

ASAP

ASYLUM
SUPPORT
APPEALS
PROJECT

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Not Destitute Enough

A report documenting UKBA's failure to apply the correct legal definitions of destitution in asylum support decisions

Not Destitute Enough

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Foreword

Asylum Support Appeals Project (ASAP) is an advocacy organisation working to end destitution amongst asylum seekers in the UK by defending 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 voluntary sector advice agencies. ASAP's policy work and strategic litigation work aims to change inhumane asylum policies which are forcing many asylum seekers into long-term destitution.

ASAP has produced several reports about asylum support decision-making issues and this report, *Not Destitute Enough*, is the latest addition. Other reports, such as *Failing the Failed?* (Feb 2007) and *Unreasonably Destitute?* (July 2008) can also be downloaded from our website at www.asaproject.org.uk. If you would like to receive a hard copy of these reports, please contact us on 020 8686 1888 or advice@asaproject.org.uk.

This new report, *Not Destitute Enough*, follows a similar approach taken by *Failing the Failed?*, in terms of looking at the asylum support decision-making process. *Failing the Failed?* analysed asylum support decisions made in 2006 on Section 4 cases. One of the key recommendations ASAP made at that time was that NASS (as it then was) adopts a clear and consistent approach to decision-making.

ASAP wanted to find out whether, two years on, there has been any significant improvement in UKBA's asylum support decision-making. In *Not Destitute Enough*, we have focused on how UKBA is deciding whether a person is destitute or not for the purpose of asylum support.

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Summary

This report shows that UKBA's asylum support decision-making does not reflect the legal definitions of destitution. In decision letters refusing or terminating support, UKBA consistently fails to outline the test being used to determine whether a person is destitute. However it is abundantly clear that UKBA frequently fails to apply the appropriate and separate legal tests for destitution. This test consist of two parts: availability of adequate accommodation and whether the person can meet essential living needs. When compared to the findings in ASAP's previous report, *Failing the Failed?*, it appears that the quality of asylum support decision-making remained poor over the last two years.

UKBA's confused and confusing decision-making creates further difficulties for destitute and refused asylum seekers who are desperately trying to access support and have to appeal against negative UKBA decisions. These asylum seekers are told by UKBA that they are not destitute enough to get support from them, and yet, UKBA's decision letters give them little, and often misleading, clues as to what they should do to demonstrate their destitution. This is forcing some refused asylum seekers to remain destitute unnecessarily.

ASAP also found that the general quality of decision-making on destitution is particularly poor. Between January and October 2008, ASAP represented 40 cases at the First-Tier Tribunal (Asylum Support) (formerly the Asylum Support Tribunal) where support was refused/terminated because UKBA did not believe the applicant to be destitute. The Tribunal found 70% of these UKBA decisions to be wrong and granted/reinstated support. The Tribunal remitted an additional 8% of these decisions to UKBA for further investigation.

This raises a serious question over how UKBA's asylum support decision-making is monitored internally and whether those who are tasked to make asylum support decisions are given appropriate training to be able to carry out such tasks competently.

Based on our findings, ASAP recommends that

- UKBA outlines the correct legal test of destitution in all section 4 decision letters
- UKBA applies the appropriate legal test of destitution when assessing applications for section 4 support
- UKBA improves the quality of decision-making on destitution issues

Methodology

Between January and October 2008, ASAP represented 157 asylum support appeals at First-Tier Tribunal Asylum Support (formerly the Asylum Support Tribunal) based in Croydon. Out of these 157 cases, 40 were cases where support was refused or terminated on the grounds that UKBA did not believe that the person was destitute although in most cases s/he met all other criteria to obtain support.

ASAP analysed the UKBA's decision letters from these 40 cases to find out how UKBA assessed whether the person was destitute or not. The cases included women fleeing domestic violence, individuals suffering from serious health problems such as HIV and TB, and families with young children.

The vast majority of these cases involved Section 4 support.

We analysed the 40 decision letters in the following ways:

1) Looking at the legal test of destitution

- Did UKBA outline the destitution test they were applying in making a decision?
- Did UKBA apply the appropriate separate legal tests:
 - a) Is adequate accommodation available to the person?
 - b) Can the person meet his / her essential living needs?

2) Looking at the overall quality of the written decision

- This was to identify unintelligible statements, incongruous findings of fact, the absence of reasoning in fact-finding and other errors.

