

## In This Issue

- **UKBA persists with Unlawful Fresh Claims Policy**
- **Support Costs at Core of Improvement Review**
- **ASAP Destitution Awareness Day and AGM on 8 December**
- **Full Time Duty Scheme Has Successful First Year**
- **Additional Costs Available for Tribunal Travel**
- **New Research Into Appeals Access for Women**
- **UKBA Withdrawals Record Gives Cause for Concern**
- **EU Directive Ruling Has Implications for Support**
- **ASAP Recruits New Solicitor and Administrator**

## UKBA Persists with “Unlawful” Fresh Claims Policy

One year on from its introduction, the UK Border Agency is persisting with the policy which requires asylum seekers to travel to Liverpool to make a fresh submission and have a decision made on it before they can qualify for support - despite ongoing criticism that it is unlawful.

A spot survey from ASAP’s work at the asylum support tribunal in September shows that of the 21 people pursuing a fresh claim who were represented by ASAP in hearings, 90% were successful in their appeals. This is consistent with decision making at the tribunal over the past year where appeals have been allowed as soon as someone attends the UKBA office in Liverpool to submit papers, and even when an appointment has been made to go to Liverpool.

In August one tribunal judge stated in his ruling allowing an appeal, that delaying decision making on support until a decision was made on her fresh submissions was “patently incorrect and a completely wrong interpretation of the law”. The ruling goes on that the fact that she was likely to be street homeless if she was not accommodated, made a breach of the European Convention on Human Rights likely if she was not awarded support.

The survey also highlights the difficulties caused by the UKBA’s policy to wait for 15 days before looking at support applications, whether or not a decision has been on the submission. Over 80% of ASAP clients had been waiting for more than 15 days from the time they submitted their Section 4 applications before the UKBA made a decision on support. The average wait for a decision on support was three weeks.

In addition, the survey undermines the contention that there is a clear link between making a fresh claim and submitting a support application. More than half of the appellants in the sample made their application for support at least a month after they had made their fresh submission with most of these submitting the application at least 3 months afterwards.

**What is the Fresh Claims Policy?** On 14 October 2009 the UKBA announced a new policy relating to further submissions (i.e. fresh claims). From then on, anyone wishing to make such submissions would have to book an appointment to visit the UKBA in person. Those who claimed asylum before 5 March 2007 would have to travel to the Further Submissions Unit in Liverpool. Those that applied later could visit their local reporting centre. The UKBA also announced that applications for Section 4 support, made on the basis that the individual had made further submissions, would not be considered until a decision had been made on those submissions. However, if this was delayed beyond 15 days, the UKBA would process the Section 4 application. The policy, which was introduced without prior consultation, has been heavily criticised since for being inhumane and unlawful.

**Need advice on asylum support law? Contact ASAP's Advice Line**

**ASAP's second tier Advice Line provides expert advice on asylum support law and asylum support appeals three days a week.**

**The Advice Line is open Mon/Wed/Fri between 2 and 4pm.**

**The Advice Line number is 0845 603 3884**

## Support Costs at Core of Improvement Review

Reducing the costs of asylum support is one of the main aims of the Asylum Improvement Project, a major review of the asylum system announced recently.

According to its terms of reference, the review will concentrate on three main areas - greater efficiency and productivity in the asylum process, better decision making and assisting the removals process. It will happen against the backdrop of significant public spending cuts and is likely to be implemented by a smaller UK Border Agency, given its budget is being reduced by up to 20% over the next four years. The first phase of the review, which was announced at a meeting of the National Asylum Stakeholder Forum, is due to take place over the next six months with recommendations implemented from March 2011.

The ongoing drive to cut the costs of asylum support is evidenced by the most recent Home Office asylum statistics, which at the end of June show there were 6,750 people receiving section 4 support, as compared with 11,390 at the same time last year.

## Destitution Awareness Day + AGM on 8 December

ASAP's annual Destitution Awareness Day and AGM is on Wednesday 8 December. This year's event will focus on the UK Border Agency's record on decision making on support cases involving destitution and the impact it has on asylum seekers. New ASAP research shows that over 80% of appeals on destitution, where the appellant is based in London, are overturned on appeal. The event will be an opportunity to learn more about the research, hear about the other big issues at the asylum support tribunal over the last 12 months and meet frontline agencies working in the sector.

