man's AVR application was approved and he was granted Section 4 support under reg 3(2)(a). The grant letter specified that he should cooperate fully with Refugee Action and be proactive in obtaining the necessary documentation to return home. It also stated that his case would be reviewed in 6 weeks.

In January 2013 the charity ASHA wrote on the man's behalf to the Iranian embassy in Dublin and the Omani embassy in London to request assistance with identity and/or travel documents. In February 2013 the charity also wrote to the Home Office to ask for contact details for the Ministry of the Interior in Tehran.

In March 2013 the Home Office withdrew the man's AVR application due to a lack of contact, problems obtaining travel documents and the fact that the application was more than 3 months old. That same month ASHA sent further written requests to the Home Office, the Iranian consulate and the Omani embassy. In April the Home Office discontinued the man's support (on the basis that he was not taking all reasonable steps to leave the UK). In support of its decision, the Home Office cited the reasons why his AVR application had been withdrawn. Despite the grant letter stating that a review would take place 6 weeks after support was awarded, no review letter had been sent prior to the discontinuation decision.

At the hearing, it emerged that through his solicitors and ASHA, the man had contacted the Iranian embassy in Dublin, the Iranian consulate in London and the Iranian Foreign Ministry. They had also written to the Home Office asking what specific steps the man should take and requesting it reconsider withdrawing his AVR application, in addition to submitting a request to the British Red Cross tracing service. The Tribunal allowed the man's appeal and reinstated his support.

⁴³ It is acknowledged that there may be circumstances where an unsuccessful attempt by the Home Office to discontinue support is a valid part of the Section 4 process.

⁴⁴ The absence of review in a couple of cases might be explained by their atypical circumstances. For example, in Appeal 33 the appellant had been awarded support on the basis that he had a flight booked to Mogadishu in 2 days' time, and this was discontinued 3 days after failing to travel on the flight.

Reasons for stopping support

The Home Office cited various reasons for discontinuing support. The status of an appellant's application under the AVR or FRS schemes was a recurring factor, with around 65% of the letters referring to one of these processes (for example, noting that an application had been withdrawn or expired, and therefore deemed withdrawn by the Home Office). Other factors relied on included: the content (or lack of) the appellant's response to a review letter; the Home Office policy that support is provided under reg 3(2)(a) once for 3 months only; a finding in respect of an appellant's nationality made in the immigration and asylum Tribunal; the refusal of further submissions; and the failure to leave the UK on a booked flight. The three examples below reflect an inconsistent approach to the level of case specific detail and clarity of reasoning provided to appellants.⁴⁵

REASONS FOR STOPPING SUPPORT – EXAMPLES

EXAMPLE 1 (SHORT EXPLANATION) – APPEAL 21

"You applied for Section 4 support on the basis that you were taking all reasonable steps to leave the United Kingdom or place yourself in a position to leave the United Kingdom. However, our records show that your application for assisted voluntary return was withdrawn on 04/05/12 and you have failed to provide evidence that you are taking steps to leave the UK. For the reasons outlined above it is considered that you are no longer eligible for Section 4 support."

EXAMPLE 2 (LONGER EXPLANATION) – APPEAL 30

"Having carefully considered all the circumstances on behalf of the Secretary of State I am satisfied that you no longer meet the criteria for Section 4 support because your ongoing eligibility for support under Section 4 of the Immigration and Asylum Act (1999) is on the basis that you are taking all reasonable steps to leave the UK, or place yourself in a position in which you are able to leave the UK; thus satisfying regulation 3(2)(a). You had previously stated that you had been to Refugee Action (Choices) to seek assistance in return to Palestine but they are unable to help you as it is a difficult process at present.

"Due to the fact that you had been on Section 4 support under this criterion for a period of considerably more than three months your application has been reviewed in close detail. It has been well documented throughout your asylum process and, in particular, your reason for refusal letter from your initial asylum claim and your subsequent asylum appeal that your claim to be from Palestine wholly lacks credibility. It has been found by your asylum caseworker as well as the immigration appeal judge that you are in fact from Egypt.

"In light of this, you were kindly asked to start taking steps to return to your actual country of origin (Egypt). You were asked if you could provide evidence of any steps you had taken to return to Egypt. You were given examples of the steps you could take including contacting Refugee Action, contacting the Egyptian embassy in order to obtain travel and/or identity documentation or showing us evidence that you had sought assistance from the immigration services and UKBA caseworker with regard to taking steps to leave the UK.

"You were given a 2 week period to respond to our request and to date we have received no written or verbal response from either you or your legal representative. It was explained in our last correspondence that failure to respond [sic] to our request would be deemed as acceptance that you are no longer eligible for support under regulation 3(2)(a) and for that reason I am discontinuing your support."

EXAMPLE 3 (UNCLEAR REASONING) – APPEAL 12

"It has come to our attention that although you claim to come from Iran you are in actual fact from [sic] Iraq, which was confirmed by the judge at your first-tier asylum appeal hearing. This brings into question the credibility of your desire to return to your country of origin and it is, therefore, not accepted that you are taking all reasonable steps to facilitate your departure from the UK."

⁴⁵ The level of information provided will of course depend on the facts of the case. However, ASAP suggests that if a decision letter merely relies on the expiry of an AVR application, this is an indication that further case analysis could have been carried out.

Conclusions

In light of the analysis and key findings above, ASAP invites the Home Office to consider the following issues relating to the termination of Section 4 support granted under reg 3(2)(a).

Appeal outcomes

The number of appeals allowed or ultimately remitted to the Home Office signifies that there is scope to improve the quality of decision-making in this area.⁴⁶ The headline statistics illustrate how crucial it is to treat each case on its specific facts, with caseworkers giving particular regard to factors such as nationality, the actual route of return, and barriers to departure. ASAP considers that its recommendations regarding the grant, review and discontinuance process would potentially eliminate some avoidable appeals (and their resulting costs), and ensure that applicants experience more consistent, fairer treatment.

