

A report by the Asylum Support Appeals Project (ASAP)

April 2011

**NO CREDIBILITY:
UKBA DECISION
MAKING AND
SECTION 4
SUPPORT**

Why 80% of destitution
refusals are overturned
on appeal



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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 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and representation to destitute asylum seekers who have been refused housing and subsistence support or had support withdrawn.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, 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. An independent report by the Citizens Advice Bureau in 2009 concluded that ASAP representation increased asylum seekers' chances of a successful appeal outcome by 32%.¹

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¹ Supporting justice: the case for publicly-funded legal representation before the Asylum Support Tribunal (CAB, 2009)

Executive summary

Background to the report

In December 2008, ASAP published 'Not Destitute Enough: a report documenting UKBA's failure to apply the correct legal definitions of destitution in asylum support decisions'. The report found that the UK Border Agency's decision making on asylum support was not based on the legal definition of destitution, which resulted in 70% of decisions being overturned on appeal. The report concluded that the UKBA's "confused and confusing decision making creates further difficulties for destitute and refused asylum seekers who are desperately trying to access support". The then head of the UKBA's Case Resolution Directorate wrote to ASAP stating that training was being introduced for caseworkers and invited ASAP to scrutinise the quality of decision making at a future date. This report revisits the issue more than two years on.

London Project

'No Credibility: UKBA decision making and section 4 support' was undertaken as part of ASAP's London Project, which started in July 2008. Funded by London Councils, the project helps London-based refused asylum seekers to appeal decisions to stop or refuse section 4 support (no choice accommodation and a pre-payment card topped up with £35 a week). The project has assisted more than 200 refused asylum seekers across London since then and it is these case files that provide the rich evidence base for this report.

Methodology

The focus of this report is UKBA refusals of section 4 applications on the grounds of destitution, because this was the most common type of appeal we worked on, representing almost half of all our London Tribunal cases. There was also an unusually high success rate at appeal in this type of case, which indicated that decision making was particularly problematic in this area.

Our research was based on a detailed analysis of the case files of 55 London-based refused asylum seekers represented by our duty scheme in the Tribunal. These were identified after a preliminary analysis of all 148 London Project files between July 2008 and March 2010. The analysis highlighted that 69 or 47% of cases were refusals of section 4 support on the grounds of destitution. Advice-only files² were then excluded from the sample, because these did not consistently contain information about the Tribunal decision, which reduced the number of files to 55.³

Typically, the case files contained the UKBA decision letter, appeal papers, the Tribunal's decision and notes of our own interview with the appellant and appeal hearing. Once analysed, these documents painted quite a comprehensive picture of asylum seekers' lives, disclosing for instance a chronology of their asylum and support history, any medical problems, information about family and dependants, details of financial circumstances and information the UKBA held about the cases.

London focus

London has two interlinked characteristics that differentiate it from the rest of the UK insofar as support is concerned. First, the UKBA's dispersal policy means it houses asylum seekers

and refused asylum seekers in London only in exceptional circumstances, such as needing medical treatment only provided in the capital. The vast majority of asylum seekers who get support are automatically allocated housing outside of London and the South East region on a no-choice basis.

Second, London is a multicultural city with a settled migrant population and a large number of established black, minority ethnic and refugee (BMER) communities so newly arrived as well as more settled asylum seekers can usually find community networks to help them. The dispersal policy means the vast majority of support applicants will have to leave these networks behind if they are granted support.⁴

Key findings

- The UKBA's decision making on destitution cases lacks credibility: 82% of decisions on support applications were overturned on appeal.
- UKBA caseworkers do not understand and/or apply the legal test for destitution when making decisions, routinely ignore evidence submitted, and do not follow their own guidelines on documentation required to back up applications.
- Decision making is marred by a culture of disbelief within the UKBA, which means assessment of credibility is unfair and unbalanced, and changes in circumstances which have led to people having to make a support application are not considered on a case by case basis.
- Refused asylum seekers in London appear to be particularly vulnerable. Many applicants had serious mental or physical health problems – sometimes unusual conditions requiring long term or specialist treatment – but these vulnerabilities were not taken into account by the UKBA.
- Applicants applied for section 4 support as a last resort, usually having spent long periods of time living in inappropriate accommodation, sleeping on floors and stairwells. More than 90% applied for support after a significant change either in their own circumstances or the lives of family and friends, which led to the collapse of precarious support networks.
- There was an unusually high number of women among the applicants. Pregnancy, or the birth of a child, was the most commonly stated reason why family and friends could no longer accommodate applicants and meant they had to apply for section 4 support. Most women were either pregnant or single parents.
- It is unclear how UKBA decision making is consistent with its statutory duty to safeguard the welfare of children under Section 55 of the Borders, Citizenship and Immigration Act 2009. There were 23 children – all but one under the age of five – listed as dependants on applications. Yet not one decision letter made any reference to dependants or how children's welfare had been taken into account in the process.
- Many refused asylum seekers experience lengthy delays before a decision is made on their support application. More than half of applicants had to wait for more than two weeks for a decision, which is too long given their circumstances. →

² We are not always able to represent clients in their hearings. This may be because we have insufficient time to prepare the case properly, we have already committed to representing someone else or we have come to the conclusion that their case is unlikely to succeed. In these circumstances we give the client advice only.

³ In parts of this report, however, some cases could not be considered because the type of question did not apply or the files contained missing documents. We have indicated where this has occurred in a footnote.

