

# Appealing to the Asylum Support Tribunal

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Factsheet 3

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The information contained in this Factsheet is intended for guidance only. While every effort is made to ensure it is correct at the time of publication, it should not be used as a

This Factsheet looks at the Appeal Process to the First-tier Tribunal (Asylum Support).

## Our telephone advice line:

If you still have questions or need further information and advice after reading this factsheet, please contact our advice line on 020 3716 0283. It is open Mondays, Wednesdays and Fridays from 2pm to 4pm. Please note, this is a 'second-tier' advice line. This means that we can give advice to other advice workers but not to individual clients.

## What is the First-tier Tribunal (Asylum Support)?

The Asylum Support Tribunal (AST) is a specialist Tribunal which deals with appeals against decisions to refuse or discontinue financial support and accommodation, otherwise known as asylum support. This is support provided under Section 95 (s95) or Section 4 (s4) of the Immigration and Asylum Act 1999 (IAA 1999). The AST does not deal with immigration or asylum appeals. It is independent from the Home Office (HO).

It is the only Tribunal in the UK that deals with asylum support appeals. It is run by the Ministry of Justice and is located at Import Building (formerly Anchorage House) in East London.

The AST is governed by a set of [procedure rules](#). They set out the procedures surrounding the appeal itself, such as the time frame in which appeals should be lodged and jurisdiction and case management powers, for example adjourning, issuing directions and type of hearing. The rules also give the power to the AST to strike out an appeal, this is covered later in the factsheet.

## Who can Appeal to the First-tier Tribunal (Asylum Support)?

Anyone who has received a decision by the HO to *refuse* or *discontinue* asylum support can appeal to the AST, with certain exceptions (see below).

A *refusal* of support is when an asylum-seeker, or refused asylum-seeker, who has applied for s95 or s4 support receives a negative decision from the HO. A *discontinuation* of support is when the HO decides that a person, who is currently receiving asylum support, is no longer eligible for that support. The decision letter sent by the HO caseworker to the person should give reasons why support is being

substitute for legal advice. For client specific advice please contact ASAP

refused or discontinued. Where the person has a right of appeal to the AST, an appeal form, known as the Notice of Appeal (NoA), should be included with the HO decision letter. The appeal form can also be downloaded from the gov.uk website [here](#). Please see [Factsheet 4](#) for more guidance on how to complete the Notice of Appeal.

### When is there no right of appeal to the First-tier Tribunal (Asylum Support)?

Whether a decision is appealable or not is contained in statute.<sup>1</sup> Therefore it is not something that the HO has the power to grant or not. If the decision letter does not state that there is a right of appeal but you consider that there should be, then lodge an appeal anyway and/or contact ASAP.

There is no right of appeal where a person's s95 support has been discontinued because their asylum claim has been fully determined, or treated as withdrawn. However, there will be a right of appeal if support has been terminated prematurely. For example before the person becomes appeal rights exhausted, or in the case of a withdrawn asylum claim where the HO has not followed the correct procedures set out in the [withdrawing asylum claims policy](#), when treating the claim as withdrawn.

There is a right of appeal against a decision to refuse support because the HO doesn't think someone is an asylum-seeker. There is also a right of appeal against the discontinuation of s4 support.<sup>2</sup>

There is no right of appeal to the AST for asylum-seekers who are refused support because the HO believes they have not claimed asylum 'as soon as reasonably practicable'. These are known as 'Section 55' decisions<sup>3</sup>. However, as a result of a ruling in May 2005, known as the *Limbuella* case<sup>4</sup>, the HO can only refuse support to asylum-seekers under s55 if it is satisfied that the individual has some other source of accommodation or support available to them. Therefore, in practice, the HO generally only considers making s55 decisions when an applicant applies for 'subsistence only' s95 support. See [Factsheet 1](#) on Section 95 support.

There is no right of appeal if the HO refuses an application under Section 57 (s57) of the Nationality, Immigration and Asylum Act 2002. S57 allows the HO to refuse an application for support if it is not satisfied that the information provided by the applicant is complete or accurate, or that the applicant is co-operating with HO enquiries for further information. S57 only applies to s95 support applications. See our [2016 briefing note on s57](#) for more details.

<sup>1</sup> Immigration and Asylum Act 1999 s103

<sup>2</sup> Immigration and Asylum Act 1999 s103(2A)

<sup>3</sup> Nationality, Immigration and Asylum Act 2002 s55

<sup>4</sup> R (Limbuella and others (Shelter intervener)) v SSHD [2005] UKHL 66

## What issues can the Tribunal consider?

Appeals at the AST are limited to the decision by the HO to refuse or discontinue support. The AST will not look at the type of support given, or whether the level of asylum support is adequate. It is not possible to appeal against the location or type of accommodation. Decisions which are not appealable can potentially be challenged by judicial review.

It is not the AST's role to consider appellants' asylum claims; these are heard by a different tribunal, the First-tier Tribunal (Asylum and Immigration).

