

ASAP

ASYLUM
SUPPORT
APPEALS
PROJECT

**Evidence for Independent Asylum Commission from the Asylum Support Appeals
Project (ASAP) November 2007**
Material Support and Accommodation for Asylum Seekers

Executive Summary

In this submission, Asylum Support Appeals Project (ASAP) gives evidence on the material support (asylum support) given to both asylum seekers and failed asylum seekers. It will particularly focus on Section 4 support, which is given to some groups of refused asylum seekers, the asylum support appeals system, the delays many of our clients experience when first applying for Section 4 support and on the inadequacies of asylum support generally. Our evidence is supported by a number of case studies which have been taken from the files of clients we have assisted under the duty scheme we run three days a week at the Asylum Support Tribunal in Croydon.

ASAP is concerned that many thousands of refused asylum seekers are forced into destitution as a direct result of the Government's policy to use destitution as a tool of immigration control. This is a view held by many organisations working in the field and was accepted by the Joint Committee on Human Rights (JCHR) in its tenth report to parliament released on 30th March 2007¹. In their report, the JCHR state that they 'have been persuaded by the evidence that the Government has indeed been practising a deliberate policy of destitution of this highly vulnerable group'. The report goes on to say that 'they have seen instances in all cases where the Government's treatment of asylum seekers and refused asylum seekers, falls below the requirements of common law and humanity and international human rights law'.

While, in reality, a large number of refused asylum seekers are unable to return to their country of origin, the criteria for section 4 support are so restrictive that relatively few people are able to receive it. Also a lack of public funding for legal representation for asylum support appeals makes it extremely difficult for refused asylum seekers, whose section 4 support application has been refused or whose support is being terminated, to successfully appeal wrong decisions made by the Home Office. This is despite a high error rate in asylum support decision making revealed by ASAP's recent report entitled *Failing the Failed?*, Feb 2007.²

¹ Joint Committee on Human Rights: The Treatment of Asylum Seekers, Tenth Report of Session 2006-07

² ASAP's report *Failing the Failed* February 07
http://www.asaproject.org.uk/news/ASAP_Feb07_FailingtheFailed.pdf

ASAP's recommendations:

ASAP recommends that those refused asylum seekers who continue to experience difficulties returning to their countries of origin for longer than six months be given work permits until the barriers to returning are resolved.

ASAP recommends that the Government provides factual evidence to prove that asylum support appeals are simple as they maintain and hence do not require legal representation or concede to ASAP's argument and provide public funding for this type of appeal in order to ensure that asylum seekers can fully defend their legal rights to food and shelter.

ASAP recommends that refused asylum seekers in receipt of Section 4 are provided with cash benefits equivalent to what is provided to those in receipt of Section 95 support. In addition, we recommend that pregnant women and new mothers on Section 4 support are also given the same rights as those in receipt of Section 95 support.

ASAP recommends that BIA respond to applications for Section 4 support within forty eight hours and if support is granted, to provide the person with accommodation immediately.

Introduction to ASAP's work

Asylum Support Appeals Project (ASAP) is an advocacy organisation working to reduce destitution amongst asylum seekers in the UK by protecting their legal rights to food and shelter. ASAP is the only organisation that is dedicated solely to providing advice on asylum support law. ASAP provides free legal advice and representation to asylum seekers with their asylum support appeals when their housing and financial support has been refused or withdrawn by the Home Office. We run a duty scheme three days a week at the Asylum Support Tribunal where appeals against the refusals or withdrawal of support are heard.

In addition to providing representation, ASAP runs a specialist advice line for advisers on all aspects of asylum support law. ASAP also provides training on asylum support law for refugee community organisations and other agencies providing advice on this area of law. ASAP's policy work and strategic litigation work aims to change inhumane asylum policies which are forcing many asylum seekers into long-term destitution.

The majority of the work undertaken by ASAP concerns individuals who have become 'failed' asylum seekers but who for various reasons are unable to leave the UK. ASAP will be drawing on the evidence we have built up during the past two and a half years since the organisation has been in existence.

ASAP's evidence to the IAC will therefore focus mostly on the support situation as it affects 'failed' asylum seekers. This submission will look at the limitations of the support that is available plus the myriad of problems that are contained in the administration of this provision. Finally we will give evidence on the asylum support appeals system and the barriers many refused asylum seekers face when appealing a decision to refuse or withdraw their support.