⁴ Most commonly people are allowed to remain in London if they are receiving medical treatment that is only available in London. Children sitting certain exams and pregnant women who are about to give birth may also be able to delay dispersal.

- ← ● UKBA decision letters were of poor quality, badly structured and difficult to understand, causing confusion among applicants and advice workers and further undermining confidence in the system.
- The application process is inaccessible and complex, which refused asylum seekers, who are vulnerable, struggle to survive on a day-to-day basis and have language barriers, are ill equipped to navigate independently.
- Good quality legal advice and advocacy by ASAP's duty scheme at the First Tier Tribunal (Asylum Support) is essential to enable people to engage in what is a deeply flawed and unfair process, explain the circumstances which have led to them becoming destitute, and obtain their legal entitlement to support.

Recommendations

- The UKBA should improve training for caseworkers so they understand and apply the legal test for destitution, assess applications for section 4 support in a way which is balanced and credible, and write clear, non-judgemental decision letters.
- The UKBA should publish and follow clear and publicly available guidance on what evidence is required to back up section 4 support applications. The guidance should be based on a reasonable evidence threshold that takes into account applicants' vulnerabilities and their difficult circumstances.
- The UKBA should recognise and prioritise the cost savings to be made from an improved and humane decision-making system on asylum support, which would obviate the need for so many appeals, rather than focusing on ways to further restrict access to support.
- The UKBA should issue guidelines on whom it considers vulnerable for support purposes, ensuring applicants with children, pregnant women and those with significant health problems are categorised as vulnerable and prioritised within the system. All decision letters should set out how the welfare of dependent children has been safeguarded and promoted in the decision-making process.
- The application form for section 4 support should be simplified and made more accessible and easy to understand. Sufficient space should be provided to allow applicants to explain their current circumstances, and the form should contain clear and consistent guidance on what evidence to submit with applications and for what period of time.
- Statutory agencies, including London Councils, local authorities and UKBA, should recognise the key role that legal advice and representation plays in enabling London's most disadvantaged individuals to avoid destitution and participate in the community, and they should work to halt the disproportionate cuts to advice services for refugee and asylum-seeking communities.
- The Ministry of Justice should abandon its plan set out in its Proposals for the Reform of Legal Aid in England and Wales⁵ to end all public funding of asylum support work. Good quality legal assistance is essential at all stages of the process up to appeal stage, to enable asylum seekers and refused asylum seekers to participate in what is a complex and deeply flawed system.

The legal dimension

In order to qualify for support, someone needs to show that they are a refused asylum seeker, meet one of five narrow criteria on why it is unreasonable to expect them leave the UK,⁶ and crucially, given the focus of this report, they are destitute. Dependants can also qualify for support.

The destitution test

The law on destitution is defined in the Immigration and Asylum Act 1999; Asylum Support Regulations, 2000; and Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005. The legal test for destitution comes from the 1999 Act and 2000 Regulations. The test sets out that 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 (ie. pay for food, clothes etc) at any point in the next 14 days.⁷ The test is clearly set out and sourced in two UKBA documents, Policy Bulletin 4 and Section 4 Guidance,⁸ intended for caseworkers making decisions, and is applied by the Tribunal when assessing whether someone is destitute.

Evidence supporting applications

The burden of proof is on the applicant in support cases, so evidence should be submitted with applications to prove destitution. Typically, this consists of personal statements, or statements from family or friends outlining why they cannot help; bank statements or other financial information (if relevant); and letters from charities or other organisations that have assisted the applicant.

The section 4 application form refers to the need to provide destitution evidence only once, when one question asks applicants to "provide evidence where necessary".⁹ Guidance attached to the application form provides limited detail about evidence. A general statement at the start explains simply that the applicant should submit evidence. Further on, there are a number of specific circumstances where evidence is requested: people staying in B&B accommodation or hostels are asked to send a copy of the invoice or bill; those helped by charities are asked to send a letter from the charity confirming this; and applicants with assets or income are asked to provide documentation. Notably, there is no mention of the need to provide evidence from friends or family who have been providing support.¹⁰

Time span of evidence

When someone has never had support or not had support for some time they should provide evidence to show why they now have no other means of support. The UKBA Policy Bulletin and Section 4 Guidance explain that where an individual has not had support for a long period of time, then it would be reasonable for the caseworker to conclude that the person has access to alternative sources of support, unless they can show a change in circumstances, in the case of Policy Bulletin 4, or as the Guidance states, "a good explanation as to why this support can no longer be provided".¹¹ The application form and Section 4 Guidance notes state that evidence should be supplied for the previous six months.

Vulnerability

The application form allows caseworkers identify vulnerable applicants. The front page includes questions that ask whether the applicant is immediately homeless, has special needs or has any dependants. These questions are intended to allow the UKBA to decide on the urgency of the application. There are also questions on pregnancy on the form intended for women applying for section 4 support on the grounds that it is close to their due date and unreasonable to expect them to leave the UK,¹² although no question aims to identify women who are pregnant but are applying for support under other criteria.

Balance of probabilities

UKBA caseworkers assessing applications must consider whether they believe the information supplied on the balance of probabilities. In other words, do they think the applicant's case is more likely to be true than not? This standard of proof means that it is possible for a caseworker to doubt some aspects of the application but still grant support on the basis that the applicant meets the destitution test.

