

Guidance on the new temporary procedure for obtaining urgent s4 support pending a decision on an appeal to the AST

19/2/21

Introduction

1. On 11/2/21, the applicant in the case of *KMI* applied to the High Court for an order requiring the Home Office (HO) to grant s4 support to all applicants for s4 support, whose applications are refused, but who have been accepted by the HO as being destitute. The thinking behind the application was that, following its landmark decision in *PA and MA*, the AST is allowing every appeal against the refusal of s4 support where the appellant is accepted to be a destitute refused asylum-seeker. See ASAP Factsheet 20, [Covid-19 and s4 support](#).
2. The Court was not prepared to grant the order sought by *KMI*. Instead, in an attempt to help appellants in difficulty, the Court made an [order](#) which created a system, in which the Court would consider emergency applications by individual s4 applicants who: (i) have appealed to the AST; (ii) cannot support themselves in the 3 weeks or so between their appeal being lodged and determined by the AST; (iii) have been accepted by the HO as being destitute.
3. The new procedure is designed to be very quick. The Court indicated that it would generally allow HO 24 hours from receiving a copy of the application to respond to it. So it is hoped and anticipated that, within 2 working days of receiving the application, the Court will make and communicate a decision on the application.
4. If the Court is satisfied of the 3 conditions in para 2 above, then it may order the HO to grant the applicant s4 support until the appeal has been determined.
5. The Court is offering this procedure as a temporary measure until a full hearing in the case of *KMI*. We do not have a date for the hearing, but we anticipate it will be in a matter of weeks.
6. The Court understands that the vast majority of the people who will benefit from the new procedure will not have solicitors or any other access to legal advice. The judges are therefore making this procedure available to individual applicants and their voluntary sector advisers directly, without the normal payment of a court fee or the need to apply for legal aid.
7. ASAP has designed a [form](#) for applicants and voluntary sector advisers to make applications under the new procedure. The form is not 'official'. ASAP has designed it to make the process of applying as easy as it can be. A copy of the form is here: ********. The following guidance is intended to supplement the information contained in the form, and should be read together with the form.

Who is the new procedure for?

8. The procedure is for anyone (whether or not they have a solicitor) who:
 - is a refused asylum-seeker; and
 - has applied for, but been refused s4 support; and
 - has appealed to the AST; and

- has been accepted by the HO as being destitute; and
- cannot support themselves until their appeal is decided, because they don't have adequate accommodation, and/or they don't have resources available or reasonably available to them to meet their essential living needs, until then.

Who is the new procedure **not** for?

9. The new procedure is not for people who:

- not refused asylum-seekers; or
- have not yet lodged a Notice of Appeal against the refusal of s4 support with the AST; or
- have not been accepted as destitute by the HO; or
- can manage in their existing accommodation and with any existing support until their appeal has been decided by the AST without undue hardship.

Anyone in the above categories should wait for their appeal to be determined by the AST in the normal way.

What about cases where the HO has refused s4 support, but hasn't made clear whether or not it is accepted that the applicant is destitute?

10. It isn't clear what should happen in these cases. The Court probably didn't appreciate that the HO fails to make a decision on destitution, when it is refusing the application anyway on the basis of no reg 3(2) eligibility. This can occur even when it's clear from the circumstances of the application that destitution would have been accepted had the HO properly considered it.
11. Because we don't yet know how the Court will approach these cases, we suggest that, where an appellant is facing serious hardship pending their appeal, and it is obvious that they are destitute, an application should be made under the new procedure. That is why we have included a box in section 3 of the form to notify the Court that the HO refusal letter does not say whether or not the HO accept destitution. It may be that we have to change this advice if the Court indicates that these cases should not be brought under the new procedure. **For now, if you are thinking of bringing a case where there has been no finding by the HO on destitution, please read and follow the following guidance carefully, and contact the ASAP advice line for further advice on your particular case.**

What evidence should you send with your application?

12. At section 4a) of the form, you should summarise the support that the applicant is currently receiving.

At section 4b), you should explain why this support cannot continue until the appeal has been determined.

You should enclose evidence of these matters with the form, for example, a letter from the accommodation provider stating that the applicant will have to leave on a specific date (which is before the appeal is likely to be determined), and letters from other people who might reasonably be expected to support the applicant to show that they cannot help.

