

19 February 2021

Factsheet 20

**In this Factsheet:**

Eligibility for asylum support for current and refused asylum-seekers due to the Covid-19 pandemic

ASAP Factsheet 20

Covid-19 and asylum support

This Factsheet cover the changes in eligibility for s4 support as a result of Covid-19. It aims to be up to date as of 18/2/21.

Please refer to Factsheet 1 regarding s95 support, and Factsheets 2 and 12 regarding s4 support. For those who have never applied for asylum please refer to ASAP's Briefings: *Support for people on immigration bail* June 2019 and *Abonders and withdrawn asylum claims* May 2019. These Briefings explain how some categories of people may be eligible for Immigration Act 2016 sch10 para 9 support rather than s95 or s4 support (see section on sch10 below). You can find all our Factsheets and Briefings on our [website](#).

**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 on Monday, Wednesday and Friday 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.

**Current asylum-seekers**

All destitute asylum-seekers who are currently in the asylum system, and are not yet appeals rights exhausted (ARE), are entitled to s95 support.

**Asylum-seekers who become refused asylum-seekers**

The Home Office (HO) is not *currently* ending s95 support to those who become ARE, unless it considers them not to be destitute. ASAP is currently unclear as to whether they need to formally apply for s4 support.

**Refused asylum-seekers**

Usually the majority of refused asylum-seekers on s4 support have outstanding fresh claims (known as 'further submissions') as it has long been established that it is not reasonable to be expected to leave the UK when waiting for a decision on a fresh claim. This cohort's eligibility for s4 support is under Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regs 2005 reg 3(2)(e): *'the provision of support is necessary for the purpose of avoiding a breach of a person's Convention rights, within the meaning of the Human Rights Act 1998'*. The Convention right relied on is ECHR Article 3 *'inhuman or degrading treatment'*,

and the breach would arise if a person were left destitute in the UK without the right to work or access to benefits.

On 18/3/20, the Further Submissions Unit in Liverpool was closed to face to face further submissions appointments and further submissions are now sent by email to [CSUEC@homeoffice.gov.uk](mailto:CSUEC@homeoffice.gov.uk).

Therefore, s4 eligibility will be created once the further submissions have been sent. Or before, if the submissions are sufficiently far advanced to enable the AST to conclude that they are not hopeless or abusive, and there is a good reason why they haven't already been submitted to the HO. However, it is no longer necessary to have an outstanding fresh claim in order to be eligible under reg 3(2)(e), as set out below.

### Discontinuation of s4 for refused asylum-seekers

On the 27/03/20, the HO stopped cessations of s4 and housed all destitute asylum-seekers who applied for s4 on the basis of the public health risks associated with the pandemic. This decision was reversed on the 15/09/20, when the HO began discontinuing s4 for those who had been granted (or continued to receive) support during the first lockdown but did not continue to be eligible under the reg 3(2).

On the 23/10/20, Principal Judge Storey allowed an appeal against the discontinuation of support in PA/MA <https://www.gov.uk/asylum-support-tribunal-decisions/pa-and-ma-v-secretary-of-state-for-the-home-department-as-20-09-42386-and-as-20-09-42397> She concluded that ending s4 support for those who reside in an area under Tier 3 restrictions (the highest Tier at the time), and are unwilling to leave the UK, *may* breach their Convention rights and those of the general public (para 48). All the other AST Judges have followed the PA/MA decision.

The HO paused cessations in November 2020, following an order made in the High Court in the case of QBB. This is a judicial review of the lawfulness of the HO's 15/09/20 policy to evict destitute refused asylum-seekers who refuse to make a voluntary departure from the UK during the pandemic. An interim class injunction was made on 2/11/20 to stay evictions of destitute refused asylum-seekers on s4 support. This order remains in force. The order can be found [here](#).

Not everyone on s4 support will be covered by this order eg those who were not in receipt of s4 support on 2/11/20, but were granted s4 support afterwards. Ring ASAP's advice line to discuss individual cases. Those who are no longer destitute or who receive a positive decision on their fresh claim will still have their support discontinued.