Circumstances of applicants

The case files included information on an applicant's personal profile, asylum history, how they survived without UKBA support, and notably their vulnerability.

Nationality

The top five nationalities of applicants were Iran (18%), China (16%), Eritrea (9%), Iraq (9%) and Sri Lanka (9%). Forty two per cent originated from African countries, almost 30% were Middle Eastern and the rest were split between South Asia and South East Asia.

Age

Most applicants were in their mid-20s to mid-40s. About a third (36%) were between 25 and 34 and another third (32%) between 35 and 44. Eighteen per cent were young people aged between 20 and 24. The oldest was 59 years old.

Gender

Almost half were women (47%) – an unusually high figure compared with our UK wide statistics and the Home Office's own national asylum statistics, where about 30% of applicants are women. Overall, 15 of the women, all but one of whom was single, had children or were pregnant. Seven women were pregnant at the time of the support application.

Children

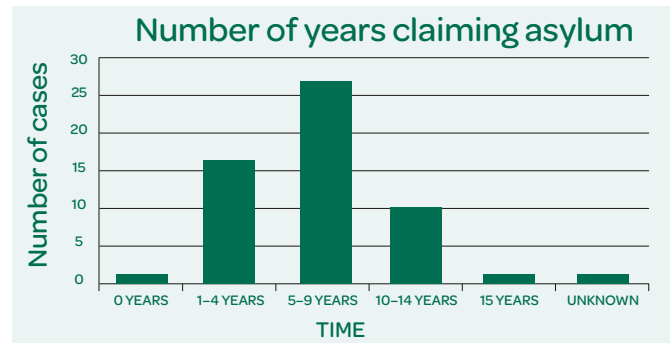
Twenty three children were included as dependants on the applications considered.¹³ All but one of these was under the age of five. A third were under one year old; the youngest was aged just 16 days.

Families¹⁴

Most applicants had family ties in London, mainly partners or children. About a fifth had extended family connections, including with adult children, parents, siblings and cousins. By the time of appeal, two families with children had sought social services assistance to avoid street homelessness.

Level of English

Sixty per cent had a working knowledge of English.¹⁵



Length of time claiming asylum

The largest proportion of applicants (49%) had claimed asylum between five and nine years prior to their section 4 application. The longest period of time since an asylum claim was 15 years. Only one person had claimed asylum within the previous year.¹⁶

Support history

A majority of applicants had either never had asylum support (27%) or had not had support for a considerable period of time (49%). Less than a quarter had received support in the past 12 months. They relied on informal support networks to survive, with about half of people getting help from friends and a quarter from family. While these networks were essential in avoiding destitution, it usually meant people had to move around and live in inappropriate, cramped accommodation with occasional nights sleeping rough; 27% had recently been street homeless.

⁵ Proposals for the Reform of Legal Aid in England and Wales (Ministry of Justice, Nov 2010).

⁶ To obtain support, a person also has to meet one of the following criteria:

- They are taking all reasonable steps to leave the UK
- There is a medical reason why they can't travel back to their country of origin
- They have permission from the courts to pursue a judicial review of a Home Office decision relating to their asylum claim
- It would be a breach of their human rights not to provide them with support because they have a fresh asylum claim outstanding or are facing street homelessness, which would constitute inhumane or degrading treatment
- There is no viable route of return to their home country.

⁷ Or 56 days if the person is already receiving support from the Home Office that is being terminated.

⁸ The documents are Asylum Support Policy Bulletin 4: Determining whether persons who apply for asylum support are destitute (Policy Bulletin), and Asylum Process Guidance: Section 4 support (Section 4 Guidance). Both documents are available on the UKBA website at www.ukba.homeoffice.gov.uk/policyandlaw/guidance – however, not all guidance documents are published.

⁹ Question 10.

¹⁰ Neither UKBA Policy Bulletin 4 or Section 4 Guidance consider what evidence should be submitted with applications. The Guidance instructs caseworkers that applicants need to prove their cases and evidence submitted must be considered when making a decision.

¹¹ See page 9 of Policy Bulletin 4.

¹² Refused asylum seekers qualify for support if they are pregnant six weeks before their expected due date and until their baby is six weeks old, as it is considered unreasonable to expect them to leave the UK during this period.

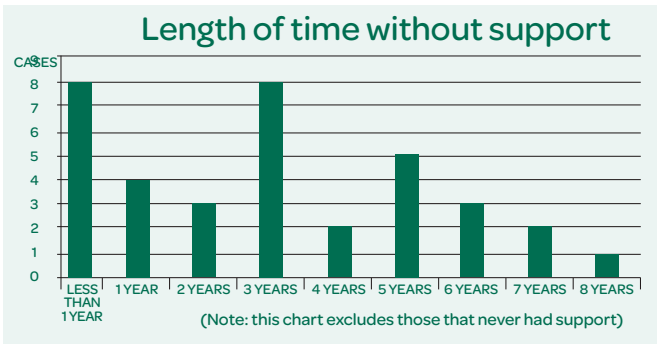
¹³ In total, the families we looked at included 29 children. Those that were not included as dependants were supported independently from the applicant.

¹⁴ We have defined family as children, partners, parents, siblings and other family members with whom there was an ongoing relationship.

¹⁵ This meant we were able to advise and prepare their cases without the use of interpreters.

¹⁶ All but one file contained a reliable date when the person first claimed asylum.

