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## 'Not Destitute Enough'

*New report on unnecessary destitution resulting from UKBA's poor decision-making*

ASAP has published a report documenting the UK Border Agency's consistent failure to apply the correct legal definitions of destitution in asylum support decisions.

'Not Destitute Enough' uses evidence collected from ASAP's work at the First-Tier Tribunal (Asylum Support) to demonstrate how confused and confusing decision-making exacerbates the difficulties faced by destitute and refused asylum seekers trying to access support. For many vulnerable people, poor decision-making means facing destitution and homelessness.

All ASAP members will receive a free paper copy of the report.

You can also download a copy of the report by visiting ASAP's [website](#). If you are not a member, but would like to receive a free paper copy, please email [abi@asaproject.org.uk](mailto:abi@asaproject.org.uk) or call 020 8686 1888.

## New development: Section 4 support for women in late stages of pregnancy

*At the First-Tier Tribunal (Asylum Support), this week ASAP successfully challenged the UK Border Agency's policy of only providing Section 4 support to pregnant women who are due to give birth in six weeks*

The client, a refused asylum seeking woman who was heavily pregnant, had applied for S4 support on the grounds that she 'was unable to leave the UK due to a physical impediment to travel'. This criterion covers women in the 'late stages' of pregnancy as well as individuals who are suffering from a medical condition which prevents them from being able to fly. The client's MAT-1 form (a maternity certificate issued by the midwife around the sixth month of pregnancy), showed her expected due date was in approximately seven and half weeks.

The UK Border Agency (UKBA) refused her application on the grounds that she was not far enough along in the pregnancy to qualify. This decision was based on Section 4 guidance notes, which are used by UKBA staff making decisions on support applications, which states that 'support must not normally be granted until around 6 weeks before the expected due date'<sup>[1]</sup>.

However, according to the NHS 'the length of a normal pregnancy varies between about 37 and 42 weeks' although the expected delivery date is 'calculated at 40 weeks from the first day of your last period. Only 5% of babies are born on their due date'<sup>[2]</sup>. This means that in reality substantial numbers of babies are born up to 3 weeks before the expected

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due date.

The Judge accepted this evidence presented by ASAP and granted the client support on the grounds that 'there is an uncertainty in predicting the date of delivery with a substantial margin of error.'

This judgement supports ASAP's view that the six week limit currently being rigidly applied by UKBA ignores NHS guidelines and is unreasonable. Gerry Hickey, a legal adviser at ASAP who represented the case said 'ASAP believes that the current six week limit should be abolished and at the very least S4 support should automatically be provided to women who are six months pregnant and over'. However ASAP also believes that refused asylum seeking women in the earlier stages of pregnancy should also be given support due to the risks destitution poses to the health of both the mother and the unborn child.

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## Walk to raise funds for ASAP: 18 May 2009

*ASAP will take part in the London Legal Support Trust's 10km sponsored walk, raising money for our work defending the legal rights of destitute asylum seekers*

ASAP will be taking part in the sponsored walk on 18 May to raise money for our legal work, defending the legal rights of asylum seekers to food and shelter. ASAP has been participating in the walk every year and last year we raised £3,000.

In summer 2009, ASAP will finally be in a position to launch its daily Duty Scheme service, thanks to LawWorks and a large group of new volunteers from four law firms in the City. Running the Duty Scheme every day of the week has been one of ASAP's key strategic objectives and will be a significant milestone for the organisation, which started this pioneering work on a fortnightly basis in 2004. The money raised on the sponsored walk will help make this possible.

Please sponsor the ASAP team by visiting <http://www.justgiving.com/asap> or sending a cheque made payable to Asylum Support Appeals Project.

If you'd like to join the ASAP team and walk with us, please email [abi@asaproject.org.uk](mailto:abi@asaproject.org.uk) or call 020 8686 1888.

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## IOM suspends voluntary returns to Somalia

*During a recent appeal at the First-Tier Tribunal (Asylum Support) it emerged that the International Organisation for Migration (IOM) has currently suspended its returns programme to Somalia.*

A Somali national, assisted by ASAP, argued that he had taken all reasonable steps in order to return to his country of origin and therefore he was entitled to Section 4 support. He had approached both the Refugee Council and Refugee Action's Choices project in order to obtain advice and guidance on how to undertake a return to Somalia. Both organisations had spoken to the IOM and were informed that the Voluntary Assisted Returns and Reintegration Program (VARRP) had been suspended for political reasons. This was later confirmed in writing. It also emerged that Somali authorities were not currently accepting EU letters, thus making it impossible for people without a Somali passport to return if they wish to.