Section 4 Support

As the Commission is aware there is a limited type of support known as Section 4 support which is available to some groups of failed asylum seekers who can demonstrate that one, they are destitute and two, are temporarily unable to leave the UK through 'no fault of their own'. This includes individuals who are too ill to travel, those who are making arrangements to leave the UK, and those who cannot be expected to leave the UK as they have made a fresh claim or have some other outstanding representations lodged with the Home Office.

Recent Home Office statistics show that around 9,500 refused asylum seekers are currently in receipt of Section 4 support.³ If we compare this figure to the actual numbers of refused asylum seekers believed to be present in the UK which, according to a report by the National Audit Office released in June 2005⁴, is estimated to be somewhere in the region of 283,00, then this represents a drop in the ocean. In addition, far from being a temporary form of support as stressed by the Home Office, according to the Citizens Advice in their report *Shaming Destitution*⁵ the average length of time spent on Section 4 support is 9 months. ASAP has worked with individuals who have been on Section 4 support for up to two years and has witnessed the long term effects reliance on this severely limited type of support can have on them. As well as the stigma involved in being forced to use vouchers, our clients have informed us of the difficulties they have in both feeding and clothing themselves. Many are forced to rely on charities for items such as winter coats and shoes and also for food parcels as the £35 a week in supermarkets vouchers they receive only partly covers their basic needs.

Over the last 2.5 years, ASAP has built up a large body of primary evidence on the problems 'failed' asylum seekers have in relation to accessing Section 4 support. It is our contention that the current regime of Section 4 is failing to support many who should be entitled to it, either because the criteria are too narrow and do not take into account the various barriers that prevent people from leaving the UK, or because of the poor quality of decision making in relation to Section 4 applications which leads to many being incorrectly refused support. As the various case studies included in our submission highlight, the low take up of Section 4 support is also indicative of the Home Office failure to take on board the realities experienced by asylum seekers who have reached the end of the asylum process in the UK.

Section 4 Criteria

Section 4 Support was put on a statutory footing in March 2005⁶. The legislation set out the criteria under which support was to be provided. It also created a right to appeal to the Asylum Support Tribunal for individuals who had been refused support and to those who were having their Section 4 support withdrawn. Prior to being placed on a statutory

³ <http://www.homeoffice.gov.uk/rds/pdfs07/asylumq307.pdf>

⁴ The National Audit Office, "Returning failed asylum applicants", July 2005.
http://www.nao.org.uk/publications/nao_reports/05-06/050676.pdf

⁵ Citizens Advice Bureau: *Shaming destitution NASS section 4 support for failed asylum seekers who are temporarily unable to leave the UK* June 2006
http://www.citizensadvice.org.uk/shaming_destitution.pdf

⁶ The Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005

footing, Section 4 support was largely provided on a discretionary basis and was referred to as 'hard case' support. This term which is still commonly used when referring to Section 4 support.

In brief, under these regulations the Secretary of State may only provide Section 4 support to a failed asylum seeker who 'appears to be destitute' and satisfies one or more of the following conditions:

- They are taking all reasonable steps to leave the UK.
- They are unable to travel due to a physical impediment or another medical reason.
- They are unable to leave the UK because in the opinion of the Secretary-of-State there is no viable route of return to their country of origin available.
- They have made a claim for Judicial Review in relation to their asylum claim and in England and Wales have been granted permission to proceed.
- The provision of support is necessary to avoid a breach of the person's human rights under the Human Rights Act 1998.

Proving Destitution

The first obstacle many of those applying for Section 4 will have to surmount is proving to the Borders and Immigration Agency (BIA) that they are destitute. The test for destitution when considering Section 4 applications is found under Section 95(3) of the Immigration and Asylum Act 1999 and states that a person is destitute if they cannot access adequate accommodation or meet their essential living expenses for the next 14 days.