The 'tick box' approach

In some cases, the Home Office expected appellants to take steps which carried little practical benefit other than procedural compliance. For example, in Appeal 19 a Somali appellant was directed to contact his embassy and approach the Home Office for assistance yet, on the facts, these steps were not relevant to his case (he had already done the latter). Applicants should not be expected to take steps that would not actually assist them in being able to leave the UK. This point was addressed in a previous statement of reasons contained in the file for Appeal 43:⁴⁷

"The central plank of the [Home Office's] case is that the Appellant has not asked [the Home Office] to remove him, yet the [Home Office] is unable to say whether or not such a request would or even could lead to removal. Indeed, one wonders why the Appellant has not, in fact, been removed if it is possible for the [Home Office] to do so. It is bordering on the ludicrous to suggest that an illegal immigrant needs to ask to be removed for the [Home Office] to actually remove him. It seems to me therefore that the [Home Office's] stance... is somewhat procedural and would not actually assist in him in being able to leave the United Kingdom... it would just be a procedural move with no benefit apart from 'ticking boxes'" (Paragraph 14)

This example is indicative of a generic approach to decision-making. One potential solution is to ensure all discontinuation letters explain how the applicant's failure to take a precise step has reduced their prospects of departure. This could assist caseworkers in identifying cases that are particularly problematic and require additional Home Office assistance (see 'More practical assistance for applicants' on page 13).

⁴⁶ It is acknowledged that not all of appeals which make up this statistic are examples of poor decision-making by the Home Office. For example, in certain cases the appellant had failed to respond to a review letter but subsequently provided new information as part of their appeal to the Tribunal.

⁴⁷ AS/13/05/29910

More information for applicants

Home Office policy requires applicants to be provided with tailored guidance on the steps they must take. However, the study sample suggests that this is the exception rather than the norm. In practice, applicants are more likely to receive generic instructions which are not always applicable to their case. For example, in some cases support was discontinued before the applicant had received any information to supplement generic instructions contained in the grant letter, while in others applicants received review letters which stated the need to adopt a 'proactive approach' without providing any explanation of how to demonstrate that this requirement was satisfied. In Appeal 51 the Tribunal Judge noted in the statement of reasons:

"I accept the appellant's evidence today that until he received the [Tribunal's] directions a week ago, he had not been given any indication whatsoever by [the Home Office] as to what steps he might take in order to satisfy Regulation 3(2)(a)."

The following extract from the statement of reasons in Appeal 40 illustrates how critical the provision of information by the Home Office can be:

"[The appellant] then approached Refugee Action's Choices department once again but was told that, without identification evidence, they could not assist him. He did not know where else to go. It was only when he received some information from the Home Office – when considering discontinuing his support – that he was able to approach the Iranian embassy in Dublin. He explained to me that he had sent the letter (a copy of which is in the bundle) and had telephoned them on two occasions. In particular, he had forwarded to the embassy a copy of his birth certificate... along with his identity card."

This example encapsulates two key points. First, where an applicant reaches an impasse (through no fault of their own), the Home Office's specialist knowledge and experience can be instrumental in overcoming the relevant hurdle. Second, the process is most efficient if the applicant is informed of all relevant information at the earliest opportunity.

The failure to provide information in a timely manner is a further cause of potentially avoidable appeals. ASAP recommends that any decision to discontinue support is related to issues which have previously been communicated to the applicant. Support should not be discontinued if an applicant has attempted to comply with all steps reasonably requested of them (see 'Retrospective treatment' on page 13).

As well as additional information about what steps to take, applicants also require further guidance about what assistance is available to them (see also page 13). In particular, ASAP suggests that on support being granted, and at review if necessary, the Home Office notifies⁴⁸ applicants about the option of applying for additional funds for the purpose of them taking a specified step to leave the UK.

⁴⁸ Such notification should contain guidance (ideally including examples) on the requirements for submitting a successful application.

Deadline for completed steps

It is crucial that applicants are afforded an appropriate period of time in which to undertake specified steps to facilitate their departure from the UK. The study sample demonstrates that applicants commonly encounter delay, which is unsurprising given that re-documentation is acknowledged as being a bureaucratic and slow process (see Appendix 1).

Although caseworkers face a difficult balancing exercise (and are not always aware of all relevant facts before the Tribunal), there were examples in the study sample of support being stopped prematurely in light of the particular circumstances in each case. A hasty decision to terminate support can undo progress which has been made, leaving destitute (and often vulnerable) individuals without any stability. It can also generate potentially avoidable appeals to the Tribunal.

- In Appeal 22, the appellant was in the process of obtaining documents via his sister in Iran which would facilitate his departure from the UK. Allowing the appeal, the Tribunal Judge noted that *"[i]t must be common sense to expect a reasonable delay particularly in obtaining documentation of this nature from the authorities and then arranging to forward this to him by courier out of Iran."*
- In Appeal 23, the appellant was in contact with his family in Iran with a view to obtaining ID documents. His parents had sent him details of his birth certificate and driving licence, which he had provided to the Iranian embassy. The appellant had also raised the issue of his departure with the Immigration Service. Despite this progress, his support was stopped.
- In Appeal 32, the appellant challenged the Home Office's decision to stop support a mere 21 days after it had been reinstated by the Tribunal following a successful appeal. Although further information about the appellant's case emerged by the appeal hearing, there was no indication that the appellant's particular vulnerability and barriers to departure from the UK (and their impact on the time it would take to progress the appellant's case) had been considered thoroughly when the decision to stop support was taken.

As noted in the section on Home Office guidance, the Home Office's policy requires that any deadline set for undertaking steps must be reasonable. However, this policy does not appear to be fully reflected in practice. Improved practice could be attained by caseworkers adopting a more pragmatic approach and considering the particular facts of a case in greater detail.

ASAP suggests that caseworkers allocate a reasonable deadline for all steps which have been specified to an applicant, communicating them in writing. In addition to providing applicants with certainty, caseworkers would also be required to engage with an applicant's specific circumstances (for example, whether the applicant must make contact with family or authorities based outside the UK, or if they require an interview with an embassy based in the UK).

Retrospective treatment of steps/raising new issues post-termination

Given the imbalance of power between the Home Office and refused asylum seekers, it is unreasonable for caseworkers to terminate support on the basis of a matter which has not previously been communicated to the applicant. This point also applies to the Home Office's case at appeal. However, the study sample featured various examples of the Home Office raising new issues shortly before, or during, an appeal. These include:

- Querying an appellant's nationality (Appeal 2)
- Stating that an appellant should have contacted the Iranian embassy in Dublin (Appeal 15)
- Expecting an Iranian national appellant to have contacted the Omani embassy in London (Appeal 29)
- Suggesting that an appellant should have tried to contact family through other means than the British Red Cross tracing service (Appeal 35)
- Asserting that an appellant should have contacted the British Red Cross tracing service (Appeal 47).