However, issues concerning an appellant's asylum claim can be relevant, for example when a refused asylum-seeker has made a fresh claim for asylum and this has yet to be considered by the HO. Their asylum support appeal would be on the grounds that removal of support would be a breach of their human rights, because they still have an outstanding claim in the UK. Although asylum support judges cannot make a decision on this new asylum application, they can dismiss the asylum support appeal if they believe the new claim is 'manifestly unfounded' or 'obviously hopeless or abusive'<sup>5</sup>. Therefore, the appellant needs to show that the new application does not simply repeat material that has previously been submitted to the HO. See [Factsheets 2 and 12](#) on Section 4 and on Section 4 and Human Rights.

## Time limits for making an Appeal

There is a very short timeframe for submitting an appeal. Appellants have only three working days from the date they received the HO letter refusing or discontinuing support (or five working days from the date the letter was posted) in which to email their appeal documents to the AST. Although it is possible to send the appeal by post, the AST strongly advises that all correspondence is sent to them by email because of the very short timeframes in hearing these appeals. Failure to meet this deadline may result in the appeal being considered invalid.

However, it is possible to submit an out-of-time appeal under certain circumstances. The AST will allow out-of-time appeals to proceed if it is in the interests of justice, and very often accepts out of time appeals. Reasons accepted by the Tribunal include: - HO decision letter received late, advice needed to complete the form, health problems making it difficult to meet the deadline and not receiving a copy of the appeal notice in time. If the appeal is late, the reasons should be explained in the Notice of Appeal. If there is a clear explanation the AST will normally accept the late appeal, even up to a week, or longer.

## Completing the Appeal Notice

The [Notice of Appeal](#) can be downloaded from the AST website here. The form must be completed in full and in English. Failure to do so can result in it being

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<sup>5</sup> AS/14/11/32141

considered invalid and the Notice of Appeal returned to the individual. The notice of appeal should include the grounds for appealing the HO decision.

A copy of the HO decision letter must be sent with the Notice of Appeal. Failure to comply with this request will result in the Notice of Appeal being sent back to the appellant. The AST will accept an appeal as valid without seeing a copy of the decision letter if the appellant has been given an eviction notice by their accommodation provider, but has not yet received the HO decision letter. Please see [Factsheet 4](#) on Filling in the Notice of Appeal.

### **What happens after submitting the Notice of Appeal?**

If the Notice of Appeal is accepted by the AST, they will email the person appealing and their representative if they have one, giving notification of receipt of the appeal. This will be followed by the notice of hearing giving the time and date the appeal will take place, as well as the format of the hearing (ie on the papers, in-person, CVP or telephone if a remote hearing has been requested). In AST documents, the person appealing is referred to as the appellant and the HO is referred to as the respondent.

The AST will direct the HO to send the appellant and their representative the appeal bundle. The bundle is a very important set of documents. It should contain the evidence the HO is relying upon to discontinue or refuse support. The appeal bundle should be received by the appellant and their representative within three days of the AST receiving the Notice of Appeal<sup>6</sup>. If it has not been received, the HO position is that this should be escalated via Migrant Help. However, this system may change in the near future. Please call our advice line if you are having difficulty getting hold of the appeal bundle from the Home Office or the AST.

Both parties will receive a document called a Directions Notice. This is a list of evidence and/or information the AST asks the appellant and the respondent to provide prior to the hearing. The Directions Notice will be sent around 4 or 5 days after the date the AST accepts the appeal. The appellant and/or their representative will have around 5 working days to respond to the directions notice, however this may vary. The Directions Notice will normally include a request for any evidence that is relevant to the appeal. For example, if the person appealing has medical problems it may ask them to provide up to date letters from their doctor. An appeal should normally be decided 10 working days after the Notice of Appeal has been accepted.

### **What happens if the Appeal is considered invalid**

If the AST decides that a Notice of Appeal is invalid they will write to the appellant and their representative explaining why. Reasons why an appeal will be considered

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<sup>6</sup> Tribunal Procedure (First-Tier Tribunal) (Social Entitlement Chamber) Rules 2008 SI No 2685 (amended 2013) rule 24

invalid include failure to include a copy of the HO's decision letter, failure to include HO reference numbers, failure to include grounds for the appeal and lodging the Notice of Appeal late. An opportunity will be given to respond to a notice of invalidity. This would need to be accompanied by the missing information or an explanation as to why the form was submitted late or was incomplete.

### **Strike Out**

The Tribunal can strike out an appeal, which means that the appeal is disposed of without a hearing<sup>7</sup>. The Tribunal can strike-out an appeal in circumstances where it has no jurisdiction to hear the appeal, or where on an initial assessment of the issues the appeal appears to have no reasonable prospect of success. If a Judge decides to strike-out an appeal, they should first invite both parties to make written submissions on the reasons given for strike-out. If the Judge then decides not to strike-out the appeal, they will either determine the appeal on the papers or relist it for an oral hearing.

### **Tribunal freephone number**

0800 681 6509 (Monday-Friday, 9am-5pm)

The AST has a freephone number for appellants or their representatives who have practical questions regarding their hearing, for example, the stage of appeal, when it might be listed, as well as general information on how appeal hearings are structured and what information they may be required to provide to the Tribunal. However, the AST cannot provide information on how to fill out the appeal form or advice on whether an appeal is likely to be successful.

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<sup>7</sup> Tribunal Procedure (First-Tier Tribunal) (Social Entitlement Chamber) Rules 2008 SI No 2685 (amended 2013) rule 8