However, ASAP's experience shows that when considering applications for Section 4 support, BIA will often apply a much harder test than the regulations require, particularly if the applicant has been without support for some time. This approach can be observed in BIA's own internal guidance to staff members dealing with Section 4 applicants. Both Policy Bulletin 71 and the more recent guidelines developed for New Asylum Model case workers state that where the applicant has been without support for a 'prolonged period (not defined) then it would be reasonable for the caseworker to assume that the applicant has an alternative source of support and may continue to do so'.⁷

It is ASAP's contention that this approach, as well as being an incorrect interpretation of the regulations governing Section 4 support, fails to take into account the daily realities of many refused asylum seekers' lives. Many of the clients ASAP has assisted over the last few years applied for Section 4 support around three to twelve months after their asylum claims failed and their Section 95 support (i.e. "normal" support for asylum seekers) ceased. The reasons for the delay in applying for Section 4 support

⁷ <http://www.ind.homeoffice.gov.uk/6353/12358/Section4supportinstruction.pdf>

vary, but one major influencing factor is a lack of knowledge about Section 4 support and the qualifying criteria.

For example, there is a widespread misconception that Section 4 support is only available to those who sign up to return voluntarily to their countries of origin i.e. the person is 'taking all reasonable steps to return'. This misconception is largely down to BIA's own publicity and press releases concerning Section 4 support which consistently emphasises the temporary nature of the support and its availability to those who are making arrangements to leave the UK. Consequently, many refused asylum seekers who may meet one of the other criterion for Section 4 support, such as those who have made a fresh claim, do not readily understand that they are also able to apply.

Also, due to the difficulties in obtaining evidence to support a fresh claim for asylum, many 'failed' asylum seekers may only fall within the criteria for support some time after their original support ceased. Thus there is often a delay before they apply for Section 4 support. BIA invariably relies on this delay to refuse Section 4 support, arguing that the individual cannot be destitute as they have survived the intervening period. This is illustrated by the case of Mrs X who ASAP represented. It is typical of many cases that ASAP has come across and is explained below.

Mrs X

Mrs X applied for Section 4 support on the basis of having submitted a fresh claim for asylum. Her original asylum claim was refused on the grounds that her claim to have suffered torture in her country of origin was not believed. For some months prior to making an application for Section 4 support, Mrs X had been receiving treatment from the Medical Foundation for the Care of Victims of Torture. To support her fresh claim they had provided medical evidence which corroborated her claim of having suffered torture. When Mrs X applied for Section 4 support she had been without support for almost a year. During this time she had moved from friend to friend, most of whom were asylum seekers themselves. She had also slept at her local church and regularly received food parcels from the Red Cross. BIA refused her Section 4 support application on grounds that they did not believe she was destitute. In their refusal, they stated that 'your S95 support was terminated on 10th July. As you have been without support for some time it is clear that you have access to a private means of support and we therefore do not consider that you are destitute, street homeless or that you are unable to access support though other means.'

Narrowness of Section 4 support criteria

Many asylum seekers, who have exhausted the asylum process in the UK, are unable to leave the UK due to no fault of their own. However as the examples of cases given in this submission illustrate both the definitions of who is destitute for Section 4 purposes, and who is considered as being 'unable to leave the UK', have been rigidly defined by BIA. For example there are many practical obstacles which prevent refused asylum seekers from leaving the UK. Many will be unable to obtain the necessary travel documents which would enable them to re-enter their country. In other cases it may be down to the fact that they are stateless or that there is a dispute over their nationality. Despite these practical difficulties, which affect many thousands of refused asylum

seekers in the UK, BIA's formal policy is that it is possible for most, if not all, refused asylum seekers to return voluntarily to their countries of origin.

The case below highlights the problems encountered by Palestinian nationals but we are aware that similar problems exist for undocumented Eritreans, Iranians, Algerians, Sierra Leoneans, Somalis, Liberians and others.

Problems with Travel Documentation

Ms P is a Palestinian national who was appealing against the decision by BIA not to give her support on the basis that they did not consider she had 'taken all reasonable steps to leave the UK'. Ms P did not hold a Palestinian passport and was in possession of a letter from the Palestinian General Delegation in London which stated that by 'virtue of the Oslo accord signed between Israel and the Palestinian Liberation Organisation, all Palestinian passports are issued only in Palestine and for Palestinians who are resident in the West Bank and the Gaza Strip'.⁸ It is also ASAP's understanding that it is doubtful that even if Ms P was in possession of a Palestinian document that she would be able to return, as Palestinian nationals are not normally able to obtain clearance from the Israeli authorities in order to re-enter their country. Despite these difficulties, which the Home Office is no doubt aware of, Ms P was still denied support on the basis that she was not taking steps to return.

Lack of Immigration Advisers

There are also those individuals who would meet the criteria for support, if only they could find an immigration practitioner to take on their case.