Acting on the information given to him, our client had not at the time made a VARRP

application. There was a concern that making an application could jeopardise his future chances of successfully returning through IOM's programme. Indeed, applications which have not resulted in a return after 3 months lapse and an individual can only ever make two VARRP applications. However, based on assurances that applications by Somali nationals will be kept on hold and not processed until the situation changes, he has now applied. His accommodation and support under S4 has continued.

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## Encouraging news for some Zimbabwean asylum seekers

In a recent case the Asylum and Immigration Tribunal (AIT) has made an extremely important decision affecting Zimbabwe asylum seekers. In the case of *RN* the AIT accepted that many more Zimbabweans are at risk on return to their country than had previously been recognised – which means that many more Zimbabweans should be successful in claiming asylum in the UK.

ASAP is unable to give advice on immigration and asylum claims (our expertise is with the housing and welfare support of asylum seekers and those who have been refused). But we would strongly advise any Zimbabwean who has been refused asylum to seek further advice from an immigration lawyer to find out if this new decision of the AIT can be used to prepare a fresh claim to the Home Office.

ILPA (Immigration Law Practitioners' Association) has a very useful information sheet on this matter. The information sheet is available on their website at [www.ilpa.org.uk](http://www.ilpa.org.uk) (click 'info service' and look for a document called 'Zimbabwe Country Guidance' under Update Sheet 17).

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## Temporary accommodation: A problem solved?

*Following successful appeals at the Tribunal in Croydon, temporary accommodation is now available at Brigstock House*

Many destitute asylum seekers who are entitled to support following a successful Section 4 appeal often have to wait anything up to three weeks before they get accommodation. ASAP believes S4 support is a legal entitlement and that UKBA must provide it immediately. ASAP threatened Judicial Review (JR) action against UKBA concerning these delays which resulted in UKBA agreeing to make temporary accommodation available immediately at Brigstock House in Croydon while UKBA organises the S4 support. [This is only following oral appeals at the Tribunal in Croydon thus not available for appeals made by paper.](#)

However due to 'teething problems' or 'operational difficulties' many individuals have been unable to take advantage of this immediate support. Several of ASAPs clients have had problems accessing Brigstock House due to poor communication between UKBA and Brigstock House and a complex authorisation process put in place by UKBA. UKBA have been trying to rectify these problems.

However we remain concerned that many individuals entitled to this temporary support will still experience difficulties when trying to access temporary accommodation. For example UKBA officials are not always present at the Tribunal to make individuals aware of this option. Secondly, if the individual has not been represented by ASAP they may have difficulties understanding what they need to do in order to gain access to Brigstock House.

Due to circumstances beyond their control, many individuals will be unable to take advantage of this support in Croydon. For example, many will have children or family members in the regions and will need to return to them. Others, like women in the late stages of pregnancy, will be not want to disrupt the medical care they are receiving. In addition many clients will have built up support networks in the regions and be reliant on the moral support this offers.

This small victory is a starting point for achieving S4 support immediately following successful appeals. ASAP believes that similar support arrangements should also be available regionally for paper appeals and for individuals who are awarded S4 at the application stage.

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## UKBA code of practice for 'Keeping Children Safe from Harm'

On 6 January 2009 a UKBA Code of guidance for 'Keeping Children Safe from Harm' came into force containing its policy for dealing with children.

A Code of Guidance does not have the force of law and this Code only lays out the aims and aspirations of a policy. Nevertheless it will may be of some help in holding UKBA to account in protecting children and their interests.

The Code states that UKBA must act according to the following principles:

- Every child does matter, as much if they are subject to immigration control as if they are British citizens
- The best interests of the child will be a primary consideration (although not necessarily the only consideration) when making decisions about his or her future
- No child should be discriminated against through being a child, or on grounds of gender, race, religion, disability, sexual orientation or culture
- The views and wishes of children should be sought and taken into account whenever decisions affecting them are made. This should be done in an age-appropriate way

In addition, the Code says that the UK Border Agency is determined to exemplify good practice in the way that members of staff deal with children.

Titles to chapters in the Code include the following statements:

- *Children's cases must be handled sensitively on arrival and when they make applications to the UK Border Agency*
- *Enforcement action must take account of children's needs*
- *Vigilance helps children as much as the formal procedures*
- *The UK Border Agency must make timely referrals of children and work positively with others*
- *The UK Border Agency must have mandatory training for work involving children*
- *The UK Border Agency must have a system of accountability for children's cases*

An important criticism of the Code is that it does not specify what steps the UKBA official must take in any particular situation. It therefore remains to be seen how effective the code is and whether it does change UKBA practice and improve the way it treats children

e.g. in arranging accommodation for families, in its dispersal policy, withdrawing support etc.

A copy of the Code can be found [here](#).