In Appeal 47, the Tribunal Judge welcomed confirmation from the Home Office of the additional steps the appellant should be taking in order for support to be maintained. However, she specifically noted that *"this information was provided only at the hearing and not in response to the direction referred to above."*

By raising new issues when terminating support (or later, at the appeal) the Home Office is unfairly 'moving the goalposts' and failing to comply with its policy of providing applicants with advance notice of all conditions attaching to their support. ASAP considers that any information the Home Office has which may assist the applicant should be provided as early as possible.

ASAP suggests that all letters granting support state the precise steps an applicant is expected to take (setting reasonable deadlines for each) and all review letters confirm whether any further steps should be taken (again giving the applicant a practical opportunity to comply).

More practical assistance for applicants

Home Office policy places the onus on applicants to demonstrate that they are proactively taking steps to leave the UK. The study sample confirms that this approach is endorsed by the Tribunal. However, in some cases applicants were asked to meet unrealistic demands given their lack of resources. In some of these cases the Tribunal Judges indicated that the Home Office should have provided the appellant with greater practical assistance:

"I would also urge [the Home Office] to try and extend facilities to the appellant (who is in a very difficult position) to facilitate his return. If what is said by the appellant is true, then he is not receiving the amount of assistance that he should particularly as both parties have a common intention with regards to this matter – they both wish for him to be removed from the United Kingdom and return to Palestine." (Appeal 25)

ASAP considers that placing the exclusive onus on appellants, particularly in problematic cases,⁴⁹ is both counterproductive and unrealistic. The Tribunal Judge in Appeal 47 alluded to this point when noting:

“For whatever reason, the Palestinian Mission is not assisting the appellant nor assisting the [Home Office]. This begs the question that if the Palestinian Mission will not respond to a governmental department... how the appellant himself, a destitute individual, can force them to act more effectively.”

Expecting applicants to undertake steps without any assistance is also at odds with the wording of the regulation. The second part of reg 3(2)(a) – “which may include complying with attempts to obtain a travel document” – implies a clear intention for the Home Office to cooperate with the applicant in respect of their departure from the UK. Similarly, reg 6(2)(d) – “complying with specified steps to facilitate his departure from the United Kingdom” should not result in the applicant having to take all responsibility for arranging their own departure, unless perhaps all relevant steps have been clearly communicated to them (and in the circumstances it is reasonable to expect the applicant to take those steps without any assistance).

The value of practical assistance provided by the Home Office is exemplified by Appeal 10. In particular, this case demonstrates how such assistance can play a crucial role in ensuring that momentum behind an applicant’s departure is not lost.

The appeal was heard during two separate hearings in March and April 2012. The appellant claimed to be Eritrean but the Home Office believed him to be Ethiopian. He had been granted support under reg 3(2)(a) in October 2010. At the first hearing, the appellant explained that apart from requesting help from the Refugee Council and attending the Eritrean embassy in London, he did not know what else he could do to pursue his departure. He learned that he could have approached the Home Office with a view to leaving the UK. At the second hearing the appellant produced documents which showed that he had applied to the Home Office to obtain assistance. Following that request, he was invited to a travel document interview at his local reporting centre, giving him a further avenue to pursue.

The 3 month policy restriction

Since its introduction in 2009, ASAP has been concerned that the restriction in the Home Office policy on reg 3(2)(a) unfairly limits access to support. The current restriction arguably prevents a caseworker from asking the question required by the present tense wording of the test: *is the applicant taking all reasonable steps to leave the UK?* If, when applying for support, an applicant is taking all reasonable steps to leave the UK the wording of reg 3(2)(a) does not suggest they should be barred because they have previously been granted support on this basis. Also, as some legitimate barriers to return can take many months to resolve, the exception to the general policy (allowing a further 3 months on support) could, in certain cases, prove too narrow.

Due to these concerns, ASAP examined how the policy is applied in practice. In a number of appeals, the Home Office had quoted its policy in discontinuation letters and appeal submissions. However, as the majority of appellants received Section 4 support under reg 3(2)(a) for longer than 3 months (and some on more than one occasion), this could indicate that the Home Office applies a broad discretion to the exception criteria (perhaps recognising that the policy has no basis in law). In the cases where the Home Office did seek to rely on its policy, the Tribunal did not appear to afford any significant weight to it. Although neither the Home Office nor the Tribunal appear to apply the policy strictly, ASAP suggests that the restriction on obtaining support under reg 3(2)(a) is removed because in addition to having no basis in law, it does not encourage caseworkers to adopt best practice of treating each case on its specific facts.

POLICY CASE STUDY – APPEAL 45

A man from Bangladesh was granted Section 4 support under reg 3(2)(a) in July 2013. At that time his AVR application was approved. The grant letter quoted the Home Office policy of limiting the provision of ‘all reasonable steps’ support.

In October the man’s AVR application was withdrawn after it expired and the Home Office determined that his support should be withdrawn. The man then submitted a second application for AVR and appealed the Home Office’s decision. In response to the grounds of appeal the Home Office sought to rely on its reg 3(2)(a) policy, referring to both the grant letter and the Section 4 Support instruction. The Home Office restated its position in its response to directions.

However, at the appeal the appellant provided evidence that Refugee Action had approved his second AVR application and that a travel document had been issued. The Tribunal allowed his appeal. The Judge’s statement of reasons gave no indication that the reg 3(2)(a) policy prevented this outcome.

⁴⁹ For example, cases where there are specific barriers to a person’s return (such as travelling to embassies in the UK or communicating with individuals and/or authorities abroad)

Case reviews

An effective review process clearly plays a fundamental role in good quality decision-making.⁵⁰ Due to their evolving nature, the review process is particularly important in 'all reasonable steps' cases. Although reviews were carried out in the majority of the study sample, ASAP is concerned by the relatively high number of cases (approximately 30%) where there was no evidence of a formal review taking place. Furthermore, not all of the reviews which were carried out appeared to comply with the relevant policy requirements. For example, there were cases in the study sample where caseworkers:

- Made factual errors
- Failed to consider evidence supplied in response to a review request
- Failed to take into account the appellant's specific circumstances.

