

Research by the Asylum Support Appeals Project (ASAP)
February 2016

THE WAITING GAME

DELAYS IN PROVIDING
ASYLUM SUPPORT
AFTER APPEALS

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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 and refused 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asylum seekers and refused asylum seekers who have been refused housing and subsistence support or had support withdrawn.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 work, advocacy and litigation to influence and change policy and practice.

Set up in 2003, ASAP staff and pro bono legal advocates now assist about 650 asylum seekers at the Tribunal every year, significantly increasing their chances of securing support.

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Written by Marie-Anne Fishwick

Research by John Hillman and Marie-Anne Fishwick

With thanks to John Hillman (ASAP), Deb Gubbay (Refugee Action), Maria Houlihan (ASHA), Laurie Ray (PAFRAS), Chloe Marong (Trinity Centre)

ASAP

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SUPPORT
APPEALS
PROJECT

Asylum Support Appeals Project (ASAP)

Ground Floor, Anchorage House
2 Clove Crescent
East India Dock
London, E14 2BE

Tel: 020 3716 0284

www.asaproject.org.uk

Summary and recommendations

Research summary and key findings

Concerned about reports of increasing delays in the asylum support system we interviewed 32 successful appellants at the First-Tier Tribunal, Asylum Support (the Tribunal) to find out how long they waited before their accommodation and support started. Legal entitlement to accommodation and support begins on the day the Tribunal allows a person's appeal. Appellants have access to emergency accommodation on that day but this is only available in London so is not a viable option for most. Accommodation providers have a maximum of 9 working days to secure housing from the moment the Home Office requests accommodation, although the Home Office can impose a shorter timeframe in urgent cases.

- On average, appellants waited 18 days for support to start and more than half waited more than two weeks. The minimum wait was 8 days, the maximum 42.¹
- We were not able to identify specific patterns in the appellants' circumstances that would explain the delay. Street homeless people were dealt with more quickly but still faced 14 days average wait for support. Other categories of vulnerable people don't appear to have been prioritised: families with children waited longer than average; those with medical problems waited the average 18 days.
- Appellants appeared to have stayed in touch with their advisers and/or the Home Office so were not contributing significantly to the problem.
- Instead, we identified two stages in the process where appellants were without support because they were waiting for the Home Office to progress their case. First, appellants waited an average of 7 days after the appeal to receive the accommodation booking forms from the Home Office which enables them to access support. Then, once they had returned the forms, they waited an average of 10 days for support to start.
- Clients who took up emergency accommodation waited on average 7 weeks for dispersal accommodation and financial support to begin.

Recommendations

ASAP's position is that the current system is unfair and unlawful. Support should be provided immediately after an appeal and any delay should be reasonable. Accordingly, we recommend that:

- The process of booking accommodation should be made simpler and more transparent. Booking forms should be given to successful appellants immediately after their tribunal hearing. The Home Office should also publish their accommodation booking procedure including waiting times in different kinds of cases.
- The Home Office should provide access to emergency accommodation to all appellants and applicants in their regions at any point after support is awarded. This would prevent further breach of human rights from occurring in cases where the appellant becomes street homeless.²
- Failing that, the Home Office should at least inform appellants before their appeal hearings that they can access emergency accommodation in London should they succeed.

¹ Days in this report refer to calendar days unless otherwise stated.

² This report doesn't look at delays faced by people granted support by the Home Office without the need to appeal. However, as the process for booking accommodation is almost identical there is reason to believe they too will face similar delays. For this reason they have been included in this recommendation.

