

PROVING DESTITUTION FOR ASYLUM SUPPORT

This fact sheet concentrates on the type of information an applicant requiring Section 4 (S4) support may be expected to provide to the Asylum Support Tribunal (AST) in order to prove they are destitute. It is aimed at advisers who are assisting applicants with their appeals to the AST against a refusal to award them S4 support. It covers the types of questions an applicant may be asked during their appeal hearing, plus the type of evidence they may be required to produce for the hearing. The advice in this fact sheet is based on our extensive experience of representing clients at the AST. For details of the criteria for Section 4 support refer to our fact sheet "Section 4 Support for Failed Asylum Seekers".

Introduction

When applying for S4 support, the test for destitution is the same as that applied when someone first applies for Section 95 (the full support given to asylum seekers whilst their asylum claims are being considered by the Home Office). This means that the person will be considered destitute either if they do not have access to 'adequate accommodation' or have no way of meeting their 'essential living needs' In line with S95, they need to show that they will not have access to housing or support within the next 14 days.

Note that if a person has previously been supported under S95 and applies for S4 support within 21 days of their S95 support ending, they will be destitute.

However, it is important to note the approach taken in Policy Bulletin 71. This provides guidance to caseworkers, and others, on Section 4 support and states that 'when a person has been without support for a prolonged period, then it would be reasonable for the caseworker to assume that the person had access to an alternative source of support'. For this reason if the client has been unsupported for some time they will very often be expected to provide evidence of how they have been supporting themselves since their support was terminated.

Evidence required Prior to the Hearing

Approximately five days before the appeal is due to take place the AST send out a list of directions to both the respondent (HO) and the appellant (person appealing). Your organisation will be sent a copy of these directions if you have assisted the client to complete the appeal notice form and included your contact details. The directions are a list of information the AST will want you to provide for them. In relation to proving destitutions this will include requests for some of the following information:

FACTSHEET:4

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The information contained in this factsheet is intended for guidance only and whilst every effort is made to ensure it is correct at time of publication it should not be used as a substitute for legal advice. For client specific advice please contact the ASAP.

- proof of any charitable support the person has been receiving (food parcels, clothing, money etc)
- signed written statements from as many individuals as possible who have supported the person since his/ her support ended
- A list of addresses where the person has been staying since support ended, plus details of how long they stayed at each address

Individuals appealing may find it difficult to get those who have been supporting them to put anything in writing. This may be because the person is being supported and is frightened of losing their accommodation. In these cases the person could provide verbal information on where they have been staying and explain to the adjudicator the reasons why their friend/s would not put anything into writing

- Evidence that s/he has been, or is about to be, evicted from the place they are currently staying
- Evidence stating why they can no longer remain at their current accommodation
- Copies of bank statements (if any) for the last six months.

The directions state that this information should be sent no later than noon of the day before the hearing. However, if the person is unable to provide some, or all of this information before the hearing, the AST will normally accept evidence provided on the day.

Types of Questions Asked During the Hearing

At the hearing the client will also be required to answer a series of questions about how they have been surviving since their support ceased. Those who have been without support for a long period are likely to be questioned in more detail. These questions are normally asked by the BIA representative but the adjudicator may also ask questions for their own clarification (if the person is represented it will be their own representative that asks these questions).

The following is a list to the types of questions those appealing on the grounds of destitution are likely to be asked:

- Where did you go when your support was terminated? (the person may have stayed with several people since losing support so will be asked give chronological account of where s/he has been staying).
- Can you give me the address of your friends/ community members where you have been staying? What type of accommodation does your friend/s have?
- Where did you sleep in the accommodation? What is the immigration status of the people you stayed with?
- Do these friend/s work? What do they do?

- **Where did you last stay? Can you remain at this accommodation?**
- **Are there any other members of your community or friends that can offer you accommodation?**
- **Where did you sleep last night? Where will you sleep tonight?**
- **Have you any family in this country?**
- **Have you ever slept outside? If so, where was this? Have you ever begged for money or food?**
- **How have you been feeding yourself since your support stopped?**
- **Have you approached charities for support? What sort of support have they been providing you with?**
- **Can you give me the name of the charities?**
- **Do you have any money? If yes, how much? Do you receive regular donations of money?**

Lastly, it is important to note that when making a decision of whether someone is destitute the AST will also taken into account whether they felt the person gave an honest and consistent account of their living circumstances. If the client is reluctant to answer questions or has given contradictory accounts of how they have been surviving this could have an impact of the outcome of the hearing. For this reason it is important that the advisor, as far as possible, helps the client prepare for the hearing by making them aware of the evidence they will be required to give.

For more information and factsheets, visit www.asaproject.org.uk

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ASAP Factsheets:

No 1: Asylum Support

No 2: Section 4 Support for Failed Asylum Seekers

No 3: What to Bring to the AST

No 4: Proving Destitution

No 5: After a Negative Decision at the AST

No 6: Section 9 Withdrawal of Support for Failed Asylum Seeker Families

No 7: Introduction to Community Care

No 8: Introduction to Judicial Review

No 9: The European Convention on Human Rights and The Human Rights Act 1998

No 10: Medical Briefing

No 11: Section 4 Breach of Conditions

No 12: Section 4: New Ways to Apply