← **CASE STUDIES: One older woman with serious health problems, including post-traumatic stress disorder, incontinence and mobility issues, lived with three different friends. She wanted to live with adult children but was unable to because of the terms of tenancy agreements and the accessibility of properties. Another young woman with a toddler moved between three different friends but spent most of the day out so as not to get in the way. She was increasingly concerned for the wellbeing of her child as she could not find appropriate places for him to play and sleep during the day. Another man, who had spent five years ‘sofa surfing’ at numerous addresses, simply ran out of friends and contacts within his community to help him.**



Vulnerability

The majority of applicants were vulnerable in some way. Often their vulnerability was complex, combining mental and physical health problems, being single parents and having dependants who were themselves very vulnerable.

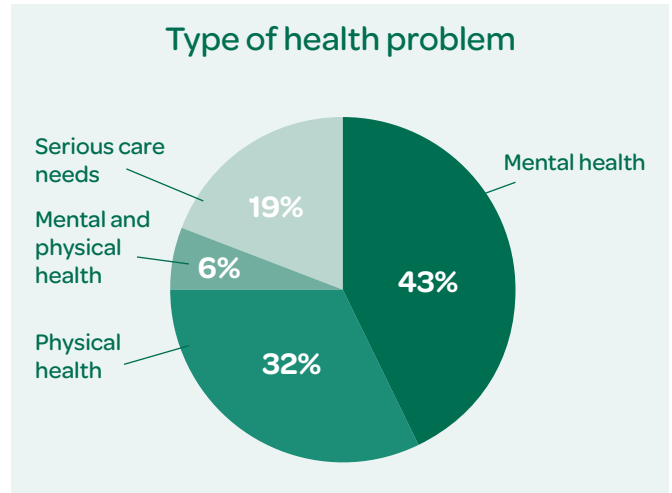
Forty-five per cent had documented mental and physical health problems.¹⁷ Ten people suffered from physical health issues such as HIV, tuberculosis, heart conditions, epilepsy and mobility problems. Thirteen had mental health problems ranging from depression and schizophrenia to post-traumatic stress disorder. Two people had both mental and physical health issues.

Five applicants or their dependants required long-term care or specialist medical treatment for conditions such as autism, Down’s syndrome, spina bifida, a growth hormone problem, and a birth defect which meant a baby could not walk. In all cases, hospitals, local authorities and/or the education authorities were involved in providing support.

Sometimes both parent and child had health problems. For example, one mother who was HIV positive had a child with Down’s syndrome. Another woman with multiple sclerosis had a child with serious mobility and health issues from birth.

¹⁷ This figure is likely to be conservative as problems such as HIV and post-traumatic stress disorder are often not disclosed.
¹⁸ Nine women stated that pregnancy or the birth of a child was the reason they had to move out of accommodation.
¹⁹ If someone applies for support within 21 days of section 4 support being terminated, the applicant is assumed to be destitute.
²⁰ This included two women who were also eligible because of pregnancy. The other cases in our sample applied for support because they had ongoing judicial reviews of their asylum claims, they were taking steps to leave the country or they had a medical condition that prevented them from travelling.
²¹ We had sufficient data to analyse 43 out of the 47 cases who had applied because of fresh claims.
²² In October 2009 the UKBA introduced a new policy which required refused asylum seekers to travel to Liverpool in person to submit a fresh asylum claim, before considering applications for section 4 applications.
²³ Four files could not be investigated because the application forms and attached evidence were not included.
²⁴ In three cases the relevant letters were missing from files.
²⁵ Seven cases could not be analysed because letters were unclear about the length of time the support had been given or were missing from our files.

In addition, three of the women applicants disclosed a history of domestic violence. The violence was directly relevant to the women’s support applications, which is why it was recorded, so the real figure is likely to be higher. One of these women was forced to exchange sex in return for accommodation.



Reasons for applying for support

Why did people apply for support? In most cases it was because support networks collapsed: 93% of case files showed there was a significant change of circumstance either in the applicant’s life, or the lives of friends and family helping them, which led to the collapse of support networks and left them destitute.

Change in applicant’s circumstances

In the biggest proportion of cases (43%), a significant event occurred in the lives of applicants which led to them applying for support. The birth of a child or pregnancy was the most commonly stated reason for having to move out of accommodation provided by family or friends.¹⁸ Others split up from partners supporting them.

CASE STUDY: One woman had recently split up with her husband who had previously been supporting her and their children, one of whom has Down’s syndrome. She was not getting maintenance from her husband and could not pay the rent so was evicted from her accommodation. She moved in temporarily with a friend but they were unable to accommodate three extra people. The family was sleeping on this friend’s floor.

Change in family or friend’s circumstances

In 33% of cases, there was a change in the circumstances of friends or family members providing support which meant they could no longer help. Some lost their income through redundancy or retirement so could no longer afford to support the applicant, while the accommodation arrangements of

others changed after separation from a partner or starting a new relationship.

CASE STUDY: One man with a serious heart condition had lived with his brother and sister in law. However his brother's marriage broke down and his brother became homeless after leaving the family home, so could no longer look after him.

Friend or family unable to cope any longer

In 16% of cases, friends or family members could no longer cope with the additional burden of supporting the applicant and their dependants. At times, this was explicitly because the applicant's medical problems were too difficult to live with.