Context and methodology

Context

Support for asylum seekers is provided by the Home Office in the form of Section 95 support or Section 4 support.³ This consists of housing and a small financial living allowance. People with ongoing asylum claims are in a relatively better position than those whose claims have been determined. The former group (eligible for Section 95 support) can access emergency accommodation pending a decision on their application for support. They can also ask for financial assistance without accommodation, if they have friends or relatives who can house them. But those who are applying after their claim has been determined (eligible for Section 4 support) can't do either and don't receive a cash-based allowance. Most decisions to refuse or stop a person's asylum support are appealable to the Tribunal.⁴

The Home Office can take a long time to process applications, particularly if further information is requested. Once approved there is often a further delay in providing accommodation and support. While a degree of delay is to be expected in the administering of any benefits system, asylum seekers are particularly vulnerable as their only formal means of survival is the asylum support system provided by the Home Office. Unless emergency accommodation is accessible to those waiting for their support to begin, there is a real risk of continued destitution and a potential risk of a breach of human rights even after the Home Office has accepted a legal duty to support.

In 2008 ASAP carried out research which found that following a grant of support by the Tribunal, 51% of appellants had to wait 2 weeks or more for accommodation. After discussions with the Home Office limited access to emergency accommodation was given to successful appellants. This group could access emergency accommodation only in London and only on the day of the hearing.

We continued to press for wider access to emergency accommodation for appellants as it became clear that this system left out many who needed access to emergency support. In 2014 we managed to obtain a further concession as the Home Office agreed to extend access to emergency accommodation outside London for appellants whose hearings are conducted via video link.

However, extended periods of destitution are still a reality for the majority people approved for Section 4 support. There is no emergency option for those granted support without an appeal or for those who needed it on any day after the appeal. Also, the Home Office has not been prepared to inform appellants that they could enter emergency accommodation after successful appeals. So appellants generally chose to go back to a difficult living situation and wait rather than abandoning their possessions, access to medical and legal advice, family and friends without notice.

Given the lack of emergency provision ASAP believes that what might have been an understandable administrative delay becomes an unreasonable one. So in 2015 we revisited the issue of delays, as anecdotally our clients and partner agencies were reporting waiting a long time to be provided with support following appeals.

Methodology

We followed 32 successful cases. Each appellant had won their appeal and was awarded Section 4 or Section 95 support. The cases spanned a period of four months from 21 July 2015 to 10 November 2015. In 4 cases the data was supplied by a partner agency as the individuals were not ASAP clients. The 28 other appellants were represented by ASAP in their appeal.

During the research period we identified a total of 34 ASAP clients who could have participated in the research; 6 did not take part. In 2 cases, the clients agreed to participate but we were not able to make subsequent contact with them. In another 4 cases the client was not approached because we either didn't have time to discuss the research with them or we felt that they were too vulnerable or distressed to give consent.

In all other cases we communicated directly with the client by conducting telephone interviews. We continued to stay in touch with them until they had secured housing. On occasion we liaised with the advice agency assisting them when the client was not able to give us all the information needed.

³ Section 95 and Section 4 refer to sections in the Immigration and Asylum Act 1999

⁴ For more information about the asylum support and appeals system see ASAP's factsheets at: <http://www.asaproject.org/research-publications/factsheets>

Process of obtaining support after an appeal hearing

There are two routes into support following a successful appeal. If the appellant takes up the offer of emergency accommodation on the day of the hearing they will be housed in one of two large hostels in South London.⁵ Residents share rooms and are provided with full-board accommodation. No cash or other support in kind is provided other than toiletries. Appellants wait there until the Home Office arranges dispersal accommodation outside London and the South East. Only 25% of the appellants we interviewed took up this option. Although this was not the primary focus of our research we tried to ascertain why the others didn't feel they could move to the London emergency accommodation. They told us that:

- They needed to go back to another town to retrieve their belongings (9 cases)
- Their child or partner was not with them (4 cases)
- They had medical appointments to attend (2 cases)
- They had accommodation they could stay in (2 cases)
- They found London intimidating and didn't want to stay there (2 cases)
- They were not at the hearing, so not in London (2 cases)
- They had to return to a specified address so as not to be in breach of an immigration bail condition (1 case)
- They had booked tickets for the next day to travel from Middlesbrough to Liverpool to hand in further submissions (1 case).