As mentioned above, a 'failed' asylum seeker who makes a fresh claim can qualify for support on the grounds that they require support in order to avoid a breach of their human rights, i.e. it would be a breach of their human rights to require them to leave the UK whilst their fresh claim had not been decided. However, due to the scarcity of immigration advisers in several parts of the UK, which is largely down to the changes in legal aid provision, many of the individuals ASAP has assisted had experienced significant difficulties trying to find an immigration solicitor to take on their cases. As a result many who have new evidence that could form the basis of a fresh claim remain destitute. This is illustrated by the case of Mr B below.

Mr B

Mr B is a Sudanese national from Darfur. During his asylum support appeal it emerged that he was a non Arab subsistence farmer from Darfur who had exhausted his asylum claim in the UK. Like many other Darfurians, the Asylum and Immigration Tribunal had accepted that he would be at risk of persecution if he returned to Darfur but lost his appeal on the grounds that he could find a place of safety by 'internally relocating' to another part of the Sudan such as Khartoum. In April 2007, in a case concerning three Sudanese nationals from Darfur, the Court of Appeal ruled that given the appalling conditions that existed in the refugee camps in the Khartoum area the option of 'internal relocation' in these circumstances was unduly harsh. However, despite falling squarely

⁸ Asylum Support Adjudicator: www.asylum-support-adjudicators.org.uk ASA/07/03/14864

within the scope of this judgement and potentially benefiting from it, Mr B had been unable to find a solicitor to assist him to make fresh representations. When ASAP met him at the Asylum Support Tribunal he had already approached ten different immigration solicitors for advice, each of which declined to take on his case either because they were oversubscribed or were unwilling to undertake legal aid work. As a consequence Mr B lost his appeal for Section 4 and will remain destitute until he can find a solicitor to take his case.⁹

Safety in Country of Origin

BIA has currently suspended removals to certain countries such as southern and central Iraq, Zimbabwe and the Democratic Republic of Congo (DRC). These suspensions have come about either as the result of high court action or because they are the subject of a country guidance ruling as in the case of Zimbabwe and DRC. However despite serious question marks over the security in these countries, recent asylum statistics from the Home Office show that the majority of claimants from these countries are refused asylum in the UK¹⁰. Furthermore, even where forced removals are suspended, BIA still maintains that individuals can return voluntarily e.g. by making arrangements themselves with the help of the assisted return programme run by the International Organisation for Migration (IOM). It is only a small minority of individuals coming from these countries who will opt to return because so many continue to fear for their lives were they to return to their own country. Many choose to remain in the UK without support running the serious risk of being detained, seeing this as the lesser of two evils.

Mr K

Mr K is from Kirkuk in Iraq. He applied for support on the basis that he did not believe that there was a safe route of return to his country of origin. This criterion for Section 4 support can only be used when the Secretary of State has declared that, in his opinion, no viable route of return exists to the country in question. Presently there are no countries in the world to which the Home Office believe there is no viable route of return.

Iraq was briefly considered as having no viable route of return between December 2004 and September 2005. This policy was changed when routes into the north of the country were opened up. Despite this change of the Home Office policy there is a wealth of information from various human rights based organisations which suggests that travel in and around Iraq is far from safe. For example UNHCR latest guidelines on Iraq which were released in August 2007 state that 'since the invasion of Iraq in March 2003 by the US-led Coalition Forces and the fall of the Saddam Hussein regime shortly thereafter, Iraq has been plagued by extreme violence perpetrated for sectarian or political reasons, as well as a general collapse of the law and order system. They go on to state that 'daily life....has been ruled by an extremely precarious security and human rights situation'¹¹.

⁹ A recent House of Lords decision entitled AH overturned the decision of the Court of Appeal on the grounds that they did not consider it to be unduly harsh to return individuals to Sudan
SESSION 2007–08 [2007] UKHL 49 on appeal from: [2007] EWCA civ 297

¹⁰ <http://www.homeoffice.gov.uk/rds/pdfs07/asylumq307.pdf>

¹¹ UNHCR's ELIGIBILITY GUIDELINES FOR ASSESSING THE INTERNATIONAL PROTECTION NEEDS OF IRAQI ASYLUM-SEEKERS Aug 2007

Notwithstanding these serious concerns about security in Iraq, in recent years the numbers of Iraqi awarded leave to remain in the UK has been extremely low. The Home Office statistics show that in 2004 195 were given leave to remain after their initial application for asylum. By 2005 the figure had sunk to 160 and in 2006 only 30 Iraqis were given leave to remain¹². This has created a large community of refused Iraqi asylum seekers who are now destitute but who understandably remain too frightened to return.