CASE STUDY: One woman, suffering from serious mental health problems, had always had support from her sister. She was very vulnerable, had made suicide attempts and the community mental health team was involved in her care. However, her sister had a young daughter who was affected by the applicant's behaviour so her sister decided she could no longer accommodate her.

Social service support inadequate

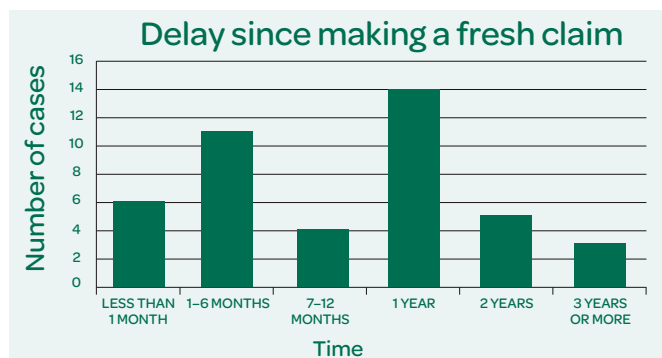
The remaining 4% had to apply for support because social services had either terminated support or were not providing sufficient levels of support to sustain the family.

No change in circumstances

In 7% of cases there had been no change in circumstances. Of these, two people were reapplying for support within the grace period allowed by the UKBA,¹⁹ while two others had been destitute for a long time and made repeated unsuccessful applications for support. Both had serious medical problems for which they were receiving treatment in London. One was street homeless.

Link between fresh claims and Section 4 support?

Eighty five per cent of applicants had submitted fresh claims under which they would qualify for section 4 support.²⁰ However, it is clear by calculating the interval between the time of the fresh claim and the section 4 application that the two were not directly linked,²¹ as a 2009 policy change, which made it much more difficult to submit a fresh claim, suggested.²² In 60% of cases, there was a delay of at least six months. Most commonly the delay was between one and two years but in two cases, the delay was four and six years respectively. In just six cases, the gap was less than a month.



The applications

Destitute asylum seekers usually find it difficult to collect evidence to back up support applications because of the chaotic nature of their lives and inability to travel around and collect evidence. They may have lost documents or cannot trace someone who helped them, or someone may not be willing to provide a letter of support as assisting them would be a breach of their tenancy agreement or support conditions. However the vast majority of applicants provided evidence of destitution: 86% included evidence from third parties about their present situation and/or past circumstances²³ showing why they had to apply for support.

Evidence supplied

Almost 80% of applicants provided evidence about their current circumstances,²⁴ while two thirds of applications contained evidence about the past, covering a period of at least six months. In just under a third of cases (27%) the evidence about the past was the same as the present, because the applicant had received support from the same source for some time, and 39% of applicants supplied separate evidence about past circumstances.

Of those applicants that did not provide evidence about their current circumstances, all supplied explanations. For example, one woman provided a very detailed account explaining that the person supporting her suffered from serious mental health problems. In another case, the applicant was sleeping rough so had no evidence. He did, however, provide evidence of how he had supported himself in the period immediately before he became street homeless.

Of those who did not supply evidence about the past, there was a reasonable explanation in most cases. Some applicants applied within the grace period allowed by the UKBA since their support ended; someone else had been released from detention the month before; others stated that they could not obtain proof either because of an acrimonious separation from a partner, or because friends had refused to supply this information.

Time span of evidence

What time period did the evidence cover? This was not clear in all of the letters,²⁵ but excluding these, most applicants provided evidence about past circumstances covering a considerable period of time. Over 60% provided evidence that covered more than one year – more than is required on the current form. In 33% of cases, applicants were able to provide evidence covering the whole period during which they did not receive government support. Nine per cent of applicants had had their support terminated less than a month before their application.

No evidence

Significantly, less than a fifth (18%) contained no evidence to support their application. More than half of these cases were successful on appeal.

UKBA decision making

All the applications were refused because the UKBA decided the applicant was not destitute.²⁶ In a third of cases, the UKBA requested more information before making a decision, which was supplied by all but three applicants.²⁷ We studied decision letters to scrutinise whether UKBA caseworkers applied the destitution test, how they treated evidence and the reasons given for refusing support.

The destitution test

The decision letters demonstrated that UKBA caseworkers either did not understand or apply the destitution test. Not one letter²⁸ explained the destitution test correctly; 86% did not attempt to explain the test. Most simply concluded that the applicant was not destitute. Thirteen per cent of letters attempted an explanation of the destitution test but none were correct.

Sometimes the caseworker partially understood the test, stating for example that destitution involved having no accommodation and subsistence support rather than inadequate accommodation and/or subsistence support.²⁹ number of letters simply stated that the applicant was not entitled to support. Some letters also incorrectly identified the source of the destitution test. Two sourced the test from UKBA case-working instructions,³⁰ while others incorrectly identified the legislation it comes from.

Treatment of evidence

Caseworkers failed to deal with the evidence supplied in a satisfactory way.³¹ Only a fifth of decision letters acknowledged the applicant's circumstances and all the evidence they had supplied. The letter then explained why the evidence was not accepted. In the remaining 79% of cases, the UKBA ignored all or some of the evidence supplied and instead focused on unconnected factors to assess and refuse the application.

In 41% of cases all the evidence supplied was completely ignored in the decision letter. In just over a fifth of cases, the evidence was acknowledged but the reason for refusal focused on factors unrelated to the evidence, with no explanation given as to why the evidence was not accepted. In 17% of cases, evidence submitted was partially dealt with but evidence about destitution was ignored and the reason for refusal was not linked to an applicant's current circumstances.

