



ASYLUM
SUPPORT
APPEALS
PROJECT

Asylum Support Appeals Project's comment on the Government's response to the JCHR's tenth report, *The Treatment of Asylum Seekers*

22nd August 2007

Introduction

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 provides free legal advice and representation to asylum seekers in their asylum support appeals when their housing and financial support has been refused or terminated, as well as second-tier legal advice and training on asylum support law for refugee community organisations. ASAP's policy work and strategic litigation work aims to change inhumane asylum policies which are forcing many asylum seekers into long-term destitution. We submitted written evidence to the JCHR's inquiry into the treatment of asylum seekers.

ASAP welcomes the Committee's Report into the Treatment of Asylum Seekers published in March 2007. We were pleased that the report highlighted the unacceptable level of destitution and other hardships that asylum seekers experience as a result of inefficient and inconsistent Government policies and practices.

ASAP is however disappointed by the Government's response published on 5th July 2007, in particular to the Recommendation number 7, under 'Access to financial support and accommodation'.

The JCHR's Recommendation number 7 reads:

"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 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. Where needed, assistance with accommodation as well as travel costs involved in attending an appeal should also be provided. We heard evidence that suggested in some cases that this assistance was not being given. In our view it is a priority that appellants receive accommodation and subsistence for the hearing."

However, in their response to this recommendation, the Government refuses to accept that public funding should be made available for asylum support appeals for two reasons.

- 1) *Asylum support appeals are not complex and therefore asylum seekers should be able to present evidence by themselves.*
- 2) *There is funding available for general legal advice under the Legal Help scheme. Also the Lord Chancellor has the power to authorise “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.*

We outline below the main reasons why we do not accept the Government’s explanation for not providing public funding for asylum support appeal hearings. Some of the reasons were already explained in the written evidence we submitted to you in October 2007.

The scale of the problem

Many asylum seekers appeal against the Home Office decisions to make them destitute. The Asylum Support Tribunal received 3912 appeals in 2005/06 and 1949 appeals in 2006/07. The Home Office does not provide information on how many asylum seekers’ support is terminated or refused where there is a right of appeal.

Many of the asylum support decisions made by the Home Office are wrong. ASAP’s report, *Failing the Failed?* (Feb 2007), examined 117 negative decisions made by NASS between January and December 2006 terminating or refusing support. We found that over 80% of these decisions which forced failed asylum seekers into destitution contained misapplications and/or misinterpretations of law.

Why ASAP believes that the Government’s response unsatisfactory

In order to test the validity of the reasons given by the Government refusing to accept JCHR’s recommendation 7, ASAP has examined the recent management information obtained from the Asylum Support Tribunal (AST) and our own evidence.

The summary of the AST management information is as follows. During the six month period between October 2006 and March 2007, a total of 851 asylum support appeals were received by the AST. 106 cases (12%) were withdrawn by the National Asylum Support Service (which became a part of the Border and Immigration Agency in April 2007). The AST therefore dealt with 745 appeals during this period. 86% (732 cases) originated from outside London which means that the appellants live far from Croydon where the AST is located. It should be noted that the AST in Croydon hears all the asylum support appeals in the UK and the appellants wishing to have oral hearings must travel to Croydon to attend their hearings.

1) *Asylum support appeals are not complex and therefore asylum seekers should be able to present evidence by themselves.*

The AST management information shows that 75% of the appellants (560 cases) received advice or representation from lay advisors, friends and voluntary organisations, including ASAP. ASAP's interviews with some of the appellants during December 2006 also indicate that asylum seekers feel that they cannot deal with these appeals by themselves.

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 representation.

Since 2004, ASAP has been running a Duty Scheme providing free legal representation to asylum seekers at the AST. Our experience shows that the vast majority of asylum seekers seek advice from voluntary sector advisors because they find asylum support appeals complex. Many asylum seekers find it difficult to present evidence by themselves due to various practical barriers they face as well as their vulnerability.

The main reasons for this are: a language barrier, unfamiliarity with the UK legal system and very tight deadlines for submitting notice of appeal (five days) and responding to directions (five days) while collecting documentary evidence. The majority of the appellants are already destitute and they face even more barriers because they have no fixed address, no money to make phone calls, travel to see their advisors or send faxes or letters to the tribunal. Since 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.

