

Filling in the Notice of Appeal

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Factsheet 4

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This Factsheet gives guidance on filling in the Notice of Appeal for clients who want to appeal decisions to refuse or withdraw 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 Notice of Appeal?

In order to appeal against a decision by the Home Office to stop or withdraw asylum support (i.e. s95 or s4 support) you must first fill in a Notice of Appeal. The Notice of Appeal can be downloaded from the Tribunal website¹. It is four pages long and consists of six different sections. The form must be completed in full and in English. Failure to do so can result in the form being considered invalid and returned to the appellant and/or their representative.

Section 1 and 2

These sections of the form cover the appellant's personal and contact details. It is important to include the Home Office reference number in this section; failure to do so can result in the Notice of Appeal being considered invalid. The address provided in section two should be one where the appellant can receive post. For those with no fixed address it may be advisable for the organisation assisting them to use their offices as a 'care of' address. They can then notify the appellant of the hearing date and any requests for information from the Tribunal.

Section 3

In this section the appellant is asked to provide the date of the Home Office decision letter against which they are appealing. This is the date on the letter the Home Office sent to notify the applicant of their intention to refuse or withdraw support. The form also requests a copy of this letter to be attached to the Notice of Appeal. Again, failure to comply with this request may result in the appeal being considered invalid.

¹ www.justice.gov.uk/tribunals/asylum-support

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

Section 4

This section deals with the type of hearing requested by the appellant. There are three possible options.

The first option is for the appeal to be determined on the papers. This means that the Tribunal Judge will make a decision based on the papers that have been submitted and the appellant will not have to attend the Tribunal. However, in more complex cases, the Judge may decide it is not possible to decide the appeal on the papers and that the appellant needs to attend the Tribunal to give evidence. When this happens the Tribunal will write to the appellant and their representative, informing them of its decision and inviting them to attend an oral hearing.

The second option is where the appellant requests an oral hearing, but one where they will not be present. This might be requested in cases where the appellant's representative will be attending the hearing on their behalf.

The third option is to request an oral hearing which the appellant attends. It is usually best for the appellant to attend an oral hearing so they can explain their case in full. The person appealing can bring his or her representative or attend alone. Hearings are attended by Home Office representatives who set out the case for withdrawing or refusing support. If the appellant or their representative attends the hearing, then this is also their opportunity to put forward the case that support should be granted or continue.

It is important to note that if the appellant requests an oral hearing then the Tribunal has to comply with this request.

Need for Interpreter

Section 4 of the appeal form also asks whether the appellant requires an interpreter and, if so, which language they speak. As the hearings can be both complex and lengthy it is advisable to request an interpreter unless the appellant is fluent in English. This service is free of charge and interpreters employed by the Tribunal are independent.

Section 5

Section 5 asks if the appellant is to be represented in the appeal. If you are an advisor, and your organisation is able to continue to advise the appellant about the appeal, you should include your details here. You will then, along with the appellant, receive information about the appeal hearing. You will be able to support the appellant to send any further information that the Tribunal requests² and help them to prepare for the hearing. By ticking this box, you are ***not*** committing yourself to representing the appellant at the appeal itself.

² The Tribunal will likely send a 'Directions Notice' to the appellant and the Home Office that asks for further specific information.

The form then asks whether the representative will be attending the hearing. If you are an advisor and are not attending the appeal it is very important to tick the 'No' box. The appellant can then access any free legal representation available on the day of their hearing from the Asylum Support Appeals Project (ASAP).

ASAP runs a full time duty scheme at the Tribunal. Depending on capacity on the day, one of our legal advisers may be able to provide free, confidential legal advice and/or represent the appellant in their hearing. If someone is happy to be represented by ASAP, they or their representatives should either inform ASAP in writing or complete an ASAP Consent Form³. We cannot guarantee that we will be able to see the appellant, but this will help us to prioritise his or her case.

Section 6

Section 6 covers the grounds of the appeal. This section can initially appear the most daunting, as it may be difficult to identify what type of grounds need to be included and what argument and/or evidence is likely to strengthen the appellant's case. However, some guidance on how to approach this section is set out below.

Section 6 asks the appellant to state the reasons for their appeal and to explain what points in the Home Office decision letter they disagree with. If the appeal is late, the applicant should also explain in this section why it is late and why they believe it should be accepted by the Tribunal. Any supporting documentation, such as a doctor's letter, to show why the person was unable to meet the deadline should also be sent. Failure to complete this section may result in the appeal being treated as invalid.