CASE STUDY: One woman applied for support because her friend was no longer able to help her as she was expecting a baby. In the application, she explained that the father of the baby had left her and supplied a proof of pregnancy, a previous proof of address and a letter from her friend dated nine days prior to the application stating that she could no longer help her. The UKBA ignored this evidence and refused to support her stating that she had not had government assistance since 1999 and therefore could not currently be destitute. Her appeal was allowed.

CASE STUDY: A pregnant woman and her partner applied for support, providing letters from two friends who had helped since her arrival in the UK. These were acknowledged but the application was refused. The letter explained that eight months prior to the application the address she lived in was connected to a suspected DVD factory and that the woman had failed to provide bank statements and payslips as requested. In the appeal, the woman explained she had never worked and did not have a bank account. Her appeal was allowed.

CASE STUDY: A single mother applied for support because three friends were no longer willing to help her. In the past she had been offered section 4 support but was not made aware of this so had not taken the offer up. In the application she provided a letter from all three friends explaining they could not help, as well as some evidence relating to her past financial circumstances. In refusing the application, the UKBA ignored the letters from friends. Instead they focused on her failure to take up the previous offer of support, some small inconsistencies relating to her ex-partner and the evidence of past financial circumstances. Her appeal was allowed.

Reasons given for refusal

It was difficult to always identify the reasons why an application was refused but some common trends did emerge when analysing decision letters.

LENGTH OF TIME WITHOUT SUPPORT: In almost a third of cases (27%), support was refused because of the length of time the applicant had been without support. This ignores the fact that people's circumstances change, especially over long periods of time, and that the changes of circumstance outlined in applications were credible and compelling in many instances.

APPLICANT CREDIBILITY: In 18% of cases, the letter stated that the caseworker simply did not believe the applicant's account. Sometimes this was followed by a direct or implied accusation of improper or criminal conduct. For instance, in one case the UKBA caseworker wrote: "It is considered that you may continue to work illegally as you have previously been doing." This was despite the fact that there was no evidence the applicant had ever worked illegally. The appeal was unsuccessful because by the time of the appeal, the woman, who had applied because she was pregnant, had given birth and was no longer entitled to section 4 support.



FAMILY TIES: In 11% of cases, support was refused on the grounds that the caseworker did not believe family members would not continue to support them. For example, the decision letter of the applicant with serious mental health issues, who could no longer live with her sister because her behaviour was disturbing her young niece, stated: "I consider that your sister probably wrote this letter specifically to aid this application in the hope that you would be given accommodation and upkeep at public expense." Her appeal was successful.

SUPPORT HISTORY: In 13% of cases, support was refused on grounds related to the applicant's track record on support – either they had voluntarily left support accommodation, or had not taken up a previous offer of support. One decision letter stated: "It is noted from our records that you have previously absconded from a section 4 property... which would suggest you have another form of support available to you." While a previous track record may be relevant to a support application, there can be good reasons for not taking up or abandoning support. Two women complained that they had not been notified they had previously been granted support. Both appeals were allowed. Another man left his support accommodation outside of London to stay with a friend because his mental health was deteriorating as a result of isolation. Some time later he was asked to leave by his friend and ended up sleeping rough. He too obtained support at appeal.

SMALL TECHNICAL PROBLEMS: On a number of occasions, the caseworker focused on a small technical problem or inconsistency in applications and used it as a reason to refuse support. The most striking example of this was when an application was refused solely because the applicant had not ticked a box to confirm he was destitute. Underneath it, however, he had written: "I have no income, funds and no means of support." This case was allowed on appeal.

UKBA decision letters

Once a decision on the application is made, the caseworker writes to the applicant informing them whether they have been granted or refused support, and if the application was unsuccessful, of the right to appeal. Some common problems were identified with how the letters were drafted and structured, which made analysing UKBA decision making more difficult for the purposes of this research.³²

Generally, the letters were poorly structured. Only a quarter contained headings that referred to each of the section 4 criteria –

a separation that helped the applicant or their adviser understand what aspects of the application had been considered, under which section 4 criteria, and why the application was refused.

Most of the letters were also very unclear. Most did not relate the decision to the legal test for destitution or the evidence supplied in applications. As a result it was difficult to tell what the UKBA objected to in the application and what factors had informed its decision. Sometimes, the caseworker appeared to conclude on one reason but then went on to introduce a new factor, as if they had forgotten to point something out.

Letters also made comments about the applicant or their conduct without explaining what relevance this had to the application. Sometimes the language used was judgemental and aggressive and on some occasions it was offensive, impugning the character of the applicant. One caseworker revealed sensitive information about an unrelated third party in the letter, which was a clear breach of confidentiality. In contrast, not one letter made reference to an applicant's children and how their welfare had been taken into account in the decision-making process, as the UKBA has a statutory duty to do under Section 55 of the Borders, Citizenship and Immigration Act 2009.

Delays

The speed with which applications are processed by the UKBA should depend on an applicant's vulnerability. Given what is at stake they should all be processed within a matter of days. In many instances, however, there were long delays in processing applications from the date on the application to the date on the decision letter.³³ More than half of applicants (56%) had to wait for more than two weeks for a decision. Of these, 23 applicants waited between two and eight weeks and seven had to wait between 9 and 21 weeks. One applicant had to wait three months for a response because the UKBA kept losing his support application, which was sent four times. The average waiting time was 30 days.