Appellants not taking up emergency accommodation have to follow the same process as clients who are granted support without an appeal. Financial support will only start once accommodation is organised. The process is identical for Section 4 and Section 95 cases. Following a successful appeal:

- A copy of the Tribunal decision is sent to the relevant Home Office team by the Home Office presenting officer
- Once this is received the Home Office sends a grant letter and accommodation booking form to the appellant or their representative. This gives the appellant 14 days to confirm they will take the accommodation and provide an address where they can be picked up from
- The appellant or their representative sends the booking form back
- The Home Office allocates a priority band to the case:
 - Priority A cases (street homeless families with children) should be allocated accommodation within 24 hours
 - Priority B cases (street homeless single people) should be allocated accommodation within 48 hours
 - Priority C cases (all other cases) should be allocated accommodation within 5 to 9 working days
- The Home Office confirms the booking with the accommodation provider, which then has between 24 hours and 9 working days to find the accommodation and start support.

- A copy of the accommodation booking form is sent to the client or their representative confirming accommodation has been booked
- The accommodation provider contacts the client to arrange pick up and support begins. The provider is contractually bound to provide the accommodation within these timeframes or face financial penalties.

In the past, clients would know which priority banding they had been allocated because the booking form would confirm it. However, because the Home Office now communicates with the accommodation provider via an electronic portal, that information has been removed from the form.

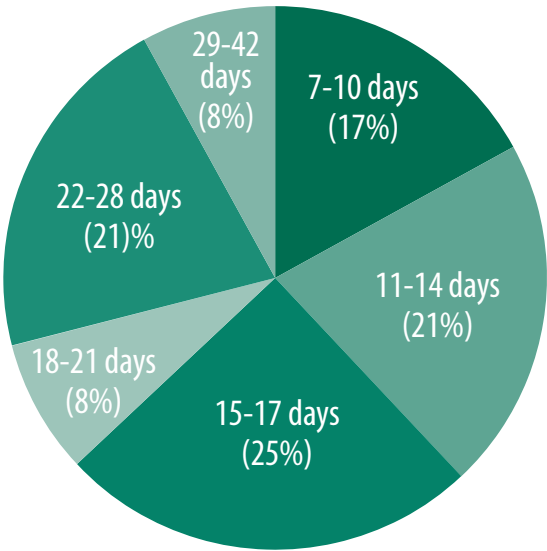
⁵ Unless they have a video link hearing in which case the emergency accommodation will be in their region.

Findings

Appellants face unreasonable delays in obtaining support

- 54% of clients who didn't take up emergency accommodation waited more than two weeks for their support to start
- Four appellants waited more than 4 weeks for support
- The average waiting time was 18 days
- The minimum wait was 8 days and maximum was 42⁶

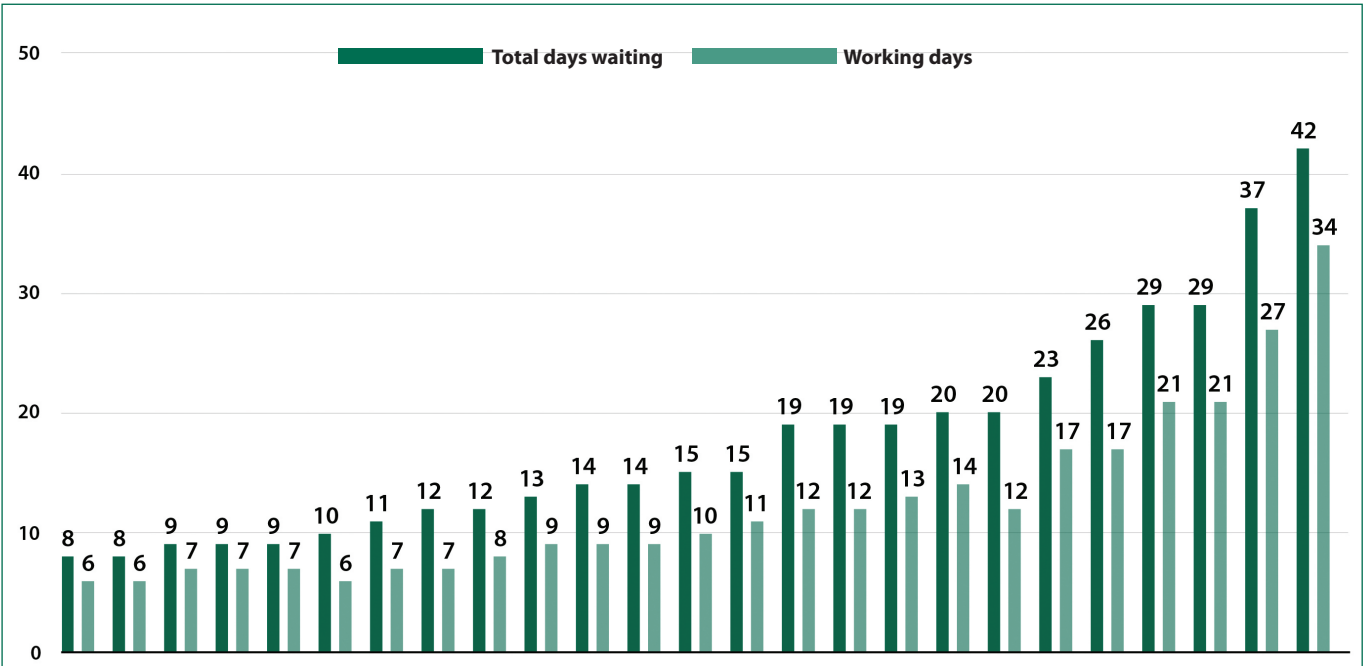
Number of days waiting for support – percent



