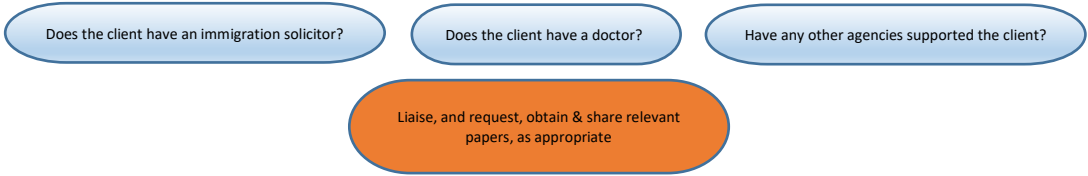
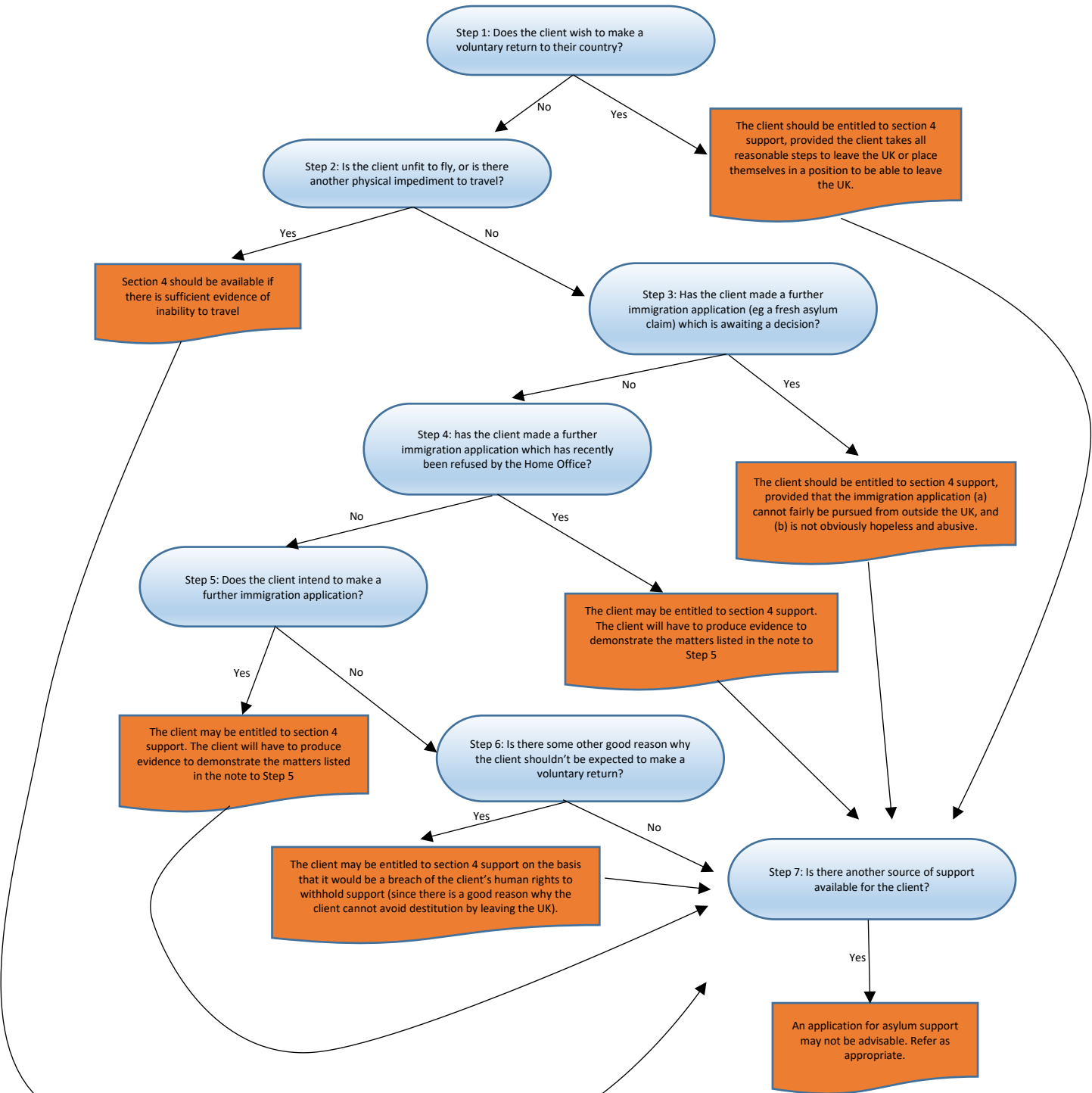