It is worth noting the success of a recent non-binding appeal decision by the Asylum and Immigration Tribunal¹³ which decided that an Iraqi man could not be required to return to Iraq because a state of 'internal conflict' within the meaning of Article 15 of the Qualification Directive issued by the European Community exists in that country. This decision appears to cover the circumstances of a substantial number of refused Iraqi asylum seekers in the UK but until such decision becomes case law or Home Office policy is changed to reflect the serious security risks facing Iraqis who return, refused Iraqi asylum seekers will continue to experience all the usual difficulties in trying to obtain Section 4 support.

Quality of decision making in Section 4 applications

One of the more worrying aspects of the Section 4 regime that has come to ASAP's attention is the quality of decision making in relation to applications for support. As part of our evidence we are submitting a report published by ASAP in February 2007, entitled *Failing the Failed*, which looked at 117 negative decisions made by NASS between January and December 2006¹⁴. The data used in the research was taken from the files of individuals ASAP had assisted under our Duty Scheme at the Asylum Support Tribunal and who were appealing against BIA's decision not to grant them Section 4 support.

Staggeringly, ASAP found that over 80% of the decisions made by BIA (formerly NASS) either misapplied or incorrectly interpreted the law or their own policies. As will be seen from the enclosed report these 'mistakes' ranged from applying the wrong legal tests when assessing whether an applicant was destitute to refusing to support a person on the grounds that they had only made a fresh claim to prolong their stay in the UK.

The report also highlights that many of those who were initially refused support went on to win their appeal with the help of legal representation. ASAP figures show that over 50% of individuals represented by ASAP win their appeals at the AST or have their cases remitted back to BIA (NASS). It is hard to quantify the exact numbers of appeals versus the number of refusals or withdrawals of support where the individuals had a right of appeal because these statistics are not made available by BIA. However given the difficulties surrounding the asylum support appeal system (see below) and the fact that there is no legal aid available to individuals wishing to have their cases represented at the Tribunal, it is our belief that many 'failed' asylum seekers who are refused support do not exercise their right to appeal.

¹² <http://www.homeoffice.gov.uk/rds/pdfs07/asylumq307.pdf>

¹³ AIT: Appeal Number AA/14710/2006/ 26th September 2007

¹⁴ ASAP's report *Failing the Failed* February 07

http://www.asaproject.org.uk/news/ASAP_Feb07_FailingtheFailed.pdf

Section 4 Delays

Delay in responding to requests for support is another major problem inherent in the administration of Section 4 support. Although ASAP has raised this issue directly with BIA at their senior management level and despite being given assurances that the practice would be reviewed and improved, the problem is still continuing. ASAP's client files show that it can take anything from one to six weeks for BIA to reach a decision on a Section 4 application. In many of these cases the individuals involved are already street homeless or have physical and or mental health problems. This issue has been raised repeatedly by agencies assisting this client group and has been the subject of several reports, perhaps the most conclusive being *Shaming Destitution* by Citizens Advice published in June 2006¹⁵.

In many cases these delays prolong destitution unnecessarily and indeed the delays will be unlawful as a breach of Article 3 ECHR as the applicants are in the meantime destitute. Perhaps the worst example of the unlawful delay by BIA in providing Section 4 support is its failure to immediately secure Section 4 support for successful appellants to the Asylum Support Tribunal where an Adjudicator has overturned BIA's original decision and ordered that the appellant is entitled to Section 4 support. Once that entitlement has been identified, the law does not allow for any delay in provision. Yet it regularly takes BIA many days if not weeks to provide support leaving the appellant destitute in the meantime.

Lack of public funding for asylum support appeals at the Asylum Support Tribunal (AST) in Croydon

As part of our submission to the Joint Council for Human Rights' inquiry into the treatment of asylum seekers in 2006, ASAP argued that legal aid is made available to those who are appealing against a Home Office decision refusing or withdrawing their asylum support. Due to the lack of legal aid, over 90% of those appealing to the AST have no legal representation during their oral appeals. For ease of reference the Asylum Support Tribunal received 3912 appeals in 2005/06 and 1949 appeals in 2006/07. Crucially, the same AST management information shows that those appellants who received advice and/or representation are three times more likely to succeed with their asylum support appeals. While the success rate (i.e. an appeal being allowed in favour of asylum seekers) for those cases which received no advice/representation was 8% (14 out of 185 cases), the success rate goes up to 26% (132 out of 560 cases) for those cases which received advice and/or representation¹⁶.