### Refused Asylum-Seekers applying for s4 support

Unlike the situation in March – August 2020, the HO is continuing to *refuse* s4

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applications notwithstanding that all areas are now subject to national lockdown in England with equivalent restrictions in place in Wales, Scotland and Northern Ireland.

On the 23/10/20, Principal Judge Storey allowed an appeal against the discontinuation of support in PA/MA <https://www.gov.uk/asylum-support-tribunal-decisions/pa-and-ma-v-secretary-of-state-for-the-home-department-as-20-09-42386-and-as-20-09-42397> She concluded that ending s4 support for those who reside in an area under Tier 3 restrictions (the highest Tier at the time), and are unwilling to leave the UK, *may* breach their Convention rights and those of the general public (para 48).

All the other AST judges have followed the PA/MA decision, and crucially they have also decided that its principles equally apply to s4 refusal appeals. Therefore, *currently*, (now that the entire country is under greater restrictions than the Tier 3 restrictions that applied at the time PA/MA was decided) all destitute refused asylum-seekers, who are refused s4 support, and appeal to the AST, will win their appeal. However, many applications for s4 support continue to be refused by the HO, and so it will be necessary to appeal in these cases.

When completing the ASF1, tick the box relating to reg 3(2)(e) on p25 of the ASF1 (the 5th box). Include a brief but clear explanation in section 24 along the lines of '*I am applying under Regulation 3(2)(e) due to public health risk and risk to myself caused by the pandemic. I am also applying under the PA/MA decision*'.

It is important that good and detailed evidence regarding destitution is provided with the ASF1 (see Factsheet 5). Currently many s4 applications are also being refused on the basis of 'not destitute'.

### How the Home Office and the AST will deal with the appeal

If destitution is accepted, and the refusal is only on the basis of no reg 3(2) eligibility, then the AST will list it for a paper determination and send out a Directions Notice which will start with the following:-

***The Respondent** is alerted that the preliminary issue of **barring** her from taking further part in these proceedings by application of Rules 8(3)(c) and 8(7)(a) will be considered by this Tribunal on the papers on XXX on the basis that she has no reasonable prospect of success by way of her decision of XXX being upheld.*

The Directions Notice will then set out details regarding the points the HO needs to address, and specifically on why PA/MA should not be followed. It is likely that the Directions Notice will not give the appellant anything to respond to, but it may give a date by which to lodge any representations.

The HO, in response to Directions, has been filing an undated document, from 3 barristers, headed 'Note on the cases of PA and MA'. This note has been used many

times since the beginning of January 2021, and has never, to ASAP's knowledge, been successful. Therefore, if this Note is submitted in an appellant's case, there is no need to respond unless requested to do so by the AST.

If destitution is not accepted, the AST will not use the 'barring' procedure and will instead list the matter for a telephone hearing.

### **New option for temporary support pending s4 appeal**

On 11/2/21 the High Court considered an application for a 'class injunction' in a judicial review brought by an applicant known as 'KMI', regarding destitute refused asylum-seekers who have been refused s4 support.

The class injunction application aimed to obtain an order which would force the HO to accommodate all s4 applicants it had accepted to be destitute, in advance of any appeal to the AST. This was to avoid the appellant being destitute while they are waiting for their appeal to be decided by the AST, which currently takes 3 weeks from the date the appeal is lodged. The application was refused, but the High Court made an [order](#), which, in effect, creates a system whereby destitute s4 appellants can apply to the High Court for support pending their appeal.

This is a totally new procedure. It is temporary. Please see our [Guidance](#) and suggested [application form](#).

### **Schedule 10 support**

The arguments regarding s4 eligibility equally apply to sch10 applicants. The sch10 application form (Bail 409) p23 reproduces the same five s4 eligibility criteria. Note that the ASAP briefings *Support for people on immigration bail June 2019* and *Absconders and withdrawn asylum claims May 2019* refer to the previous version of the Home Office's Immigration Bail policy. The latest version is 5.0, dated 28/2/20. Under this policy, those who can apply for s4 or s95 support *should not* apply for sch10 support. The main groups who may be eligible for sch10 are stateless applicants, Article 8 applicants and those with withdrawn asylum claims. The policy lists some of the relevant groups at p57.