REVIEW CASE STUDY – APPEAL 16

The following case is an example of where no review took place. When the case proceeded to an appeal, the written submissions from the Home Office could have engaged more closely with evidence provided by the appellant. During the appeal hearing, further steps were suggested to the appellant for the first time.

In February 2012 an Algerian man applied for Section 4 support. He had applied to Refugee Action's Choices service for AVR and his application was approved. Section 4 support was granted to him in March. The grant letter incorrectly referred to steps he had taken through the International Organisation for Migration (the letter should have referred to the Choices service). It stated that no specified steps to facilitate his departure had been stipulated.

In April 2012 the applicant visited the Algerian embassy in London to obtain a travel document. He handed in photographs of himself (which he had been asked to take). An embassy employee completed a form and attached the photographs to it. The applicant subsequently telephoned the embassy on numerous occasions to check progress but he could only get through to a recorded message. In June 2012 the Home Office withdrew the applicant from the Choices AVR programme because 3 months had passed since the application was approved. A few days later his Section 4 support was stopped.⁵¹

The applicant lodged an appeal. He explained that he had attempted to contact a childhood friend in Algeria who could confirm that the appellant was Algerian (he had lost contact with his family). The applicant also produced a letter from Refugee Action which advised him to delay making a second AVR application until he received his Algerian identity documents.

The Home Office response to Tribunal directions set out a generic list of steps which the appellant could take. Some of these (for example, "Complete and submit an application to the Algerian embassy") did not relate to the evidence the applicant had already provided.

At the appeal hearing, the Home Office suggested additional steps that the appellant could have taken to obtain evidence of his nationality. These included contacting British Red Cross tracing service and placing an advertisement in a local newspaper in his home city in Algeria. Neither of these steps had previously been communicated to the appellant.

Allowing the appeal, the Tribunal Judge concluded:

"I find that the appellant has given compelling and credible evidence that he has taken active steps to return to Algeria. I find that the appellant has taken all reasonable steps to leave the UK. At today's hearing he has been advised of further steps he may take..."

⁵⁰ See the report of the Independent Chief Inspector of Borders and Immigration on asylum support, which identifies the review process as one of the areas for improvement: <http://bit.ly/1vtPG5x>

⁵¹ The decision letter referred to his AVR application having been withdrawn and cited a lack of contact with Refugee Action.

ASAP recommendations

In summary, ASAP makes the following recommendations to the Home Office:

- 1** On granting support (and at review if necessary), the Home Office notifies an applicant of the precise steps they are expected to take for support to continue.
- 2** The Home Office informs an applicant in writing of the reasonable deadline by which they are expected to complete each specified step.
- 3** On granting support (and at review if necessary), the Home Office notifies all applicants about how to apply for exceptional funds for the purpose of undertaking relevant steps to leave the UK.
- 4** At both grant and review stages, caseworkers consider whether it is reasonable for the Home Office to provide an applicant with practical assistance to overcome the barrier to them leaving the UK.
- 5** As soon as practicable the Home Office provides an applicant with any relevant specialist information it has relating to arranging departures from the UK.
- 6** The Home Office delays issuing a discontinuation letter until an adequate case review has taken place.
- 7** In discontinuation letters the Home Office explains how the applicant's failure to take a particular step has reduced their prospects of leaving the UK.
- 8** In discontinuation letters, caseworkers state what information was provided in response to a case review and explain why a decision to stop the applicant's support has subsequently been reached.
- 9** Any decision to discontinue support is related to an issue which has been previously communicated to the applicant.
- 10** Support is not discontinued if an applicant has attempted to comply with all steps reasonably asked of them.
- 11** The policy limitation on accessing Section 4 support under reg 3(2)(a) be removed.

APPENDIX 1: LOGISTICS OF RETURN

To help place our research findings in context, this appendix summarises the practical logistics for a refused asylum seeker leaving the UK.

Methods of return

Typically, a refused asylum seeker wanting to arrange their departure from the UK is faced with the following options:

- Return independently (but it is extremely unlikely that a destitute refused asylum seeker will be able to pursue this option)
- Approach Refugee Action's Choices service regarding assisted voluntary returns (AVR)
- Approach the Home Office regarding the facilitated return scheme (FRS) or voluntary departure
- Approach Immigration Services.

Documents required

To leave the UK a refused asylum seeker will need a travel document. For certain nationalities European Union (EU) letters are issued by the Home Office, but many countries only accept a valid passport or emergency travel document (ETD). In ASAP's experience many refused asylum seekers need to apply for a new passport or an ETD, and the steps they have taken to pursue this is an issue which often arises in appeals to the Tribunal.

An ETD is issued by an embassy, high commission or consulate. It is normally for a single journey and only valid for a prescribed period. To obtain an ETD an applicant needs to prove their identity to the relevant authorities of the home country. The requirements vary depending on the country of return.

In 2013, the Home Office released guidance (in response to a request made under the Freedom of Information Act 2000) issued by its 'country returns operations and strategy' (CROS) team which contains country specific information about ETD requirements. It also records the expected timescale (if known) depending on whether an application is made with original evidence, with copy evidence or with no evidence. The edition from August 2013 contains the entry "*no established timescales*" for Iran, Occupied Palestinian Territories and Eritrea.

In April 2014 the Independent Chief Inspector of Borders and Immigration published his findings following an inspection of the ETD process. This report confirms that supporting evidence of nationality and identity is of central importance in persuading foreign embassies to issue ETDs.⁵² It also notes that the process of re-documentation can be "*bureaucratic and slow*".⁵³

Assisted voluntary returns (AVR)

If a person without status in the UK decides to return to their country of origin they can apply for assistance under the AVR programmes. The Home Office has published information about the various AVR programmes in the form of guidance to caseworkers – Assisted voluntary returns (AVR).⁵⁴

For single refused asylum seekers, the relevant scheme is the 'voluntary assisted return and reintegration programme' (VARRP). VARRP applications are approved by the Home Office AVR team. The programme itself is operated and administered by Refugee Action's Choices service, which is entirely independent from the Home Office. Applicants receive free and confidential advice from the Choices service and deal with it throughout the process. The assistance provided under the VARRP programme can play an integral role in helping refused asylum seekers overcome what might otherwise be insurmountable difficulties in arranging their departure from the UK. As might be expected, the status of an application to the Choices service is also regularly considered by the Tribunal.

