

## **Briefing Note: Mental health and eligibility for section 4 support**

Please read first our Factsheet 2 and 12 on s4 support. Clients with mental health problems can be successful in obtaining (or retaining) s4 support, even though they do not currently have outstanding further submissions. Due to their extreme vulnerability, it can be argued that support is necessary under reg 3(2)(e) ('the provision of accommodation is necessary for the purpose of avoiding a breach of a person's Convention rights'). Thus, they are qualifying under this ground, and not the stricter criteria of reg 3(2)(b) ('unable to leave the United Kingdom by reason of a physical impediment to travel or for some other medical reason'). Please call ASAP's advice line to discuss individual clients.

### **Risk of suicide, self-harm or serious deterioration if destitute**

A client's medical evidence may indicate that they present a risk to themselves and/or others because of previous self-harm or suicide attempts relating to their (subjective) fear of return to their home country. They may therefore be 'unable to travel' because the prospect of return could trigger a suicide attempt. The civil aviation authority website states: *the key consideration [for psychiatric conditions] ... [is] will the condition interfere with the safe conduct of the flight or will the flight environment exacerbate the condition? The main areas for concern are people whose behaviour may be unpredictable, aggressive, dis-organised or disruptive. In these circumstances, air travel would be contra-indicated.*<sup>1</sup>

Any medical evidence should address why the behaviour that might interfere with the safe conduct of a flight cannot be mitigated by medication and/or an escort.

The starting point for section 4 eligibility and the risk of suicide is the Principle Judge's landmark decision [AS/15/05/33112](#) on 12/02/2016 in which she rejected the suggestion that a perceived risk of suicide creates an entitlement to support on human rights grounds (reg 3(2)(e)). Relying on the Supreme Court decision *J v SSHD*<sup>2</sup>, the Principle Judge was satisfied effective processes were in place to ensure the safety of anyone who was at risk while in the UK (if necessary via being sectioned under the Mental Health Act 1983) and at the point of removal (via medical escorts).

However, an clients mental health illness could form part of the 'variety of factual circumstances' described in *R(NS) v First-tier Tribunal* [2009] EWHC 3819 (Admin) (see also factsheet 2). In *R v First-tier Tribunal (Social Entitlement Chamber)* [2021] EWHC 1690 (Admin), the judge described human rights assessments as 'multifactorial' (para 137), meaning that there might be various aspects of a client's circumstances which means they are entitled to s4 support under reg 3(2)(e). Serious mental health conditions taken together with for example the prospect of further submissions, may mean it is not reasonable for that individual to leave the UK to avoid destitution.

### **Limited ability to pursue voluntary return**

A client's mental health problems may limit the steps they are able to take to return to their home country voluntarily, such as re-documentation. For example, they may have difficulties with memory,

<sup>1</sup> <https://www.caa.co.uk/Passengers/Before-you-fly/Am-I-fit-to-fly/Guidance-for-health-professionals/Psychiatric-conditions/>

<sup>2</sup> [2005] EWCA Civ 629. This case was considered in the context of enforced return; one of various examples of the Tribunal using case law relating to different statutory frameworks, in the absence of decisions from the higher courts specific to asylum support.

organisation or communication which make it harder for them to make the necessary arrangements. What steps could someone in these circumstances *reasonably* be expected to take to return to their home country and how would this differ from someone without a mental health condition? Unless and until appropriate measures are in place to enable them to leave the UK safely and humanely, for example with the assistance of a medical escort provided by the Home Office, failure to provide support may breach Article 3 ECHR.

### Relevant questions

1. Is the Home Office's medical evidence written by someone with the appropriate specialism? The Home Office obtains a written medical opinion from NowMedical, who will review the papers sent to them. Is the client's medical evidence written by someone who is more appropriately qualified to comment on their specific condition?
2. How well does the client's own medical professional, who is providing evidence, know them? The fact that the Home Office's medical advisor has not met the client should be taken into account.<sup>3</sup>
3. If a s4 appeal is challenging a discontinuation of support (where support was previously awarded for medical reasons under reg 3(2)(b)) has the Home Office discharged the burden of proof to demonstrate that the appellant's health has significantly improved to the extent that they are now able to travel/take steps to return voluntarily?
  - Has the appellant's medication decreased? Have they stopped having therapy?
  - If so, what are the reasons for this? If stable and secure accommodation has led to an improvement in their mental health, how might destitution affect this?
  - Whose evidence/opinion is it that they have improved? Is it the view of a medical professional?

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<sup>3</sup> *Shala & Anor v Birmingham CC* [2007] EWCA Civ 624 (para 22)