Average delay by region - days

| Region | Number of cases | Average delay |
|-----------------|-----------------|---------------|
| South East | 2 | 33 |
| Wales | 1 | 29 |
| West Midlands | 3 | 24.3 |
| Yorkshire | 2 | 18 |
| North West | 7 | 16.1 |
| Scotland | 1 | 15 |
| North East | 4 | 13.5 |
| East of England | 1 | 13 |
| South West | 2 | 13 |
| London | 1 | 9 |

Number of days waiting for support – by case



⁶ In working days, the average waiting time was 13 days, the minimum 6 and maximum 34..

Case studies

The appellant who waited 42 days was applying for support for himself, his wife and 2 children

Before claiming asylum he had been on a student visa and had received a grant from his country of origin. However the money from the grant had run out by the time of the appeal and he was in rent arrears. He and his family managed to stay in his accommodation until the Home Office support started but as a result of the delay are being pursued by the landlord for payment of outstanding rent.

The appellant who waited 37 days was a pregnant woman with complicated medical needs

She was not assisted by an agency but remained in touch with the Section 4 team throughout the process. She missed one pick-up because she said the accommodation provider failed to contact her. This was 21 days after her hearing. She happened to have called the Section 4 team on that same day and they informed her of the problem and re-booked her accommodation. It then took another 16 days for her accommodation to be provided.

One of the appellants who waited 29 days had a complicated case

He had applied for support for himself, his partner and their disabled baby who was in intensive care at the time of his appeal. Support was obtained at the hearing for him and his daughter but not his partner. However, she had also made a separate application for support in her own right and was in the process of appealing a decision to refuse support. It took 8 days for him to receive the accommodation booking form from the Home Office. Because the family needed to be housed together, the agency helping him delayed sending the booking form by 8 days to await the outcome of her appeal. The Home Office withdrew their decision to refuse his partner's support and housed the family together 13 days later.

There was no apparent reason for the delays in the other case that waited 29 days

She was a single woman with some relatively minor health problems.

Looking at the 5 cases that waited the least amount of time we found a variety of situations:

- Two single women without children or medical problems who were staying with friends (8 and 9 days)
- A street homeless single man with HIV (9 days)
- A street homeless single man with serious mental health problems (10 days)
- A woman who was in hospital giving birth to her baby at the time of the appeal and remained there until she was discharged to her asylum support accommodation (9 days).

The appellants' circumstances did not appear to be a significant factor in determining the speed at which support was granted.