Assistance provided

Choices will help a successful applicant to obtain travel documents, arrange and pay for flights, arrange transport to and give assistance at the UK departure airport, arrange onward transport in the person's country of origin (or the third country to which the applicant is permanently admissible) if required, and where possible make a referral to a locally based non-governmental organisation (NGO) for assistance after return. People returning under VARRP are eligible for up to £1,500 worth of reintegration assistance, including a £500 relocation grant in cash on departure for immediate resettlement needs. A range of reintegration options are available depending on the person's specific needs, with the listed options including education, vocational training, job training and medical support.

Eligibility criteria

Subject to stated exceptions, the VARRP programme is open to any non-European Economic Area national (and their dependants) whose application for asylum is pending or has been refused. However, in practice the Home Office views the AVR programme as being discretionary. ASAP is aware of cases in which the Choices service considers that a person should be eligible according to the criteria, but the Home Office refuses their application.⁵⁵ Notable exceptions include:

- Those who are applying from immigration removal centres
- Those involved in ongoing matters related to the criminal justice system
- Cases where removal proceedings have begun
- Individuals subject to a deportation order or who have received custodial sentences in the UK totalling 12 months or more.

⁵² An Inspection of the Emergency Travel Document Process, para 1.7. Report download at: <http://bit.ly/1jdQTFY>

⁵³ An Inspection of the Emergency Travel Document Process, para 4.1

⁵⁴ Assisted voluntary returns (AVR). Download at: <http://bit.ly/1oTj4wP>

⁵⁵ In practice it is very difficult to challenge this decision as the eligibility criteria include various clauses which make it clear that the Home Office can approve or refuse applicants for reasons outside of the stated criteria.

Usually a person can only make two applications for AVR. Home Office guidance provides that anyone who cancels or withdraws their application, or does not leave within three months of approval on two occasions, will no longer be eligible. However, it also states that a third application will be considered where evidence is produced to support exceptional reasons why departure has not taken place. The decision and consideration in relation to a third application rests with the Home Office's AVR team.

The guidance provides that an applicant can withdraw from the AVR process at any time.⁵⁶ The AVR team will cancel an application (i.e. it is 'deemed withdrawn') if either the applicant fails to travel within 3 months of the application's approval date, contact between the applicant and the Choices service is lost within the 3 months allowed for departure, or a change in circumstances makes the applicant ineligible. Under the AVR programme, an applicant is required to withdraw any outstanding leave 'airside' in the UK (i.e. as they leave the UK).

Restrictions

There are certain countries for which the Choices service is unable to assist with AVR. These are listed on the Choices website.⁵⁷ At the time of writing the list includes the top three nationalities⁵⁸ identified in our study sample (although the restrictions for nationals of Iran depend on whether the applicant has a valid travel document).

Facilitated Returns Scheme (FRS)

FRS is a voluntary scheme managed by the Home Office. The International Organisation for Migration (IOM) is responsible for administering an applicant's reintegration. As with the AVR programmes, the Home Office has published guidance, 'The facilitated return scheme (FRS)',⁵⁹ for caseworkers about this scheme.

FRS is designed to assist with the return of people who have served or are serving a custodial sentence. The guidance states that the main aim of FRS is to promote and assist early removals by encouraging full compliance and cooperation from eligible 'foreign national offenders' who are willing to return to their country of origin voluntarily. Financial support includes £750 for those leaving upon conclusion of their sentence or £1,500 for those returning through early release.

In order to access the scheme an applicant must agree to various conditions. These include disclaiming all appeal rights (or any outstanding representations) against a decision made by the Home Office and complying with any processes for obtaining travel documents.

If the applicant is without a valid passport (or other travel document), an application must be made to obtain a new one. The guidance states that the time frame varies from country to country, and what is considered to be reasonable will vary from case to case (although it expects that a document can usually be obtained within 3 months).

Voluntary departure

Separate to the AVR programmes operated by Refugee Action's Choices service, the Home Office runs a 'voluntary departure' programme. The relevant guidance to caseworkers⁶⁰ states that where Refugee Action's Choices service is not used, an applicant should be referred to the appropriate reporting centre or local enforcement office.

In practice, ASAP understands that people who approach the Home Office about returning may be directed towards voluntary departure but not told about the AVR programme operated by the Choices service. This may be because Home Office staff view voluntary departure as a quicker process. However, ASAP understands that in the experience of Choices staff the timescales are similar and largely depend on how long it takes to obtain a travel document for the applicant. This is generally the same for both programmes; where an embassy is unwilling to cooperate with the Home Office, the process could actually be quicker under AVR.

ASAP considers it vital that the Home Office directs all potentially eligible applicants to the Choices service because the voluntary departure programme is significantly less beneficial for returnees. For example, people returning under the voluntary departure programme do not receive any independent advice or financial assistance, and are not provided with onward travel or a referral to NGOs in the country of return.

⁵⁶ Where the applicant withdraws, the guidance directs the AVR team to inform the immigration compliance and engagement team who must consider the potential for the applicant to receive Section 4 support.

⁵⁷ See <http://bit.ly/1IMBHhE>

⁵⁸ The entry for Somalia refers to 'South and Central Somalia' and states that it is possible to return to Somaliland and Puntland.

⁵⁹ The facilitated return scheme (FRS). Download: <http://bit.ly/1pJFLD0>

⁶⁰ Voluntary departures. Download: <http://bit.ly/1st1ovA>

APPENDIX 2: BARRIERS TO RETURN

Iran, Occupied Palestinian Territories, Somalia, Eritrea

The Home Office expects people receiving Section 4 support under reg 3(2)(a) to leave the UK within a short period of time. However, the study sample proves that this expectation is not always realistic. With this finding in mind, it is important to consider what barriers refused asylum seekers face as they may adversely impact the ability to obtain and stay on support.

One of the primary problems refused asylum seekers face when attempting to leave the UK is a lack of resources. By virtue of qualifying for Section 4, clearly they are unable to purchase travel tickets independently. Many also struggle to secure funds to arrange and attend embassy appointments, or contact family abroad to ask for documents. Some also report not being provided with sufficient guidance about their options.