**ASAP's Destitution Awareness Day + AGM will be held in Amnesty International's Action Centre in central London between 1 and 5pm. For more information or to book a place or stall at the event, contact Oliver on 020 8686 1888 or [Oliver@asaproject.org.uk](mailto:Oliver@asaproject.org.uk)**

## Full-Time Duty Scheme Has Successful First Year

ASAP's full-time Duty Scheme has had a successful first year.

Launched in September 2009, following the recruitment of 12 pro bono legal advisers from four City Law firms, the scheme has assisted 600 asylum seekers in the past year – double the previous year's figure. At the same time, it has maintained its high success record with 66% of the 387 individuals represented in hearings successful in their appeals.

### ASAP Statistics for the first full year of the Duty Scheme Sep 2009-August 2010

Tribunal	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	July	Aug	TOT
Represented	38	25	26	33	25	37	48	33	30	29	28	35	387
Advice only	14	6	19	19	10	26	27	19	21	14	12	17	204
<b>Total assisted</b>	<b>52</b>	<b>31</b>	<b>45</b>	<b>52</b>	<b>35</b>	<b>63</b>	<b>75</b>	<b>52</b>	<b>51</b>	<b>43</b>	<b>40</b>	<b>52</b>	<b>591</b>

## Need Training on Asylum Support Law?

Last year ASAP trained over 62 organisations on asylum support law. We can design courses tailored to your work and advice workers knowledge and skills base.

Call us on 020 8686 1888 for more information

The expanded duty scheme meant ASAP was better able to respond to the large increase in appeals at the start of the year when appeal numbers hovered around the 500 mark for February, March and April. At times there were two legal advisers on duty to assist the increased number of appellants.

There are now about 20 solicitors and barristers volunteering on the duty scheme while another 10 solicitors are due to join the rota in the next month or so. The chambers involved are Doughty Street, Garden Court, Renaissance and Toaks.

## Additional Costs Available For Travelling to Tribunal

The UK Border Agency has agreed to fund the travel costs of people accompanying some very vulnerable individuals to the asylum support tribunal. At a recent meeting of the Tribunal User Group, the UKBA confirmed it would give travel costs to some appellants - for example, victims of domestic violence or trafficking - so they could be accompanied to the tribunal.

However, the funding will only be made available where there is a compelling reason that the appellant needs a companion and will be assessed on a case by case basis. It will not be made available on every request. Some of the circumstances which may qualify an appellant for the funding are: 1) serious physical or mental health problems; 2) difficulties with pregnancy; 3) women who, for cultural reasons, may be unable to travel alone to London. The development follows sustained advocacy on the issue from ASAP, Refugee Action and Asylum Aid.

**Advice for Advisers:** If you are advising clients who are vulnerable due to health problems or other support needs, you can now put in a request for the person to be accompanied to the tribunal. This request will need to be submitted to the tribunal at the same time that the Notice of Appeal is made. You will need to outline the type of health or support needs your client has and why they need to be accompanied to the tribunal. You will also need to give the name of the person who will be accompanying them. It will be up to the tribunal whether costs are awarded.

## New Research into Appeals Access for Women

ASAP's Women's Project is carrying out research into the barriers women face to the support appeals system.

The research will examine women asylum seekers experiences of the different stages of the appeals process, such as getting advice on appeals and travelling to London to attend tribunal hearings. It will look at whether vulnerabilities, such as experiences of gender related violence and mental and physical health issues, as well as issues like pregnancy and childcare responsibilities, prevent women from attending the tribunal. It will also look at what can be done to make the system more accessible to women. As well as interviewing appellants at the asylum support tribunal, the research will gather evidence from frontline organisations working with women. The Women's Project is funded by Comic Relief.

If you have views on why women have problems accessing the asylum support system, contact Gerry Hickey on 020 8686 1888/[Gerry@asaproject.org.uk](mailto:Gerry@asaproject.org.uk)

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## UKBA Withdrawals Record Gives Cause for Concern

ASAP is concerned about the UKBA's practice of withdrawing from appeals at the asylum support tribunal, only to issue another decision refusing support. This leaves individuals with little option but to appeal the decision a second time, during which time the UKBA refuses to grant them interim support.

Sometimes this is done at very short notice, at times on the day of the appeal itself when the appellant has already made the long journey to the tribunal. This unfair practice increases the time asylum seekers are left waiting for their appeal to be heard, often leaving them destitute or street homeless for an additional period of up to two weeks.

The following statistics taken from the tribunal website illustrate the extent of the problem. The statistics are for September 2009 to April 2010, a period when there were 2698 appeals in total and 525 UKBA withdrawals – 20% of the overall total. In comparison, just 3% of appeals were withdrawn by the appellant.