“Most of the 40 UKBA decisions analysed for this report were found to be wrong by the Tribunal. In 28 out of the 40 cases (70%), the Tribunal in fact found the person to be destitute and quashed UKBA’s initial decision”

Most of the 40 UKBA decisions analysed for this report were found to be wrong by the Tribunal. In 28 out of the 40 cases (70%), the Tribunal in fact found the person to be destitute and quashed UKBA's initial decision. In 3 out of the 40 cases (8%), the Tribunal requested that UKBA carries out further investigation in order to a new decision.

Background information on destitution and Section 4 support

Destitution among asylum seekers in the UK is believed to be a substantial and growing problem. The scale of the problem is difficult to quantify as, to date, no quantitative research has been undertaken at a national level. The only statistics available are those issued by the National Audit Office. In a report written in 2005 on Home Office procedures for returning refused asylum seekers, The National Audit Office estimated that between 155,000 and 283,500 refused asylum seekers were living in the UK¹.

The main group affected by destitution in the UK are refused asylum seekers. Support for asylum seekers ends 21 days after a person receives a final negative decision on his/her asylum claim i.e. after any appeals have been concluded. The only exception, in which support does not end after 21 days, is when an asylum seeker has dependent children in their household before their asylum claim is finally determined. In this case, the person continues to be entitled to support until they are either removed from the UK or they leave voluntarily. Apart from this exception, asylum seekers whose claims for asylum have been refused are expected to return voluntarily to their countries of origin.

In very restricted circumstances some refused asylum seekers can access Section 4 support.

To qualify for Section 4 support, a refused asylum seeker must meet one of the following criteria, as set out in regulation 3(2) of The Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005:

- The person is taking all reasonable steps to leave the UK
- The person is unable to leave the UK due to physical impediment to travel or for some other medical reason
- The person is unable to travel because in the opinion of the Secretary of State there is currently no viable route of return available
- The person has applied for judicial review in regards to a decision relating to his or her asylum claim and has been granted permission to proceed (England & Wales)
- Support is necessary to avoid a breach of the person's Convention Rights within the meaning of the Human Rights Act 1998

¹ National Audit Office 'Returning Failed Asylum Applicants' (HC 76 2005-2006) www.nao.org.uk/publications/nao_reports/05-06/050676.pdf This figure was calculated by subtracting the number of removals from the number of asylum seekers who have had their asylum refused

Legal framework for decision-making on destitution

Destitution: the legal definition

The legal definition of destitution for Section 4 purposes is set out in Section 95(3) of the Immigration and Asylum Act 1999.² This states that a person is destitute if:

- (a) s/ he does not have adequate accommodation or any means of obtaining it (whether or not his essential living needs are met);
and/or
- (b) s/he has adequate accommodation or the means of obtaining it, but cannot meet his other essential living needs
and that s/he is destitute now or is likely to be within 14 days

Destitution: legal test with two parts

As well as setting out the legal definition for destitution (see above), the legislation also sets out the framework for deciding whether a person is destitute or not. It lists issues that UKBA needs to consider when deciding whether a person has 'adequate accommodation', and/or whether they can meet their 'essential living needs'.

Part one: adequate accommodation?

If the applicant has some form of accommodation, UKBA has to assess whether it is adequate accommodation and the regulations require UKBA to consider the following:³

- whether it is reasonable for the person to continue to occupy the accommodation
- whether they can gain entry to it
- whether they can live there together with their dependents
- whether it is overcrowded
- whether it is unsuitable for the person on account of any health needs the person may have

² Section 95(3) Immigration and Asylum Act 1999 http://www.opsi.gov.uk/acts/acts1999/ukpga_19990033_en_9#pt6-pb2-l1q95

³ Asylum Support Regulations 2000: Regs 8 <http://www.opsi.gov.uk/si/si2000/20000704.htm#8>

Part two: meeting essential living needs?

In addition to assessing whether a person has adequate accommodation, UKBA must decide whether someone can meet their essential living needs.

Neither statute nor regulations define what is meant by 'essential living needs'. There is no legislative list of what constitutes essential living needs. So what are 'essential living needs'?

Clearly essential living needs must include an individual's ability to feed themselves (and dependents) and to obtain essential goods such as sanitary product and clothing. ASAP would argue that it must also include the ability to meet basic social needs which help maintain mental as well as physical well-being.

On the other hand, in deciding whether someone is destitute, the regulations do require UKBA to assess the individual's assets. The regulations state that UKBA must take into account the following⁴:

- any income which s/he have or which may reasonably be expected to have;
- any other support which is available or which may reasonably be expected to be available to them;
- any of the following assets which are available to her/him or which might reasonably be expected to be available to her/him: cash, savings, investments, land, vehicles or goods for trade or business

“Unfortunately UKBA does not take a common sense view and consistently presumes any support from friends or family remains available even where it was only originally provided to avoid a crisis.”