As noted (see page 4) many refused asylum seekers need to apply to their embassy for a valid travel document, and this process can be notoriously complicated. Information about the inability or refusal of national authorities of the country of return to issue documentation is contained in 'Point of no return – the futile detention of unreturnable migrants', a collaborative European report involving Flemish Refugee Action (Belgium), Detention Action (UK), Menedek (Hungary), France terre d'asile (France) and the European Council on Refugees and Exiles.⁶¹

The difficulties of arranging departure are particularly acute for a handful of nationalities. This may be because the relevant country is very unstable, has limited diplomatic relations with the UK, or imposes specific procedures which complicate the re-documentation process. Such circumstances can impact on whether AVR is available. Set out below are some issues which may affect people from the top three countries in the study sample when taking 'all reasonable steps' to return. Information is also provided on Eritrea, as appellants claiming this nationality also regularly attend the Tribunal.

IRAN

Diplomatic relations between the UK and Iran ceased in November 2011, following the storming and subsequent closure of the British embassy in Tehran. The Iranian embassy in London also officially closed. While diplomatic relations have since improved, media reports from April 2014 indicate that at that stage the embassies had yet to officially reopen.⁶² It is particularly difficult for undocumented Iranians to arrange their departure from the UK because it is only possible to return to Iran on a valid travel document issued by the Iranian authorities. The Choices website states that it is unable to assist Iranians without documents.

In May 2013 the Home Office produced an instruction to caseworkers concerning access to Section 4 support for Iranians under reg 3(2)(a). Although not official Home Office guidance, the internal instruction did set out two steps as the minimum requirements for evidencing genuine attempts to obtain travel documents. These were contacting the Ministry of Foreign Affairs, Islamic Republic of Iran, and emailing or writing to the Iranian embassy in Dublin.

In February 2014 a case in the High Court⁶³ revealed further information about the process and prospects of return to Iran. In addition to confirming that an applicant will only be issued an ETD by the Iranian authorities if they can provide original identification documents (for example a birth certificate, identity card or expired passport), it indicated that an applicant must attend the embassy in person and sign a declaration stating that they wish to return to Iran.⁶⁴ The case also contained information about the procedure for obtaining a duplicate birth certificate,⁶⁵ which was described as "*an essential prerequisite*" to making a successful application for a duplicate passport.

On the basis of evidence provided by Refugee Action's Choices service the High Court concluded there was no realistic prospect of the applicant (or a family member) obtaining a passport or ETD from the Iranian Embassies in Dublin and Paris or the Omani embassy in London (which the Home Office had suggested as an alternative route).⁶⁶ The High Court said that neither the claimant's family nor his legal representatives could be blamed for failing to obtain documents from Iran or Iranian consulates, due to the various difficulties involved.⁶⁷

Nonetheless, the High Court accepted that the situation may improve given recent improvements in diplomatic relations between the two countries. In particular, the High Court referred to discussions between the UK and Iran's non-resident charges d'affaires about an appropriate system for returning undocumented Iranian nationals who have no right to remain the UK. However, at the time of writing an official announcement about such a system is yet to be made.

⁶¹ Point of no return – the futile detention of unreturnable migrants, pp12-18. Download: <http://bit.ly/1mgVJ6p>

⁶² UK and Iran discuss re-opening embassies. Daily Telegraph, 28 April 2014. Download: <http://bit.ly/1IMDSBP>

⁶³ *R (on the application of JM) v Secretary of State for the Home Department* [2014] EWHC 4430 (Admin). Although this case concerned the lawfulness of detention and prospects for enforced removal, it contains information which is also relevant to voluntary returns.

⁶⁴ *Ibid*, para 63.

⁶⁵ *Ibid*, para 66. Even if the application is made at an embassy, the majority of the procedure is carried out in Iran. The applicant, or a person who has been granted Power of Attorney on their behalf, must attend and produce a full photocopy of the previous birth certificate and testimony by two trustworthy people confirming their identity, who must also attend in person; other identity records, such as an Iranian driving licence, military completion card or educational records must also be produced.

⁶⁶ *Ibid*, para 78-79.

⁶⁷ *Ibid*, para 87.

OCCUPIED PALESTINIAN TERRITORIES

Palestinians are subject to a special Home Office policy that extends the standard time for AVR applications and Section 4 support from 3 to 6 months. However, the Choices website states that it cannot currently assist with voluntary returns to the Occupied Palestinian Territories. It notes that there is no direct route available from the UK to the Occupied Palestinian Territories and that Choices is unable to assist with overland travel from neighbouring countries.

Home Office country guidance bulletins⁶⁸ state that to re-enter the Occupied Palestinian Territories a person must possess a travel document issued by the Palestinian authorities. In order to obtain a Palestinian travel document a person requires an ID card or ID card number. However, only residents of the West Bank and Gaza present during the Israeli Government's 1967 census were registered in the Palestinian Population Registry (PPR), which has since been used for the purpose of issuing ID cards.⁶⁹ The guidance states that children under 16 do not carry a separate ID card but are listed on their parents' cards. However, they are given their own unique identity number which is included on the child's birth certificate. According to the Home Office bulletins, the Palestine General Delegates Office (PGDO, now the Palestinian Mission) has advised that if a child is born to Palestinian parents but has never lived in the Occupied Palestinian Territories and has not been registered there, they may not be issued with an ID card.

The PGDO has advised that Palestinians living in the UK can apply for a Palestinian passport by power of attorney. However, in practice the process is rarely speedy, and requires the applicant to know someone residing in the Occupied Palestinian Territories to act as nominee. After the PGDO has confirmed that the applicant is Palestinian and has an ID card number, it issues a power of attorney form which must be signed by the applicant. The power of attorney form is sent to the nominated person in the Occupied Palestinian Territories, who then applies on the applicant's behalf at the relevant local office.

The issue of what reasonable steps Palestinians without a travel document or ID card can take for the purpose of Section 4 support was considered by the Tribunal's Principal Judge in February 2013.⁷⁰ It was held that the process for obtaining a travel document *"may be long but not impossible"*.⁷¹ While the Tribunal decided that it is reasonable to require a person seeking to satisfy the test in reg 3(2)(a) to show that they had attempted to contact the PPR (either directly or with the help of family or friends), it also concluded that the Home Office *"should play a more proactive role in assisting those wishing to return to Palestine"*.⁷² It is perhaps worth noting that the Home Office did not reply to the Tribunal's request for information as to what, if any, AVR routes to the Occupied Palestinian Territories were operational and how many refused asylum seekers had successfully

returned to the Occupied Palestinian Territories.