The JCHR accepted our recommendation and its report stated:

“The absence of provision for representation before the Asylum Support Adjudicators may lead to a breach of an asylum seeker's right to a fair hearing, particularly where an appellant speaks no English, has recently arrived in the UK, lives far from Croydon and/or has physical or mental health needs. Where an appeal fails, and as a result of the unavailability of legal representation an asylum seeker is left destitute, the result

¹⁵ Citizens Advice Bureau: *Shaming destitution NASS section 4 support for failed asylum seekers who are temporarily unable to leave the UK* June 2006
http://www.citizensadvice.org.uk/shaming_destitution.pdf

¹⁶ The Asylum Support Adjudicators: www.asylum-support-adjudicator.org.uk

may also be a violation of Article 3 ECHR. We recommend that the Government should make legal aid funding available for representation before the Asylum Support Adjudicators”¹⁷

In June 2007, the Government formerly responded to the findings by the JCHR . With regard to the above recommendation the Government refused to accept that public funding should be made available for asylum support appeals for two reasons below. As part of our evidence to the Commission we would like to set out the reason why we think the Government position is wrong.

First reason: Asylum support appeals are not complex and therefore asylum seekers should be able to present evidence by themselves.

ASAP strongly disagree with the notion that asylum support appeals are not complex and therefore asylum seekers should be able to represent themselves with little or no difficulties. As the commission is no doubt aware, asylum seekers are considered to be one of the most vulnerable client groups in our society. A disproportionate number suffer from mental and physical health problems, often as a result of the trauma they experienced in their countries of origin. In addition, there are the practical difficulties such as language barriers and unfamiliarity with the UK. The nature and range of problems experiencing by asylum seekers set them apart from other users of tribunals where legal aid is also not provided, such as employment tribunals etc.

Furthermore there are very tight deadlines for submitting the Notice of Appeal to the Asylum Support Adjudicators, which is five days from the date of the refusal letter. Once submitted the client then only has three days to respond to directions issues by the AST. For your reference, directions are a list of documentary evidence required by the tribunal at least twenty four hours before the hearing is heard. The majority of the appellants are already destitute and they face even more barriers because they have no fixed address and no money to make phone calls, travel to see their advisors or send faxes or letters to the tribunal. Since the burden of proof rests on asylum seekers, these factors adversely affect their chances of being able to show that the initial Home Office decisions were wrong and that they are in fact entitled to support. It is ASAP’s belief that these barriers, coupled with the particular needs of this client groups, result in far lower numbers of refused asylum seekers exercising their right of appeal.

Physical and mental health problems not only make it difficult to prepare for an appeal unaided but also to provide evidence effectively during the hearings. ASAP’s statistics show that in 2005/06, 56% of the appellants ASAP assisted under our Duty Scheme had physical or mental health problems. Some were suffering from the effect of torture and rape sustained in their country of origin. ASAP has witnessed many cases where the appellants broke down during their appeal hearings or where the Adjudicator had to stop the hearing-for a short break in order that the distressed and upset appellants could compose themselves before continuing to give evidence.

¹⁷ Joint Committee on Human Rights: The Treatment of Asylum Seekers, Tenth Report of Session 2006-07

Mustafa

Mustafa was from a country which continues to experience brutal ethnic violence and massacres. He came to the UK a few years ago and was detained for nearly a year.

When Mustafa was given bail from detention, one of his friends who stood as surety had offered him floor space to sleep in his one room flat. Mustafa recently managed to find an immigration solicitor who had put together new evidence for his fresh asylum claim. Now, his friend had asked Mustafa to leave the flat to make room for his family who were joining him from their home country.

The letter from his doctor stated that Mustafa was suffering from post traumatic stress disorder relating to the torture he had experienced back in his home country. The letter from his friend said that Mustafa was finding it difficult to sleep because of nightmares and often shouted in his sleep.

