

What should happen when the Home Office withdraws from an asylum support appeal

This is a briefing note on what should happen when the Home Office withdraws from an asylum support appeal. It looks at the relevant Home Office policy on withdrawals and the asylum support Tribunal's regulations and practice in this area.

1. Sometimes the Home Office withdraws a decision to discontinue or refuse asylum support in the run up to an asylum support hearing. This can leave clients in limbo as they wait to hear what the Home Office is going to do next on their case.
2. It is particularly difficult for those clients who have had a refusal of support (rather than a discontinuation) because they remain without support while waiting for the Home Office to make a new decision on their case. And they have been denied the opportunity to challenge the original decision in front of an independent judge.
3. There is a Home Office policy which explains the procedure that the Home Office should follow when it wants to withdraw from an appeal. It appears to have been designed to prevent clients from being left in limbo as a result of the withdrawal.
4. You can find it at Chapter 6 of the [Asylum Support: Policy Bulletin Instructions](#)
5. In practice, the Home Office does not always follow this policy and you may need to remind them of its existence.

What does the Home Office policy say on withdrawals?

6. If the Home Office withdraw their decision BEFORE 12noon on the day prior to the hearing, they should:
 - Draft a new decision letter which states that the previous decision has been withdrawn and which contains the new decision.
 - Send this letter by first class post and/or fax to the appellant and their representative
 - Fax a withdrawal request to the asylum support Tribunal and send them a copy of the new decision
 - Arrange or maintain support if the appellant has now been assessed as being eligible.
7. If the Home Office withdraw their decision AFTER 12noon on the day before the hearing:
 - A Home Office Presenting Officer must go into the hearing and ask the judge to allow them to withdraw from the appeal

- The judge should only allow this if:
 - The Home Office confirms the withdrawal in writing AND confirms in writing that the appellant will be granted support immediately or,
 - The Home Office produces a new, written decision which refuses or discontinues support AND the appellant agrees that the hearing can proceed against the new decision or,
 - The Home Office produces a new, written decision which refuses or discontinues support AND the appellant does not agree to the hearing processing. In which case, the Home Office must consent to an adjournment of the hearing while the appellant prepares their case. Support must continue until the new hearing date in discontinuation cases.

What is the Tribunal position on Home Office withdrawals?

8. The Tribunal's position (as outlined by the Principle Judge in a letter to ASAP in 2010) is slightly different to the Home Office policy above. Please see a copy of this letter attached to this briefing.
9. The Principal Judge's letter sets out that the Home Office and the Tribunal should follow the 'AFTER 12noon' procedure if the Home Office withdraws on the **day** of the hearing. The letter states that if the Home Office withdraws from an appeal at any point up to the day of the hearing itself, all that is required is for the Home Office to send the Tribunal a written notice of withdrawal for the Tribunal to automatically treat the appeal as at an end. In contrast to the Home Office's policy, there is no requirement for the withdrawal to be accompanied by the new decision.
10. [The Tribunal Procedure rules](#) (which provide the statutory framework for the legal powers of the Tribunal) provide very little in the way of protection for appellants when the Home Office withdraws before the hearing.
11. So, in effect, the Home Office's policy on withdrawals (rather than the powers of the Tribunal itself) provides the greatest safeguards for clients in these situations, especially if the withdrawal happens before the day of the hearing.

What can I do to help my client if the Home Office withdraws before the day of the appeal?

12. You should familiarise yourself with the Home Office policy mentioned above and bring it to the attention of the Home Office in cases where they have withdrawn from an appeal and not immediately issued a new decision.
13. If they continue to ignore their own policy after having been chased, and all possible information provided to them, and they are still delaying on making the further decision, the only remedy is

judicial review. Therefore the case could be referred to a solicitor specialising in asylum support. It is likely that a solicitor's 'pre-action protocol' letter would lead to a new decision being issued.

What if the Home Office withdraws on the day of the hearing?

14. If your client is being represented by ASAP and the Home Office withdraws on the day of the hearing, we will discuss the situation with the client. If they have been **refused** support, we will discuss going into the hearing and asking the judge to comply with the Principal Judge's guidance in these circumstances. This would mean that we would ask the judge to only allow the withdrawal if and when the Home Office provides a new decision in writing. We would do this to try and prevent the client from remaining without support while waiting for a new decision to be sent to them.
15. The Home Office may provide a new, written negative decision in the hearing. In this scenario, the hearing will only go ahead if the appellant and any representative are ready to proceed. If not, the hearing must be adjourned to a date not exceeding fourteen days in the future.
16. If your client is appealing a Home Office decision to **discontinue** their support, the support should continue while the Home Office is making a new decision. Therefore there would be no obvious advantage to the client to go into the hearing and insist that the Home Office provide a new written decision immediately.