In many cases concerning Palestinians at the Tribunal, the Home Office disputes the appellant's claimed nationality. This happened during the hearing of the appeal heard by the principal Tribunal judge. However, she held that the Home Office should have raised the issue sooner:

"I am satisfied that the Secretary of State has not taken issue with the appellant's claimed nationality until the date of the hearing and that the appellant and his representative have not been put on notice that this was to be raised as an issue in this appeal. If that is now the stance of the UKBA, then justice and fairness demands that the appellant is given an opportunity to adduce evidence in support of his claim."

SOMALIA

As there is currently no official Somali embassy in the UK (the London Diplomatic List gives no alternative contact details for Somali missions abroad),⁷³ Somalis have one less point of contact that is generally available to other nationalities.

Home Office Operational Guidance (dated September 2013)⁷⁴ states that Somali nationals may voluntarily return to Somalia in one of three ways: by themselves, making their own arrangements; through the voluntary departure procedure arranged by UK Border Force; or under one of the AVR schemes.⁷⁵ However, it also notes that the Choices service is not able to assist people returning to south and central Somalia. This is confirmed on the Choices website (assistance is available for returns to Somaliland and Puntland provided that the relevant authorities accept the application).

According to the operational guidance note, the Home Office AVR team will provide reintegration assistance for anyone choosing to return to south or central Somalia until a full service from Refugee Action's Choices service is in place.⁷⁶ The guidance note states that the application will be processed and determined by the Home Office AVR team who will liaise directly with the applicant to arrange the process of return and the reintegration assistance.

Apart from the guidance note, there does not appear to be any information published by the Home Office on how Somalis can obtain a travel document to return. However, in a High Court case in 2009⁷⁷ (in the context of enforced return) the Home Office gave evidence that a person could be returned to Somalia on a 'European Union' letter.⁷⁸ Guidance on enforced removals states that the 'European Union' re-documentation process is managed by the Home Office's CROS team.⁷⁹ It would therefore appear that the Home Office is the authority responsible for issuing travel documentation for return to Somalia.

As with Palestinians and Eritreans, disputed nationality also appears to be a common problem for Somalis. In particular, Somalis who claim to be Bajuni are often believed to be Kenyan or Tanzanian.

⁶⁸ Occupied Palestinian Territories Bulletin v1.0 June 2010. <http://bit.ly/1yjSPRI>
Occupied Palestinian Territories: Country of Origin Information (COI) report.
<http://bit.ly/1pJH9pp>

⁶⁹ From 1967 to 1994 the Israelis issued ID cards which gave the holder the right to reside in the Occupied Palestinian Territories, since when the Palestinian authorities took over responsibility for issuing ID cards and travel documents.

⁷⁰ AS/12/11/29199.

⁷¹ Ibid, para 61.

⁷² Ibid, para 62.

⁷³ London Diplomatic List, August 2014. <http://bit.ly/XaSS75>

⁷⁴ Somalia: Operational Guidance Note, v24.0, September 2013. <http://bit.ly/R4GS3b>

⁷⁵ Ibid, para 6.5.

⁷⁶ ASAP understands that the Home Office was unable to answer a request from Refugee Action's Choices service for details of how the Home Office would assist people in this situation.

⁷⁷ *R (Egal) v Secretary of State for the Home Department* [2009] EWHC 2939 (Admin).

⁷⁸ Ibid, para 49.

⁷⁹ Documents for enforced removals. Guidance v10.0. <http://bit.ly/1oTwCse>

ERITREA

The Human Rights Watch world report of 2014 describes Eritrea as being “among the most closed countries in the world”.⁸⁰ However, according to Home Office Operational Guidance (dated February 2014), Eritreans can voluntarily return in one of three ways: independently; through the voluntary departure procedure arranged through the immigration service; or under one of the AVR schemes.⁸¹

Eritreans will only be able to return if they have a valid Eritrean passport or identity document. If the person is without documents, they must make an application to the Eritrean embassy in London. A document issued by the Eritrean embassy titled ‘Our general criteria For citizenship’ states that a person with an Eritrean parent is eligible for Eritrean nationality “as long as the person provides three Eritrean witnesses”. It also states that all application forms are completed in person by the applicant at the embassy’s consular section and must be authorised by the Ministry of Foreign Affairs in Eritrea. In practice, the requirement to obtain evidence from 3 witnesses can be problematic for a refused asylum seeker due to the particular history surrounding population movement and conflict between Eritrea and Ethiopia. Many of the appellants encountered by ASAP are of mixed origin or have difficulty in proving they are Eritrean and not Ethiopian. As a result, their nationality is often disputed by the Home Office.

The Choices website states that no assistance can be provided to an Eritrean without a valid passport or identity document. However, if the applicant has a valid travel document, assistance can usually be provided for the logistics of return. Where the applicant has an expired passport or an identity document, the Choices service can assist with an application for a travel document.

Another potential complication for returning Eritreans is tax requirements imposed by the Eritrean authorities. The Home Office operational guidance note includes the following extract of a report by the US State Department: “In general citizens had the right to return. However, citizens residing abroad had to show proof that they paid the 2% tax on foreign earned income to be eligible for some government services, including passport renewals.”

ASAP is aware of cases in which the Eritrean embassy in London refused to issue a travel document on the basis that the applicant had not paid additional taxes. This type of demand would usually frustrate any application made by a person on Section 4 support who is destitute.

The US State Department report also notes that:

“Persons known to have...been declared ineligible for political asylum by other governments had their visas and visa requests to enter the country considered with greater scrutiny than others did.”

⁸⁰ Human Rights Watch: World Report 2014. <http://bit.ly/1kTnFzd>
⁸¹ Eritrea: Operational Guidance Note, v14.0, February 2014. <http://bit.ly/1mzXwkF>

APPENDIX 3: METHODOLOGY

Identifying case files

The study sample was selected by running targeted searches on ASAP's AIMS database (which stores key details of its client files). Following an initial search to identify a data pool of 'all reasonable steps' cases, preliminary analysis was carried out to distil client files matching the following criteria:

- The relevant appeal took place between 1 January 2012 and 31 December 2013
- That appeal concerned a decision to discontinue Section 4 support
- The appellant sought to rely on the 'all reasonable steps' criteria prior to the appeal
- The Home Office disputed the appellant's claim to be taking 'all reasonable steps'
- An ASAP duty scheme advocate represented the appellant in the appeal hearing.