**Seeing A Destitute Client Whose S4 Support Is Being Discontinued (with accompanying notes) – 13.08.21**

**Taking stock, liaising and seeking papers**



**Taking instructions from the client**



## Accompanying note to section 4 discontinuation flow chart

Please treat this note and the flowchart it accompanies as a basic guide only. It has been drafted in case having an ordered approach of this sort helps your work, but mindful that everyone's working needs and ways of working is different. It is assumed for the rest of the note that the client is able to prove destitution.

### Step 1

Does the client wish to make a voluntary return to their country? If so, then section 4 may be available provided the client is able to demonstrate that they have taken all reasonable steps to leave the UK or place themselves in a position to be able to leave the UK.

### Step 2

Is the client fit to fly, or is there another physical impediment to travel?

If not, and there is evidence to support an inability to travel, then section 4 may be available. Consider seeking medical or other evidence as to why the client would not be able to undertake a journey (bearing in mind that an international flight usually lasts no more than a matter of hours, and – the Home Office will say - can be undertaken if necessary with appropriate medication and an escort).

### Step 3

Has the client made a further immigration application, eg:

- a fresh asylum claim (see a note on further immigration applications appended at Appendix 1).
- a fresh human rights claim under Art 3 on the grounds that the client will be ill treated if returned (eg by non-state agents, so that, despite the risk of ill treatment, the Refugee Convention does not assist the client)
- a fresh human rights claim under Art 3 on medical grounds, eg on the basis that although not at imminent risk of dying if returned, the evidence shows that '[the client would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy]'. This language is taken from the Supreme Court judgment in *AM (Zimbabwe)* which was given on 29 April 2020. It will be particularly relevant where the client's previous asylum and/or human rights claim was refused before that date
- a fresh human rights claim under Article 8 on the grounds that removal from the UK will disproportionately interfere with the client's rights to family and/or private life in the UK
- an application for leave based on long residence where the client can prove 20 years' residence in the UK

which is still waiting for a decision from the Home Office?

If so, then the client may be entitled to section 4 support, provided that the immigration application (a) cannot fairly be pursued from outside the UK, and (b) is not obviously hopeless and abusive.

#### Step 4

Has the client made a further immigration application which has recently (ie within the last 3 months) been refused by the Home Office?

If so, then the client may be entitled to section 4 support. The client will have to demonstrate one of the following:

- that the Home Office refusal of the further immigration application was not accompanied by a right of appeal (in which case the client should appeal and apply for section 95 support);
- that a judicial review claim has been lodged;
- (failing that), that a PAP letter has been sent;
- (failing that), that legal aid has been granted to enable the client to bring a judicial review claim;
- (failing that), that legal aid has been applied for, and that the client has been advised that the merits of a judicial review claim are greater than 50% (which would justify legal aid for a claim to be issued);
- (failing that), that the client has obtained the earliest possible appointment to seek advice on a potential claim for judicial review.

A solicitor's letter will obviously be necessary in the vast majority of cases. As a general rule, the further down the above list of bullet points the client's case appears, the harder it will be to persuade the Home Office and the AST that the client is entitled to section 4. The merits of any judicial review claim will also be relevant.

#### Step 5

Does the client intend to make a further immigration application?

If so, then the client may be entitled to section 4 support prior to the submission of the further immigration application. The client is more likely to be entitled to section 4 if they can produce evidence to demonstrate that:

- The application, when it is made, will not be obviously hopeless or abusive;
- The application will be made at some specified time in the near future (the sooner the better);
- There is a good reason why the application has not been made before now (preferably the evidence will show that the delay in submitting the further application is due to

circumstances beyond the client's control, and that the client has done everything possible to progress the further application expeditiously).

These matters will likely need to be addressed by the client's immigration solicitor, if the client has one. If the client does not have an immigration solicitor, consider whether you can refer the client to one (see Appendix 1).

#### Step 6

Is there any other good reason (in the terms of the Home Office policy, 'a legal or practical impediment') why the client cannot be expected to make a voluntary return to their country (eg the client is on bail in a criminal matter for which it is necessary to attend court on a particular day in the future)?

If so, the client may be entitled to section 4 support on the basis that it would be a breach of the client's human rights to withhold support (since there is a good reason why he cannot avoid destitution by leaving the UK).