The expression 'which is available or which may reasonably be expected to be available' is not defined by the regulations. The Home Office consultation paper on the relevant regulations stated that this applies to cases where support is being provided by friends and family⁵. In *Support for Asylum-Seekers* by S Willman, S Knafler and S Pearce the authors state that 'The intention seems to be to take account of support that family and friends can reasonably afford to provide... and should be distinguished from emergency support provided by family or friends which they cannot really afford but may be offered on a humanitarian basis to prevent physical or mental injury'⁶. Unfortunately UKBA does not take such a common sense view of what may reasonably be expected to be available and consistently presumes

⁵ NASS' Consultation Document on the Main Regulation Under Part V1 of the Immigration and Asylum Act 1999, para 21

⁶ Sue Willman, Stephan Knafler and Stephen Pierce, *Support for Asylum-seekers: a guide to legal and welfare rights*, 2nd edition, LAG 2004 p142.

any such support from friends or family remains available even where it was only originally provided to avoid a crisis.

In many cases no formal and structured assessment is carried out by UKBA as to:

- the nature of support the person has been accessing
- whether it is meeting the person's essential living needs
- whether the support can continue
- whether there has been a recent changes in circumstances

Some of the cases ASAP has analysed show that even where applicants explain the nature of the support that they have relied on before applying to UKBA and why that cannot continue (eg. they have exhausted the generosity of friends and family), UKBA regularly refuses to provide support purely on the basis that the individual has been without UKBA support for a period to time. For example, we have seen countless refusal letters which include comments such as:

‘given that you have been without support since April 2007 it is obvious that you have access to a private means of support’

and

‘it is not credible that someone who has been without support since 2006 cannot continue to access an alternative source of support’

UKBA's lack of a clear decision-making process

- Out of 40 decision letters analysed, only one letter outlined the destitution test
- 22 decision letters did not apply appropriate and/or separate legal tests of destitution
- In 16 decision letters, glaring errors or wording of the decision made it impossible to understand on what basis UKBA decided the person was not destitute

ASAP believes that it is vital that UKBA adopts a clear structure when deciding whether someone is destitute in order to maintain a fair asylum support decision-making process. Yet these findings show that UKBA consistently fails to include an outline of the legal test of destitution in its written decisions and, more worryingly, fails to apply the tests set down in law when assessing whether someone is destitute.

It appears that since these issues were highlighted in ASAP's previous report *Failing the Failed?*, there has been very little improvement in UKBA's asylum support decision-making in relation to destitution.

ASAP also makes the following observations based on our analysis:

- **What evidence is needed to prove that destitution?**

Often it was unclear why UKBA decided that the person was not destitute. In some of the cases, the person's accounts of destitution were simply not believed. In other cases UKBA arbitrarily decided that the documentary evidence they had supplied was not good enough. In yet other cases, UKBA made an assumption that because the person had not been receiving UKBA support, the person must have access to support from other sources. The problem stems partly from the current Section 4 support application form which does not explain what UKBA expects from the applicant as evidence of destitution.⁷

- **Do you need to be street-homeless to be destitute?**

Sometimes, UKBA had applied an incorrect test when assessing destitution. One error which appeared repeatedly in the decision letters is UKBA's confusion of the higher tests of street homelessness and/or breach of Article 3 of the ECHR with the legal test of destitution. Often, UKBA expressly decided that a person was not destitute because s/he was not '*street homeless*' and/or often stated that s/he had '*not established the necessary standard to engage the high threshold of Article 3 of the ECHR*'. Neither of these phrases is contained in the legislation.

⁷The cases analysed for this report were not considered under the New Asylum Model. Individuals applied for support using the Case Resolution Section 4 Support Application form, which can be downloaded from the UKBA website: <http://www.ukba.homeoffice.gov.uk/asylum/support/apply/section4/> (accessed: 17 Dec 2008)

UKBA is repeatedly not applying the law but is creating its own higher threshold for section 4 support. This issue was highlighted two years ago by ASAP's previous report, *Failing the Failed?* It is very disappointing that it has not been addressed by UKBA.

- **A culture of disbelief in asylum support decision-making?**

One of the major criticisms to be levied at the Home Office over recent years is that there a 'culture of disbelief' operating amongst decision makers in relation to asylum applications⁸. ASAP contends that the 'culture of disbelief' extends to decision-making on Section 4 support.