13. Please bear in mind the following basic principles (which pull in opposite directions):

- You should keep the paperwork you send with the application to a minimum. Only include evidence that is relevant. For example, there is no need to attach the ASF1 to the application to prove that the applicant is destitute if this is clear from the HO refusal letter.
- On the other hand, it is vital that the Court has the complete picture of what has happened, and that there can be no suggestion that the Court was misled. For example, if there is an alternative source of support that has been available to the applicant in the past but is not available now, then you should refer to it in section 4, and state that it is not available, rather than ignore it. If you think a document may be relevant, but you are not sure, then include it.

What will an applicant get if the application is granted?

14. We think that if an application is granted, the Court will order that the HO must accommodate the applicant within a specified (short) period of time until the appeal is decided. Once the appeal is decided, we expect the Court order will lapse. If the appeal is successful, the applicant will anyway be entitled to s4 support, and we hope and anticipate that there will be no break in their support. We expect that the type of support that the Court will order will be standard s4 accommodation, offered anywhere in the UK on a no choice basis. There will not be a cash only option.

What about applicants who have an urgent need for support pending determination of the appeal, but who should not be dispersed?

15. In most cases, s4 accommodation is granted outside London and the South East of England, on a no-choice basis. Many applicants want to remain in the area where they have been living when they applied for s4 support, but to do so, they will need to apply to the HO under its policy on dispersal. The policy is restrictive, and largely confined to cases where the applicant is a client of Freedom from Torture or the Helen Bamber Foundation, or cases where there would be serious disruption to medical treatment if the applicant is moved (including for women in the late stages of pregnancy). The HO policy on dispersal is set out in *Allocation of Accommodation Policy*¹ and *Healthcare Needs and Pregnancy Dispersal Policy*.²

16. If there are serious medical or other concerns about the consequences of dispersal, these should be brought to the attention of the Court under the new procedure. You should also draw the Court's attention to the HO policy on dispersal, and should (1) attach any evidence that explains why dispersal should not take place, and (2) confirm to the Court that an application will be made to the HO to avoid dispersal if s4 support is granted by the AST. We think that the Court will want to know if there are good reasons why dispersal should not happen before the AST determines the appeal. There is at least a chance that, if the evidence is strong, the Court will require someone to be accommodated locally until after their appeal has been allowed and they have had a reasonable opportunity to apply to the HO not to be dispersed.

1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/597382/Allocation-Of-Accommodation-v5_0.pdf

2

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/496911/new_Healthcare_Needs_and_Pregnancy_Dispersal_Policy_EXTERNAL_v3_0.pdf

17. This is a complicated subject, and we do not know how the Court will treat cases like this. We recommend that if you have a case like this, you should contact the ASAP advice line as soon as possible for advice on your particular case (see below).

Is the applicant liable to pay legal costs?

18. All users of the Court are technically liable to pay a court fee to use the Court's services (although if they are destitute they can be exempt from paying a court fee), and are theoretically liable to pay their opponents' costs if they lose. So these possibilities cannot be entirely excluded. However, the judges have proposed this scheme to be operated by people who are destitute and who do not have access to lawyers.
19. If an applicant is destitute, and does not have support while they wait for their appeal to be decided by the AST, it is extremely unlikely that the Court will make an order that they must pay a Court fee for making the application, or the HO's costs of responding to their application. However if they make a false statement about their income or savings or the support that is reasonably available to them (for example, from friends, family members or charities), then there is a possibility that the Court may order the applicant to pay a Court fee for making the application and/or the HO's costs of responding to the application. If applications are made in good faith then costs are highly unlikely to be an issue.

Conclusion

20. We realise that this new procedure is a big change, and will only benefit those people in the most difficult circumstances, who need support urgently and can't wait until their appeal has been decided. The new scheme is temporary, and may only operate for a few weeks while Covid-related restrictions remain, or until there is a further hearing in *KMI*. Notwithstanding the complexities of applying for it, it is heartening that the judges have authorised this temporary system to be set up. They clearly recognise that there are some hard cases in our communities, and they want to help. If the case can't wait until the appeal has been decided, please use this new procedure. Contact the ASAP advice line, and we will assist you as much as possible.

The ASAP Advice line

21. The ASAP advice line is open on Mondays, Wednesdays and Fridays between 2 and 4pm on 020 3716 0283. Further details are available at <http://www.asaproject.org/contact/adviceline>. We are also available to respond to individual enquiries by email through the ASAN and HIG networks.