Looking for patterns

We looked at various factors to see if there were any discernible issues which may have sped up or slowed down the provision of accommodation. We couldn't identify a consistent pattern that explained delays and in each category we observed a wide disparity in terms of waiting times. There was little evidence of the Home Office prioritising the types of cases that might be considered to be more urgent.

Factors that were analysed:

- **Street homeless clients** (4 cases) waited on average 14 days and delays ranged from 9 to 23 days. In one case, the appellant waited 11 days to receive the booking form but once it had been returned support was organised within 24 hours, indicating that perhaps the priority system was operating. But in contrast, another person who was HIV+ waited a total of 9 days for support to be organised despite urgent emails being sent to the Section 4 team.
- **Families with children** waited on average 23 days (4 cases) and the delays ranged between 9 and 43 days.
- The average wait for people with **medical conditions** (14 cases) was the same as the general population of the study (18 days) within a range of 9 to 37 days. At the 2 week mark, slightly more people with medical conditions were still waiting compared with the study group as a whole.
- **Gender** may have made a difference as the 5 women in the study waited marginally less time with an average of 17 days wait for support.
- Clients who needed accommodation in **specific locations**, not surprisingly, also waited longer. The delay in these cases was 22 days on average (7 cases).
- There seemed to be no difference between those applying for **Section 4** and **Section 95** support. Both groups waited on average 18 days.

There was a great deal of regional variation in waiting times but in some cases the sample sizes were too small to enable us to draw definite conclusions (see table, page 6).

When do delays occur?

We identified four points at which delays might occur:

1. The appellant loses touch with the Home Office or fails to give them a contact address so they are unable to send booking forms (stage 1)
2. The Home Office delays sending the booking form (stage 2)
3. The appellant delays sending the booking form back (stage 3)
4. The Home Office delays booking accommodation and starting the support (stage 4).

So how did each stage play out in practice? We found the following:

Appellants didn't lose touch with the Home Office (stage 1)

We looked to see if there was a known point of contact for the appellants. In all cases, the Home Office had a contact address for the client at the point of the appeal. In all but three cases appellants were represented by an agency. So in the vast majority of cases there was a third party the Home Office could communicate with to get in touch with the client. We →

← found no examples of persistent or systematic communication problems which would have contributed significantly to the delay. In only two cases we observed delays that could be attributed to problems the Home Office might have had in reaching the client. In both cases, the appellants still waited about 2 weeks for support once the problems were resolved:

- A street homeless appellant lived in a different town to his solicitor who was representing him in the appeal. He also had very limited access to telephones so it was difficult to contact him. It took 8 days for him to meet with a local advice agency that could contact the Home Office to get a booking form. Once this was done, he still waited 15 days for support to start.
- Another unrepresented appellant reported that he had not yet received the accommodation booking form a week after his appeal. It had quite possibly been sent to his former address but as he was not living there anymore it was difficult for him to find out. He didn't have the resources to chase up the form so we referred him to a local agency. Once it contacted the Section 4 team it took 13 days for his support to start.

There were two further cases where communication broke down. But in the first, this occurred after the accommodation had been sorted out and in the second, the problem was not the appellant's fault:

- One person in the study, who had very severe mental health problems, found the waiting too stressful and decided to disengage from the process at the same time as the accommodation was being arranged for him 10 days after his appeal. Up until that point, he and the Home Office had communicated without issue through his advisers.
- One unrepresented appellant already mentioned above was marked as having failed to travel although she says she never received a call from the accommodation provider. On that same day she contacted the Section 4 team and it rebooked her support. At all times, the Home Office had the correct contact details for her. She still waited a further 16 days to receive help. In total the delay in this case was 37 days.

Appellants experienced unnecessary delays in receiving the booking form (stage 2)

In 9 cases appellants were able to tell us on which date they received the accommodation booking form. There was an average of 7 days wait between the hearing and the agency or client receiving the accommodation booking form (waiting times ranged between 2 and 11 days). Given that the decision to grant support is made by the tribunal judge in the hearing there is no reason why there should be any delay at all in receiving the booking form. This could be handed over to the client by the Home Office presenting officer on the day of the hearing thereby considerably reducing the waiting times.