The delays include cases where further information was requested before processing the application. Such requests can be justified as long as the UKBA has a good reason to ask for more information. Taking this into consideration, there were still some lengthy delays.³⁴ Some applicants waited for as long as 18 weeks from the time of making their application before the UKBA requested further information.

CASE STUDY: One woman experienced a 21 week delay between the application and the decision. She was requesting support because she was in the late stages of pregnancy, which entitled her to support six weeks before and after the baby's birth. Four days after applying for support the UKBA requested more information. This was supplied ten days later. The UKBA did not respond for a further 15 weeks, eventually refusing support because she was no longer eligible for support and the caseworker did not believe she was destitute. She lost her appeal because by then her baby was over six weeks old.

²⁶ A fifth of applications were also turned down on the grounds that the applicant did not meet other criteria for section 4 support.

²⁷ In these circumstances, UKBA policy states that if the person doesn't answer, it can just refuse the application on this basis. See page 10 of the Section 4 instructions.

²⁸ Five decision letters were missing from the files.

²⁹ Two letters stated: "You will not be granted support solely on grounds that you are a failed asylum seeker. You must be able to demonstrate that you are destitute or that accommodation and subsistence is no longer available to you."

³⁰ Asylum Support Process Instruction: Assessment and Test of Destitution Process (the Process Instructions). This document is not publicly available.

³¹ A total of 42 letters were examined for treatment of evidence. Three case files did not contain a copy of the application form and attached evidence, seven did not supply evidence with their application while three did not respond to requests for further information so the decision letter did not consider the evidence that had been supplied.

³² UKBA letters are based on a template so some standard paragraphs appeared in all of them. The standard parts are the opening paragraph that explains that the person has applied for section 4 support; the second paragraph that states that their application has been refused because they are not considered to meet the criteria set out in the regulations (although what these are is not explained); and a paragraph explaining the person has a right of appeal or can obtain assistance to return home should they not wish to appeal.

³³ 54 applications were used in this analysis.

³⁴ Some files did not contain the response to requests for further information. This reduced the sample to 48 cases.

Application form

The section 4 support application is not easy to complete.³⁵ The 14 page form and accompanying 15 page guidance note are only available in English and online from the UKBA's website. The form is a PDF document and the guidance note attached can only be accessed by clicking on a paper clip icon at the bottom of the screen, which is hard to find. This form was introduced in the summer of 2009 when it replaced a much shorter application form that was easier to complete.³⁵ An analysis of how the questions dealing with destitution were answered on the current application form highlighted some clear shortcomings.

Absence of free text space

The form requires applicants to fit information into specific linked boxes³⁶ rather than providing free text space to explain their circumstances. In other words, if the applicant answers 'yes' to a specific question, they are then guided to another part of the form. This makes it difficult to give an account of their situation because it restricts what can be said and where. The information given then can lack clarity and detail while some questions are easily missed.

Lack of clarity on past circumstances

The form is not consistent on the duration the applicant needs to provide evidence for if they have been without support for some time. Question 10 of the application form contains the following statement: "If you have been without support from the UK Border Agency or a local authority for some time, you will be expected to explain how you have supported yourself during this period." There is no explanation of the phrase "some time", including in the guidance notes, which just state: "If you have been without support from the UKBA... you will be expected to explain how you have supported yourself during this period." Further on in the application, Question 17 asks: "Explain how your circumstances have changed in the last six months, why you are now destitute and unable to support yourself." This inconsistency creates uncertainty about what duration the UKBA wants evidence about, and is reinforced by the large number of refusals on the grounds that the applicant has been without support for a considerable period of time.

When evidence is required

The application form also asks the applicant to "provide evidence where necessary" of their destitution. The fact this is in bold indicates it is important. However, the whole phrase is written in much smaller font than the rest of the form, so it can be easily overlooked. Also there is no further explanation of when evidence will or will not be "necessary". The form does not make this clear anywhere. The guidance note is also silent on this but points the

³⁵ Our sample was split between old and new forms.

³⁶ There are 47 linked questions on the form.

³⁷ Part 3.

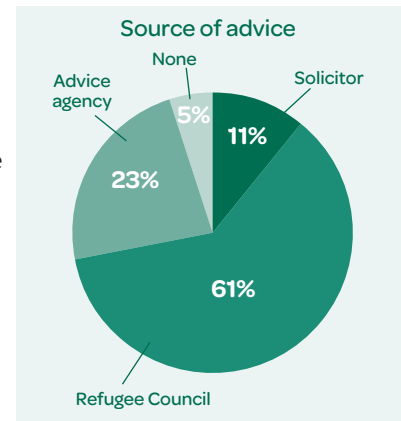
³⁸ Following Home Office cuts of 60% to support services for refugees and asylum seekers at the start of 2011, there is now a much reduced level of advice on support available to asylum seekers and refused asylum seekers in London.

³⁹ The report, Supporting Justice, put this at 47% taking into account remitted and withdrawn appeals (CAB, 2009).

applicant to a section of the form³⁷ which considers destitution in more detail. The guidance note to this section and indeed the questions in the section itself only ask for information, not evidence.