#### Step 7

Is there another source of support available for the client? Eg does the client have accommodation-related care needs which would justify a referral to the local authority under the Care Act 2014, is the client pregnant such that a referral to the local authority would be appropriate, or is there an alternative charitable source of support? If so, consider an appropriate referral as an alternative to an asylum support application.

Ravi Low-Beer  
ASAP

19 July 2021

## APPENDIX 1

### Note on further applications (including fresh asylum and human rights claims)

1. There is a national shortage of immigration solicitors able to take on fresh claim cases with public funding. One potential reason is because fresh claims often require a large investment of an immigration solicitor's time at the outset of the case, with little indication of what precisely they should be looking for, or whether a viable fresh asylum claim will eventually appear. This can sometimes be a disincentive to a hard pressed legal aid immigration solicitor with billing targets to meet – particularly if the initial preparation work needs to be done urgently.
2. It may be possible to make the client's case more attractive to a new immigration solicitor in the following ways:
  - (If considering whether there may be a potential fresh immigration claim) find out from the client whether there is any new evidence since their asylum claim and any appeal was rejected.
  - If the client doesn't have a full set of immigration papers, consider:
    - (i) assisting the client to apply for a copy of the Home Office file, which is free (although note the need for the client to have photo ID, and the inevitable delay before the file will be produced – see a link to the online application here: <https://www.gov.uk/government/publications/requests-for-personal-data-uk-visas-and-immigration/request-personal-information-held-by-uk-visas-and-immigration>); and
    - (ii) seeking papers from the file of the immigration solicitors representing at the time the asylum claim and any appeal against the refusal of asylum was determined (although note the possibility of delay and the charging of an admin fee by the solicitors).
  - If the client has immigration papers, check them, and in particular the determination of the Immigration Tribunal (usually the First-tier Tribunal (Immigration and Asylum Chamber) dismissing the client's asylum appeal – what findings did the Immigration Judge make and what reasons did the Immigration Judge give for dismissing the appeal? Take those findings as a starting point. In light of those findings, consider whether, in the time since the client's asylum appeal was dismissed:
    - (a) there is any new evidence relating to the specific facts of the client's case that might have made a difference to the Immigration Judge. Bear in mind that if the client was not believed by the Immigration Judge, the new evidence will need to be supported by objective evidence (ie not just based on what the client says), and must address all (not just some) of the reasons given by the Immigration Judge for disbelieving the client's account.
    - (b) there is any new country specific evidence that that might have made a difference to the Immigration Judge. For example, is there a new Upper Tribunal Country Guidance case, which means that the client should qualify for asylum on the facts as found by the Immigration Judge?

- (c) Is there any new expert evidence relating to the specific facts of the client's case that might have made a difference to the Immigration Judge? If possible, the assumptions that the expert uses to write their report should be the facts as found by the Immigration Judge.
- (d) Is there any new expert medical evidence relating to the client that might have made a difference to the Immigration Judge? If the client is receiving treatment in the UK for a serious condition, is there evidence (i) that such treatment would not be available in their country if they are returned, and (ii) of how the lack of the client current treatment would affect them. If not, consider requesting such evidence from the client's doctor.
- (e) Is there any new evidence arising from the client's stay in the UK since their asylum appeal was dismissed? For example: has the client had any children, has the client's physical or mental health deteriorated, does the client have more than 20 years' continuous residence in the UK, and can these matters be evidenced?

If the answer to any of the above questions is 'yes', consider referring the case to an immigration solicitor.

3. Since the speed with which the client pursues a fresh immigration claim may be relevant to whether support is granted before the further immigration application is submitted to the Home Office, take a full note of the steps you have taken and why. For example, if you have approached all the local immigration solicitors in your area, and none have the capacity to offer the client an appointment, make sure a note to that effect, and of any follow up is included (where appropriate) in a later section 4 application. This might be important if, for example, the client has to prove that the reasons for the delay in making further submissions is due to circumstances beyond their control (such as the shortage of solicitors with capacity to advise the client on a potential fresh claim).
4. The letter that is needed from the client's immigration solicitor should explain:
  - the gist of the further immigration application (or could include a copy of the draft application if it is available),
  - what is new about the further application,
  - why the application could not have been made earlier,
  - why the application is not obviously hopeless or abusive,
  - the timescales for finalising and lodging the further application,
  - how the work has been funded (if either pro bono or legal aid).