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## Women's Project

### *ASAP's project prioritising destitute asylum seeking women*

As part of our women's project, which is funded by Comic Relief, ASAP has been working closely with Asylum Aid on their Women's Charter. The Charter promotes the rights of women claiming asylum in the UK and covers all aspects of the asylum system including the support provided to women whilst the asylum claims are being considered. In contrast to men, many women will experience persecution that is specific to their gender such as sexual violence, honour crimes, forced marriage, domestic violence or female genital mutilation. However the Charter recognises that UK asylum policy often fails to take into account the particular needs of women seeking asylum which can result in their claims being unfairly assessed.

To identify and take forward the particular needs of women asylum seekers, Asylum Aid has organised three workshops covering various stages of the asylum process. ASAP has helped facilitate a workshop on asylum support issues that was held in January. At the workshop participants identified a range of difficulties women faced throughout the asylum process. This included the requirement for women with young children to regularly sign on at their local reporting centre, the lack of childcare facilities for women undergoing asylum interviews and the particular risk refused asylum seeking women face when they become destitute in the UK. These issues will now be taken forward at the various national and regional UKBA stakeholders forums that have been set up across the UK. For more information on the Women's Charter go to [www.asylumaid.org.uk](http://www.asylumaid.org.uk)

#### **Representing Women at the Asylum Support Tribunal in Croydon**

If your organisation works with women asylum seekers who would like representation at the Asylum Support Tribunal, our legal advisers are happy to take referrals.

If we think we can help, please fax your contact details; the Home Office Decision Letter; the Notice of Appeals and any other relevant documents to 020 8686 1899. We'll get in touch about whether we can help.

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## ASAP's Annual General Meeting

### *Thanks to those who attended and helped make our AGM a great success*

Over 40 people attended ASAP's AGM on 17 November 2008. The evening focused on the future of the asylum support system and Sue Willman, ASAP's Chair and partner at Pierce Glynn solicitors, gave the main speech, charting changes to the asylum support system and discussing the possible impact of future reforms.

Eiri Ohtani, ASAP's Coordinator, and Alison Pickup, Duty Scheme volunteer and new MC member, gave a presentation on ASAP's work at the First-Tier Tribunal (Asylum Support) and the impact access to legal representation has on asylum support appeals.

We would like to thank the British Red Cross for generously providing the venue.

Full minutes of the AGM can be obtained by emailing [abi@asaproject.org.uk](mailto:abi@asaproject.org.uk) or calling 020 8686 1888.

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## Free Legal Representation at the Asylum Support Tribunal in Croydon

### *Does your client have an appeal hearing at the Asylum Support Tribunal?*

If your client has an oral hearing at the Asylum Support Tribunal in Croydon, ASAP could represent their case.

ASAP Duty Scheme runs on **Mondays, Tuesdays, Thursdays and Fridays**. We are normally able to represent 2 - 3 cases a day.

To refer a case to us, please fax the following documents to **020 8686 1899**:

- Contact details of the adviser (we do not contact the appellant directly)
- Decision letter from the Home Office
- Notice of appeal
- Any other relevant documents or evidence

An adviser will call you back to discuss the case.

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## Charting our work

### *Some of the things ASAP has done from November 2008-February 2009*

Date	Activity
05 November 2008	Attended UKBA workshop to draft new Section 4 form
07 November 2008	Attended Asylum Rights Campaign monthly meeting
12 November 2008	Talk to Psychologists Working with Refugees and Asylum Seekers (PSYRAS)
17 November 2008	ASAP's AGM
19 November 2008	Delivered asylum support training with Rights of Women in Leeds
25 November 2008	London Destitution Advice Network meeting, chaired by ASAP
26 November 2008	ASAP spoke at meeting of the All-Party Parliamentary Group on Refugees about vouchers
28 November 2008	ASAP's Duty Scheme expanded to a 4 day week
28 November 2008	ASAP guest speaker at Lewisham Refugee Network's AGM
01 December 2008	ASAP's speech to the All Party Group mentioned in <a href="http://oneowrld.net">oneowrld.net</a> news

08 December 2008	Launch of Destitution Awareness Week: attending the Tribunal every day
08 December 2008	Publication of 'Not Destitute Enough'
12 December 2008	Attended Case Resolution Directorate meeting
12 January 2009	Meeting with Terence Higgins Trust
13 January 2009	Meeting with Refugee and Migrant Forum of East London
15 January 2009	Still Human Still Here meeting
15 January 2009	NASF Pre-Meeting
16 January 2009	Meeting with Hackney Refugee Forum
16 January 2009	Meeting with Positive Action for Refugees and Asylum Seekers
16 January 2009	Asylum Rights Campaign meeting
30 January 2009	ASAP training: Cardiff
30 January 2009	Case Resolution Directorate Sub-group meeting
10 February 2009	ASAP training: volunteer solicitors
18 February 2009	Meeting with London Detainee Support Group