Grounds for Appeal

The grounds submitted in the Notice of Appeal should be closely related to the reasons set out by the Home Office in their decision letter refusing or withdrawing support.

For example, where support is being refused in an application for s4, the Home Office will outline the reason why they think the person appealing is not eligible. It could be that they don't consider them to be destitute or that they fail to meet another of the eligibility criteria attached to receiving s4. The Home Office decision letter should quote the applicable legislation in their refusal letter.

In cases where the Home Office do not accept the eligibility criteria is met, the following wording would normally appear: 'Your application has been carefully considered to see if you are eligible but I am not satisfied that you satisfy one or more of the conditions set out in regulation 3(2) of the Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005'. The letter should then go on to state which conditions the appellant does not meet.

³ Details on how to make a referral are at <http://www.asaproject.org/what-we-do/referrals-for-the-ast/>

In the grounds of appeal, the appellant needs to state the reason(s) they disagree with the decision and why they do meet the criteria. If the issue in dispute is destitution, this could include information about their current living conditions and how they have been surviving. If it concerns another ground, such as being unfit to travel, they will need to provide information about their medical condition. Remember, however, that there will be time to provide further evidence later in the appeal process, so do not delay appealing in order to get more evidence because you may miss the deadline.

Examples of Grounds for Appeal

The following table provides a list of some of the reasons the Home Office might refuse or withdraw support and the types of grounds that could be included in an appeal. This list is by no means exhaustive and is intended as general guidance only. The grounds of appeal will differ from case to case so it is important that any grounds submitted relate closely to both the reasons for refusal and the appellants' individual circumstances. If you have any doubts about how to phrase the grounds of appeal, contact ASAP.

Reason for refusing or withdrawing support	Grounds for Appeal
The applicant is not destitute	Provide evidence on how the appellant has been supporting herself/himself, proof of any charitable support they may have been receiving etc. If they have been staying with friends, a letter confirming the dates they stayed with them and why they can no longer remain there.
They are no longer an asylum-seeker as their claim has been fully decided (this applies to those who have been either refused s95 or are having their s95 support withdrawn)	Any information to show that there is a claim or appeal outstanding. This might include a solicitor's letter, letter from the Home Office etc. If they have been given some sort of status (e.g. discretionary leave to remain), evidence to show that they have not yet received their Biometrics card and National Insurance number.
Refusal of s4 support on the grounds that the person does not meet any of the criteria for support (please see Factsheet 2 on Section 4 support for more details on who qualifies)	If they are unable to travel then include medical evidence which confirms this and explains why (e.g. a Medical Declaration). If the appellant is pregnant or has a baby under six weeks old then provide evidence which confirms this e.g. MATB1 form, letter from the hospital,

	<p>child's birth certificate.</p> <p>If the appellant has submitted a fresh claim for asylum or a Judicial Review claim, then a copy of the claim and proof it was submitted.</p> <p>If they have been taking all 'reasonable steps' i.e. attempted to get a travel document or approached the Home Office re regarding assistance to return voluntarily then this information should be included, together with supporting evidence of attempts to contact Home Office or the relevant embassy.</p>
<p>Refusal on the grounds that they breached one of the conditions attached to receiving asylum support and housing.</p> <ul style="list-style-type: none"> • Failure to notify a change of circumstances • Concealing Financial Resources • Unauthorised absence from the property • Failure to travel to a dispersal accommodation 	<p>If the persons disputes that there has been a breach of conditions, then information supporting this should be submitted.</p> <p>The grounds should include details of why the applicant failed or was prevented from informing the Home Office about changes in their circumstances.</p> <p>If the Home Office believes the person has been concealing financial resources then the grounds of appeal should include information on living conditions and any supporting evidence they have such as bank statements etc.</p> <p>Evidence to show that they had a reasonable excuse for being absent. This could be due to racial harassment, illness, problems with the accommodation etc.</p> <p>Evidence to show that the appellant had a reasonable excuse for not travelling, such as disruption to medical treatment, close family ties in an area; a child has attended the same school for 12 months. etc</p>

Sending the form to the Tribunal:

An appellant (or their representative) can choose one of three options for sending the appeal notice to the Tribunal: by post, email or fax.

By post:

East London Tribunals Service
Asylum Support
2nd Floor, Anchorage House
2 Clove Crescent
London E14 2BE

By email:

asylumsupporttribunals@hmcts.gsi.gov.uk

By fax:

01264 347 902

The Notice of Appeal lists the following Freephone number for appellants who wish to discuss any aspect of the appeal process: 0800 681 6509.