The selected time period was considered sufficient for the purpose of demonstrating a sustained pattern of decision-making. The research focused on discontinuations rather than refusals because these cases would include the grant, review and discontinuation process (as opposed to just the refusal of an application). However, some discontinuation files were excluded from the study sample because:

- The 'all reasonable steps' argument only emerged at (or immediately prior) to the appeal, and therefore the preceding Home Office decision-making process would not be an accurate comparator against the other cases in the study sample
- The appellant's eligibility under the 'all reasonable steps' criteria was not considered in detail by the Tribunal (in certain 'combination' cases the issue was rendered academic)
- The appellant was advised but not represented by the ASAP duty scheme advocate (advice-only files did not consistently contain sufficient information about the Tribunal decision in the appeal).

This preliminary analysis produced the study sample of 51 appeals, which related to 47 people because four appellants had two appeals during the specified time frame.

Information recorded

For each of the identified cases the following information (to the extent available) was recorded:

- Appellant's gender
- Appellant's nationality
- Date on which the relevant period of support commenced
- Whether support had previously been provided under reg 3(2)(a) of the 2005 Regulations
- Whether the appellant had previously made an appeal to the Tribunal
- Whether the appellant had made an application to Refugee Action's Choices service for assisted voluntary returns (AVR)
- Whether the grant letter made support subject to tailored conditions

- Whether the Home Office issued a review letter prior to discontinuing support
- The basis on which the Home Office decided that the appellant was no longer eligible for support
- What, if any, steps the Home Office had suggested the appellant should take for support to be continued
- Whether the Home Office was represented in the appeal hearing
- Appeal outcome.

Typically, each case file contained the Home Office's decision letter, both parties' appeal papers, the Tribunal's decision and the ASAP representative's notes of the client interview and appeal hearing. These documents revealed a comprehensive picture of the appellants' (often complicated) immigration and asylum support history. They also revealed the particular terms on which support was awarded and the basis on which the Home Office made and defended its decision that the appellant was no longer eligible.

For each case a chronology of key facts was produced. This included the various steps the appellants said they had taken with the aim of leaving the UK, and the review process (to the extent it took place) applied by the Home Office in response. This information was then analysed in light of the applicable legal provisions and Home Office policy documents to ascertain the quality of the Home Office's decision-making in this area.

Limitations and scope for development

This report is not a comprehensive study of the procedures by which refused asylum seekers can leave the UK. Equally, it does not intend to provide an exhaustive description of all the steps they may be required to take in each case (for example, as part of a re-documentation process) to enable their departure. Instead, the report is limited to analysing Home Office practice in light of the relevant requirements set out in law and policy, with a focus on how this practice has been interpreted by the Tribunal.

The study sample (51 cases) comprises the majority of 'all reasonable steps' discontinuation appeals represented by ASAP during the relevant period. However, while ASAP considers that the sample provides sufficient data to identify relevant trends of decision-making, it does not incorporate every potential relevant case which occurred. Some 'all reasonable steps' appeals may have been recorded as 'combination' cases on our monitoring systems because they concerned a variety of substantive issues. Accordingly, further work could be carried out to determine whether the findings in this report are reflected across a larger sample.

It is also important to note that not all of the case files contained a complete record of information. For example, some of the files did not contain the letter granting support. However, all 51 files contained sufficient information to justify their inclusion in the sample.

The method of research was limited to identifying and reviewing relevant case files. This is due to the fact that

ASAP's contact with appellants is limited to the day of their appeal, which impacts on the viability of conducting follow-up interviews. As a result, a further potential avenue of development might be to interview individuals who are in the process of taking 'all reasonable steps' in order to obtain additional qualitative evidence. This might also aid an assessment of how specific cases can evolve over time.

Finally, the findings of this report are based on appeals from a specific time frame. Given that these cases are extremely fact sensitive, the findings are necessarily linked to particular circumstances which arose during the relevant period. For example, the closure of the Iranian embassy in London in November 2011 is undoubtedly a factor behind Iranians being the highest represented nationality in the study.

APPENDIX 4: APPEAL REFERENCES

STUDY SAMPLE	TRIBUNAL APPEAL NUMBER
Appeal 1	AS/12/01/27885
Appeal 2	AS/11/12/27846
Appeal 3	AS/11/12/27835
Appeal 4	AS/12/01/27935
Appeal 5	AS/12/01/27981
Appeal 6	AS/11/08/27947
Appeal 7	AS/12/02/28001
Appeal 8	AS/12/02/28013
Appeal 9	AS/12/02/28095
Appeal 10	AS/12/02/28069
Appeal 11	AS/12/03/28203
Appeal 12	AS/12/04/28353
Appeal 13	AS/12/05/28419
Appeal 14	AS/12/06/28501
Appeal 15	AS/12/06/28535
Appeal 16	AS/12/06/28546
Appeal 17	AS/12/06/28548
Appeal 18	AS/12/07/28633
Appeal 19	AS/12/07/28657
Appeal 20	AS/12/07/28689
Appeal 21	AS/12/07/28708
Appeal 22	AS/12/08/28748
Appeal 23	AS/12/08/28754
Appeal 24	AS/12/09/28864
Appeal 25	AS/12/09/28912
Appeal 26	AS/12/09/28908
Appeal 27	AS/12/08/28797
Appeal 28	AS/12/10/29058
Appeal 29	AS/12/11/29101
Appeal 30	AS/12/11/29136
Appeal 31	AS/12/11/29163
Appeal 32	AS/12/12/29281
Appeal 33	AS/13/01/29380
Appeal 34	AS/13/02/29566
Appeal 35	AS/13/03/29636
Appeal 36	AS/13/04/29712
Appeal 37	AS/13/04/29765
Appeal 38	AS/13/04/29826
Appeal 39	AS/12/05/28456
Appeal 40	AS/13/05/29950
Appeal 41	AS/13/06/29994
Appeal 42	AS/13/07/30156
Appeal 43	AS/13/08/30230
Appeal 44	AS/13/10/30572
Appeal 45	AS/13/10/30571
Appeal 46	AS/13/11/30625
Appeal 47	AS/13/11/30641
Appeal 48	AS/13/12/30781
Appeal 49	AS/13/12/30795
Appeal 50	AS/12/12/29295
Appeal 51	AS/13/10/30507