Outcome	Sep	Oct	Nov	Dec	Jan	Feb	Mar	April
Withdrawn (Appellant)	2	3	5	6	10	9	20	28
Withdrawn (UKBA)	42	38	55	26	38	52	50	42

**ASAP is looking at the issue of why asylum seekers appeal hearings are cancelled because of a UKBA withdrawal. If this is something which has affected any of your clients, please contact Michael Spencer on 020 8686 1888 or email [Mike@asaproject.org.uk](mailto:Mike@asaproject.org.uk)**

## EU Directive Ruling Has Implications for Support

*Supreme Court Ruling on right to work may impact on asylum support law*

On 29 July the Supreme Court upheld the Court of Appeal's decision in R (ZO (Somalia) and Another) v Secretary of State for the Home Department. This important ruling may have an impact on the support received by refused asylum seekers who have fresh submissions pending with the UKBA.

The decision concerns the interpretation of the EU Reception Directive, which came into force in 2005. The Directive sets out minimum standards for the reception of 'asylum seekers', with the aim of ensuring 'a dignified standard of living and comparable living conditions' across the EU. These conditions include the right to apply for permission to work if the asylum application has not been determined within one year.

The question for the court was whether the Directive also covered people whose initial asylum claim has failed, but have made fresh representations and are waiting for the Home Office to decide on whether these amount to a new asylum claim. The court ruled that such people did fall within the definition of 'asylum seekers' for the purposes of the Directive and are therefore entitled to enjoy its benefits, including the right to apply for permission to work after one year.

This ruling may also have an impact on asylum support law. Currently, refused asylum seekers who have made fresh representations are granted section 4 support until their

claim is recorded by the UKBA , at which time they become entitled to section 95 support. However, following ZO (Somalia), the question arises as to whether section 4 support is adequate to comply with the requirements of the Directive.

A possible example is 'mixed households'– i.e. where the partner of the applicant is a British national or has leave to remain in the UK. UKBA's current practice is to require section 4 applicants in mixed households to leave their families and move into accommodation in order to receive section 4 support. This practice arguably breaches the Directive, under which the UK is required to take 'measures to maintain as far as possible family unity..... if applicants are provided with housing.'

For the time being, refused asylum seekers who have lodged fresh representations should continue to apply for section 4 support, unless their claim has been recorded.

**If your client is in a mixed household and is required to separate from his family in order to take up section 4 support, please contact Mike Spencer by emailing [Mike@asaproject.org.uk](mailto:Mike@asaproject.org.uk)**

## Two New Staff Join ASAP Team

ASAP has recruited two new members of staff. Michael Spencer has been appointed as ASAP's new solicitor. Michael previously worked as a solicitor at Freshfields Bruckhaus Deringer LLP, where he specialized in regulatory and public law litigation, and was a regular volunteer on ASAP's duty scheme. He will supervise and train volunteers on the duty scheme, while developing ASAP's litigation strategy. Michael said: "Volunteering with ASAP was a thrilling experience and I am delighted now to be fully joining a team that is dedicated to reducing destitution among asylum seekers. I am looking forward to working with ASAP to challenge unjust and illegal decision making and policies around asylum support."

Oliver William Griffiths is ASAP's new administrator. Originally from South Wales, Oliver has just moved to London from Sheffield for the second year of his part-time Legal Practice Course. He previously worked as an administrator at a childrens' charity and as a paralegal for a criminal defence firm. Oliver's role is to ensure the smooth running of ASAP's office, coordinate the volunteers on the duty scheme, collate statistical information, manage membership database and event organisation. Oliver said: "I feel very privileged to be working for a charity doing such commendable work. Everybody has made me feel very welcome and I am looking forward to meeting more ASAP members at our Destitution event in December."

Contact Michael on [Mike@asaproject.org.uk](mailto:Mike@asaproject.org.uk) and Oliver on [Oliver@asaproject.org.uk](mailto:Oliver@asaproject.org.uk)

**ASAP Secures New Funding:** The appointments of the two new staff members were made after successful fundraising. We have secured funding from Trust for London (formerly City Parochial), Joseph Rowntree Charitable Trust and the Sigrid Rausing Trust to develop our policy and litigation work to challenge inhumane and unlawful asylum support policies. We have also recently secured core funding from Tudor Trust. Thank you to all our funders for their support.

### Contact ASAP

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