Appellants didn't delay returning the booking form to the Home Office (stage 3)

Eight appellants were able to tell us the date on which the booking form was received and when it was sent back. In 2 cases, the advice agency helping them waited two days to send the form back but in all other cases the form was returned on the day it was received or the day after. This suggests that

agencies and individuals are not contributing to the delay by not promptly complying with Home Office procedures. In one case, detailed above, we were not able to find out precisely what dates forms were received and sent back. But we told that the agency decided to delay sending the booking form back by 8 days pending an ongoing appeal regarding the appellant's wife's entitlement. However, overall the family waited 29 days for support. This was the only example we found of a deliberate delay by an appellant or their advisers and in the circumstances this course of action was justifiable.

Significant delays in arranging support once the form is returned (stage 4)

In 9 cases we were also able to calculate the delay between the form being sent back and support starting. We found an average waiting time of 10 days (waiting times ranged between 1 and 18 days) which is longer than the maximum 9 days that accommodation providers have to find the accommodation. This could be an indication of problems that these contractors are having in sourcing appropriate accommodation rather than a problem directly within the Home Office's control. However, the fact remains that the legal duty to provide accommodation lies with the Home Office so if there are issues sourcing accommodation then clients should be offered access to emergency accommodation.

Clients waiting for dispersal accommodation in emergency accommodation face even longer delays

A quarter of appellants who won their cases took up emergency accommodation in London on the day of the hearing – 4 were already based in London before their appeal, 4 were not but were sleeping rough or had nowhere to go that night. All were single and only one appellant was a woman.

Our research found very significant waiting times for dispersal accommodation to be organised when the person was in emergency accommodation. On average they waited 49 days or 7 weeks for support. The two cases below illustrate why such long waits can be problematic.

- One client waited 103 days (almost 15 weeks) in emergency accommodation for his Section 4 support to start. For the first 10 weeks he was in London. Then he was rehoused in emergency accommodation in Cardiff (this is classified as temporary dispersal accommodation). Prior to winning his support he was street homeless in another town. Rather than return to the streets he took up the offer of emergency accommodation in London which meant that he only had very limited personal possessions and few spare clothes. In emergency accommodation he had no access to the financial assistance he was entitled to so couldn't buy the replacement clothes he needed.
- Another person waited 118 days in emergency accommodation (almost 17 weeks). He was a vulnerable client of Freedom from Torture. The delay was probably due to the lack of suitable accommodation in London, which is a well-established problem. But emergency accommodation was not a suitable place for him to reside long term because of his substantial mental health problems.

Conclusion

The appellants' circumstances do not appear to have been a factor in explaining different waiting times. There was little evidence of an effective priority system that would enable the Home Office to deal with urgent or vulnerable cases more quickly.

The wait was not exacerbated by appellants' own conduct. There was very little evidence of them losing touch with the Home Office or not responding to correspondence promptly. Instead, it appears that the problem stems from Home Office systems:

- First, there was an avoidable period of delay in sending vital paperwork to appellants after the appeal. This could be easily resolved if all the forms and relevant letters were given to the appellants immediately after a successful appeal.
- Second, a further period of delay occurs when the Home Office is securing accommodation. Delays were experienced by those who didn't take up emergency accommodation but were even greater for appellants in emergency accommodation. This might be a little more complex to resolve because the Home Office relies on contractors to source accommodation and organise support. However, if everyone who is granted support is given access to emergency accommodation if they face street homelessness this would provide an immediate solution and avoid breaching the human rights of appellants and applicants.

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Other research reports

- Destitution: Unchecked, unbalanced. Home Office decision making on asylum support (2015)
- The next reasonable step: Recommended changes to Home Office policy and practice for Section 4 support granted under reg 3(2)(a) (2014)
- ASAP audit on UKBA decision making: One year on still 'no credibility' (2013)
- Barriers to support appeals for asylum seeking women (2011)
- No credibility: UKBA decision making and Section 4 support (2011)

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