Mustafa applied for section 4 support from the Home Office as he was going to be destitute very soon and had a fresh claim for asylum, which means that his application meets the criteria for support. Mustafa did not understand why this was happening to him. Before his hearing, the ASAP Advisor examined his paperwork and explained to Mustafa why NASS was refusing to support him. She also explained what questions the Adjudicator was likely to ask and what evidence he needs to present to the court to show that the NASS decision was wrong.

When the Adjudicator asked Mustafa to explain his situation, there was a long pause. Mustafa looked down and said in a very quiet voice through an interpreter “I have nothing and I must depend on my friend for everything. You see me wearing these clothes. They are not mine. I borrowed them from my friend. These shoes are not mine either. I feel ashamed to be here wearing my friend’s clothes. I have nothing.”

Being prompted by the ASAP Advisor, Mustafa, haltingly and with long silences in between, continued to explain how he went without any food, sometimes for a few days, and that he relied on food parcels from charities. Mustafa said that unless he leaves the flat, his friend cannot bring his family to the UK. He produced a letter from his friend to verify this point. Mustafa added that he did not want to be a burden on his friend any more.

The Adjudicator, however, decided that Mustafa was not destitute and was not entitled to section 4 support. Mustafa’s friend’s letter did not state exactly by which date Mustafa would have to leave the flat and the Adjudicator understood it as meaning that Mustafa could continue to stay with his friend.

Outside the hearing room, Mustafa sat down with his head in his hands. He continued to mutter to no one in particular, “It is better to be in the detention centre. I cannot live like this.”

Second reason: There is funding available for general legal advice under the Legal Help scheme. Also the Lord Chancellor has the power to authorize “exceptional funding” for representation for under the Access to Justice Act 1999 s6(8)(b) in those cases where representation may be essential for a fair hearing, and where no other sources of help can be found.

In practice funding is never granted for asylum support appeals as 'exceptional funding' because the procedure is too slow and cumbersome to allow for any successful application of public funding. In any event as all asylum support appellants are in such dire circumstances few appellants can (nor should they be required) to show that his/her case is exceptionally different to that of all other appellants. In fact, in her written answer to the question by Andrew Dismore MP (Hendon, Labour), on 3rd July 2007, Bridget Prentice, Parliamentary Under-Secretary, Ministry of Justice, said; *'The Legal Services Commission has not authorised any requests for exceptional funding for representation before a NASS tribunal in the last three years. It does not record numbers of applications received.'*

Sufficiency of subsistence levels

Lastly ASAP would like to briefly comment on the low levels of Section 95 support and on the severe hardship it causes as it is set at a rate lower than income support (70%). The situation is even worse for those receiving Section 4 support because support is provided by way of vouchers and not cash. The vouchers can only be used in designated shops which may or may not sell goods that asylum seekers require, such as Halal meat, items for baby care and sanitary items. There is no margin for budgeting for important items (such as clothing, travel etc), let alone saving for those not infrequent periods when no support is paid because of BIA's errors or delays in the process of providing support.

ASAP's greatest concern is over the inadequacies of additional support for pregnant woman or new mothers who are receiving section 4 support. They are expected to survive on supermarkets vouchers to the value of £35 per person. This is wholly inadequate to meet the costs of needs of new mothers and their babies.

Following lobbying by the refugee agencies and others, the Home Office is now in the process of considering providing additional support to this group but only in the form of additional vouchers and only for short period following the birth of a child. ASAP is particularly concerned that that the suggested maternity payment for those receiving section 4 support is £50 less than for those who are receiving section 95 support. Even if reliance on section 4 support was short term, a maternity payment under section 4 will still be required and used for the same necessities as for those on section 95 as these sets of mothers' needs are identical. The arrival of a baby requires the immediate provision of extensive essentials. These cannot be restricted simply because there might be a change of circumstances in a few weeks – and in practice there may be no change within many months. ASAP believes the Secretary of State is already in breach of many of his legal obligations to safeguard the welfare of children in the UK who are caught up in the asylum process. Restricting maternity payment in this way will be a further failure to meet those obligations.

End.

*Evidence from the Asylum Support Appeals Project (ASAP)
Material support and accommodation for asylum seekers*

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ASAP works to reduce destitution of asylum seekers in the UK by defending their legal rights to food and shelter. We combine free legal representation, second-tier advice and training on asylum support law and policy work to ensure that asylum seekers are able to access the housing and welfare support they are legally entitled to.