Assistance in completing applications

Ninety five per cent of people obtained help in completing their support application, mostly from the Refugee Council's One Stop Service in London. Other applicants obtained advice from other refugee agencies or solicitors. Significantly, no applications were made with the help of agencies outside the refugee sector, such as the CAB.³⁸



Role of representation in appeals

To what extent was the high success rate of appeals down to factors other than the quality of UKBA decision making, notably representation in appeal hearings by ASAP's duty scheme?

There is an overturn appeal rate at the First Tier Tribunal (Asylum Support) of more than 40%.³⁹ This rises significantly when appellants are represented in appeal hearings by ASAP. Between January and December 2010, for example, 69% of appellants whom ASAP represented in appeals won their appeal or had the case remitted. This is because the appeal gives asylum seekers and refused asylum seekers who are represented by expert advocates an opportunity to engage in the process, usually for the first time.

Asylum support cases can involve complex issues of procedure and law and a difficult factual background. Without representation, someone who has language barriers, is very vulnerable, sometimes frightened and knows little about the law clearly cannot make a case for support. Appeals also allow the Tribunal judge to ask questions based on the evidence submitted that assess the credibility of appellants. Establishing the credibility of appellants is central to destitution cases, which is why this type of appeal has an unusually high success rate.

However, it is the poor quality of the UKBA's initial decision making which sets up so many unnecessary appeals. It is its failure to apply the legal test for destitution, follow its guidelines, make decisions on the basis of evidence submitted, have a balanced assessment of credibility, and write clear and credible decision letters, which leads to more than 80% of decisions on destitution being overturned on appeal.

Summary of findings

UKBA decision making on destitution lacks credibility. Over 80% of the London Project's clients between July 2008 and March 2010, who were refused support by the UKBA on the grounds that they were not destitute, won their appeals after being represented by ASAP's duty scheme. This poor decision making resulted in unnecessary appeals, which meant unnecessary cost to the public purse and unnecessary hardship and stress to already vulnerable adults and children.

UKBA decision making is not based on the law underpinning section 4 support and, in particular, the legal test for destitution. Seventy nine per cent of UKBA decision letters contained no explanation of the destitution test and why the applicant did not meet the test. Of the letters that did make reference to the test, none explained it correctly. This shows no improvement in decision making since our report two years ago, 'Not Destitute Enough', which documented the UKBA's failure to apply the correct legal definitions of destitution in asylum support cases.

UKBA caseworkers dealt with the evidence submitted of destitution in an unsatisfactory way. Despite the difficult circumstances of their lives, more than 80% of applicants supplied evidence from third parties, two thirds supplied evidence of the last six months and 60% supplied evidence going back at least a year. This is more than is required by UKBA guidelines. Yet in most cases either some or all of the evidence was ignored and decisions were made on the basis of irrelevant evidence or information, or small inconsistencies and technical shortcomings in applications.

The assessment of credibility at the initial decision-making stage on support is unfair and unbalanced, and is distorted by a culture of disbelief. Applications were refused because people have not had support for some time, despite the fact that the circumstances of individuals change over long periods of time. They were also refused because caseworkers did not believe families would no longer support them even when there was a compelling reason why this was the case, such as an applicant's serious mental health problems were distressing her young niece. In a fifth of cases, caseworkers simply stated they did not believe the applicant's account.

Women have particular gender-related vulnerabilities that put them at risk of destitution. The birth of a child or pregnancy was the most commonly stated reason given by applicants for having to move out of accommodation provided by family or friends. Overall, 15 women applicants, all bar one of whom was single, had children or were pregnant. Women were also at risk of destitution through domestic violence and sexual exploitation.

Decision making fails to take adequate account of vulnerability. Applicants had 23 children between them, most under the age of five, and seven women were pregnant. The majority of people had serious mental or physical health problems, sometimes long-term conditions affecting both parent and child. Yet there was

no indication that any of these factors was taken into account in the decision making process, either in terms of the decision itself or length of time it took to process the application. There was no reference in decision letters as to how children's wellbeing had been taken into account, as the UKBA has a statutory duty to do.

More than half of applicants had to wait for more than two weeks for a decision on their support application, when decisions should be made in matter of days. A significant number waited for two to five months, including one pregnant woman who was eventually refused support on the basis that she had had the baby and was no longer entitled to the support. One person waited for 21 weeks between application and decision.

The section 4 application form is not accessible and easy to complete. The form is lengthy and is only available online and in English. Its format makes it difficult for applicants to explain their situation clearly and comprehensively. Further, the application form and accompanying guidance are not clear enough about when it is necessary to provide evidence and for what period of time. This is particularly concerning as asylum seekers and refused asylum seekers now have much reduced levels of advice on support available to them following Home Office cuts of 60% in 2011 to refugee support services, and so are likely to find the process even more onerous.

Making a fresh asylum claim is one of the criteria that can qualify someone for section 4 support but no direct link is apparent between making a fresh asylum claim and making a support application. The majority of applicants had a fresh submission on their asylum claim outstanding, but of these over 60% submitted a support application more than six months after making a fresh claim. This lends support to the argument that people are not making fresh claims to qualify for support.

Representation by ASAP's duty scheme allows asylum seekers and refused seekers to participate in an inaccessible and unfair system. It enables them to explain the difficult and changed circumstances of their lives which have led to them becoming destitute, so they can obtain their limited legal entitlement to housing and subsistence. Without representation, uniquely vulnerable people cannot make their own case for support, establish their credibility, and highlight its complete absence from the UKBA's decision making on asylum support.

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