Our telephone advice line:

If you still have questions or need further information and advice after reading this briefing, please contact our advice line on 020 7729 3042, which is open Mondays, Wednesdays and Fridays from 2pm to 4pm.

ASAP, December 2015

Please see below for copy of Principal Judge's letter on withdrawals



**FIRST-TIER TRIBUNAL
ASYLUM SUPPORT**

Address:

2nd Floor
Anchorage House
2 Clove Crescent
London
E14 2BE

Telephone: 020 7538 6171
Fax: 020 7538 6200

Date : 11 November 2010

Dear Mr Spencer,

Ré : Withdrawals by UKBA

Thank for your letter of 8 September 2010 together with enclosures, received yesterday by fax. Please accept my apologies for the delay in responding to the same.

Whilst I am able to comment generally on the tribunal's policy in relation to withdrawals, I am not willing to comment on individual cases.

I note your concerns in relation to the UKBA practice of withdrawing decisions on the day of hearing and their failure thereafter to re-instate support. I can confirm that I have raised this matter with UKBA and indicated that I am dissatisfied with the current practice as it may result in injustice to appellants. As such, I have indicated to them and to tribunal Judges that henceforth we will observe the following procedure:

If UKBA wish to withdraw a decision on the day of the hearing:

- a) they may **only do so** in person, otherwise the request will be refused without reasons being given; and
- b) the PO must make the application in open court.

The TJ will only grant the withdrawal application provided:

- 1) UKBA confirm **in writing** that the decision under appeal is being withdrawn and the appellant will be granted support immediately; or
- 2) the decision to be withdrawn is to be substituted with a new decision which is available for service at the hearing and both parties are agreed that the hearing can proceed against the new decision; or
- 3) the new decision is available for service at the hearing but where the appellant or their representative is not ready to proceed, the respondent consents to an adjournment (not exceeding 14 days) of the appeal hearing against the new decision, and **confirms in writing that support will continue** until the appeal has been heard and finally determined; or
- 4) where UKBA wish to replace the decision under appeal with a new decision that is yet to be made, UKBA provide **written confirmation** that the appellant will be supported until such time as the new decision is served on

the appellant against which they will have a fresh right of appeal and the appeal has been finally determined by an asylum support TJ.

In the absence of the above, the appeal will proceed to hearing. You will note that save for scenario 2) above, UKBA's withdrawal request must be accompanied with written confirmation that the appellant's support will continue.

In relation to withdrawals made prior to the day of hearing, I am of the opinion that Rule 17 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 enables UKBA to withdraw its case, or any part of it,

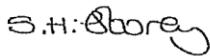
'(a) at any time before a hearing to consider the disposal of the proceedings (or, if the Tribunal disposes of the proceedings without a hearing, before that disposal), by sending or delivering to the Tribunal a written notice of withdrawal; ...'

I do not accept that the term "case" has the meaning attributed to it by Mr McCloskey in his letter to Ms. Elliott of 2 September 2009. In my opinion Rule 17 has the same effect as the old Rule 16 of the Asylum Support Appeals (Procedure) Rules 2000. I say this because I was party to the discussions that led to the drafting of the 2008 Rules and that was my clear understanding at the time. Thus, the reference to the respondent's "case" is, in my opinion, the decision under appeal. Once the decision has been withdrawn, there is in effect no appeal left to be heard.

I appreciate that you may have a different understanding of the 2008 Rules to mine and if so, no doubt you will wish to seek clarification from the Administrative Court by way of judicial review. Until then, the tribunal will continue to follow the above interpretation, subject to the procedures detailed above in relation to withdrawals made on the day of hearing.

Finally, I should add that I have also advised UKBA of the above procedures in relation to withdrawals made by them on the day of hearing. As your letter was copied to the s.4 distribution hub, I am for the sake of completeness, also copying this letter to them.

Yours faithfully,



Sehba Haroon Storey
Principal Judge Asylum Support