Many appellants suffer from physical and mental health problems making it difficult to prepare for their appeals unaided or 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 the Adjudicators had to stop the hearings for a short break in order that the distressed and upset appellants could compose themselves before continuing to give evidence.

Given this evidence, ASAP is extremely concerned that the Government still appears to believe that asylum support appeals are not complex and therefore asylum seekers should be able to present evidence by themselves. In ASAP's experience, many hearings are highly complex, including points of law and reference to case law.

We also urge the Government to take into consideration of the effect of destitution on asylum seekers' wellbeing before making a decision not to extend CLS funding to asylum support appeals. Outcome of asylum support appeal hearings are extremely important because refusals mean that asylum seekers become destitute with no possibility of supporting themselves. We believe therefore it is *not* disproportionate to extend CLS funding for representation to asylum support appeals.

2) There is funding available for general legal advice under the Legal Help scheme. Also the Lord Chancellor has the power to authorise “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 theory, as the Government’s response suggests, general legal advice under the Legal Help scheme might be available for those who qualify financially, and solicitors could be applying for exceptional funding from the Legal Services Commission. However, as this rarely happens in reality, ASAP believes that these provisions do not constitute an effective mechanism to safeguard asylum seekers’ human right to a fair hearing.

In our experience, very few solicitors are willing to represent asylum seekers during their asylum support appeal hearings because they do not get paid for it. ASAP also believes that because there has been no public funding for legal representation for this type of appeal, solicitors have not had an opportunity to build up their expertise in this area of law. It should also be noted that immigration solicitors do not necessarily help their asylum seeking clients with their asylum support appeals because asylum support law is distinct from immigration law.

As a result, there are few solicitors asylum seekers can turn to when they have such tight deadlines to comply with for the asylum support appeals. On the other hand, the Home Office employs trained presenting officers whose job is to provide legal representation on their behalf at the AST. ASAP’s experience shows that the Home Office is represented in almost all appeal hearings while very few asylum seekers are represented.

The AST statistics shows that only 7 to 8 % (between 52 to 63 cases) of the appellants were able to receive advice (not representation) from solicitors before their asylum support appeals between October 2006 and March 2007. Even though legal advice could be available under the Legal Help scheme, 25% (185 cases) received no advice at all. Practical barriers mentioned above also make it difficult for asylum seekers to access legal advice. In practice, applying for exceptional funding is not a realistic option either, as demonstrated by the fact that, for the last three years, there has not been a single occasion when such funding was authorised*.

The Government’s response also mentions that extending CLS funding for asylum support appeals representation would be ‘out of step with existing, and developing, context for CLS immigration funding’. However, as asylum support law is not immigration law, funding for asylum support appeals would come under CLS funding for housing law. Hence ASAP believes that the Government can easily implement the JCHR’s Recommendation 7 without being inconsistent with their approach to CLS immigration funding.

Lastly, we would like to comment on the matter of provision for accommodation and subsistence for the appellants. ASAP understands that the Government has recently stopped issuing the appellants train tickets for attending asylum support appeals hearings. Instead, many appellants now travel by coach which has significantly increased their travelling time. Many of the destitute appellants find these long journeys challenging and arrive at the tribunal completely exhausted. ASAP has in the past provided food and drinks for these appellants in order that they would be refreshed enough to give evidence during their appeal hearings. ASAP recommends that the

Government provides subsistence vouchers for those who have to travel more than 3 hours to their asylum support appeal hearings.

Conclusion

ASAP finds it unacceptable that the Government continues to ignore the evidence contained in the JCHR's report and refuses to accept Recommendation 7. ASAP urges the Government to reconsider its position and make public funding available for legal representation for asylum support appeals immediately.

End.

*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.'

For further information, please contact:

Ms Eiri Ohtani (Co-ordinator)
Ms Gerry Hickey (Legal Advisor)
Asylum Support Appeals Project (ASAP)
Cornerstone House
14 Willis Road
Croydon CR0 2XX
Tel: 020 8684 5873

From 1st September 2007, our contact details will be:
18 Barclay Road
Croydon CR0 1NJ
Tel 020 8686 1888