- **Can support from charities meet the person's essential living needs?**

Thousands of destitute asylum seekers across the UK are dependent on charities for their survival. In the absence of any form of state support, these charities provide a much needed lifeline to this group. The services offered include the provision clothing, sanitary products food parcels, hot meals and, less commonly, small amounts of cash and supermarket vouchers. Many of ASAP's clients rely entirely on charitable support. However, UKBA consistently fails to recognise that this form of support is provided on an emergency basis only and is not designed, nor able, to meet the person's 'essential living needs'. Therefore the fact that someone has managed to sustain themselves on charitable support for any period of time should never be used as justification for refusing support.

⁸ The Independent Asylum Commission *Fit for Purpose Yet? Interim Findings*, March 2008

Case studies

There follow some of the appeals that ASAP represented. All the appeals were allowed.

Case study: Adequate accommodation?

Ms S is a Congolese national and is HIV positive. When she applied for Section 4 support she, along with her two dependent children, were living in hostel accommodation provided by social services. This consisted of one room and a total of £24 a week to meet the family's living needs.

Ms S became homeless following a breakdown of her relationship with her husband. Her husband had indefinite leave to remain in the UK and he had successfully obtained a court order to remove her from the family home. Faced with street homelessness, social services agreed to support her under emergency powers.

In her application for Section 4 support, Ms S wrote that she was homeless with two children and had no money coming in. She explained that she was being supported by social services on a temporary basis but that they were withdrawing support the following week. She stated that there was no one else to help and wrote that her case was urgent. She ended her Section 4 application form by writing 'Please find us accommodation urgently!'

In their refusal letter, UKBA stated 'you state in your application that you have been supported through social services. They are due to stop you (sic) support in *** 2008. You have not provided documentary evidence to substantiate that an alternative form of support was no longer available to you. It is clear that you have maintained some kind of support.'

The First-Tier Tribunal (Asylum Support) found Ms S to be destitute on the grounds that £24 a week was not sufficient to meet the appellant's or her children's essential living needs. They also accepted the client's testimony that the family was being housed on an emergency basis and that this arrangement would shortly come to an end.

This case highlights UKBA's failure to properly assess whether Ms S was destitute, despite the evidence that she was living in emergency accommodation provided by social services which was about to be withdrawn. The fact that this person was being provided with a limited form of support on an emergency basis should have been a strong indication of her inability to secure support elsewhere.

Many refused asylum seekers frequently move around or stay in severely overcrowded accommodation. Others will have slept outside in parks, in stations or on night buses. In cold weather, many rely on their local mosques or churches for shelter. Very often, our clients sleep on the floors of other Section 4 accommodated people, which can result in the loss of that person's accommodation for a breach of conditions. On countless occasions our clients have described having to leave this accommodation early in the morning, unable to return until late at night, to avoid being found on the premises by the accommodation provider. ASAP believes that, all of these individuals should be considered as a person not having access to adequate accommodation.

Case study: A culture of disbelief?

Ms Z is a Nigerian national with three dependent children, the youngest being a three month old baby. She applied for Section 4 support because the family who had been providing her with temporary accommodation was moving away. For the past nine months, she had been surviving on food parcels and small amounts of cash she received from various charities. With her application for support she provided a copy of a letter from her friend and a detailed statement describing the various charities she had been visiting. She explained that she was unable to provide enough food for two of her children as most of the money she received from the charities was used to buy nappies and food for the baby. She ended by saying 'please consider my application urgently. I have been asked to leave [the accommodation] immediately and I do not have any other friends or relatives for support... If I become homeless it will be dangerous for me and my children'.

In their refusal letter UKBA wrote 'You submit a letter from you friend's husband dated the *** 2008 which states that he is no longer in a position to continue to support you. There is no end or start date....You also state you have had support from the Red Cross, *** Refugee Services, *** Community Centre and *** Refugee Services. We are not satisfied in view of the vague information that this is a satisfactory explanation in itself that this avenue of support can no longer continue'.

In allowing her appeal the Tribunal commented that she was a credible witness

and had given a straightforward account of her current circumstances which was supported by documentary evidence.

Sometimes obtaining evidence in support of an application has been taken by UKBA as fabricating a claim. For example, in another case represented by ASAP a young woman with children submitted two letters from friends stating that they could not continue to assist her. They had previously provided her with support but this stopped due to their own difficult circumstances. In their decision letter UKBA wrote that 'these letters bore all the hallmarks of ones written purely to obtain support'.

Case study: Not destitute enough

Mr G is from the Democratic Republic of Congo. He had been destitute for ten months when he applied for Section 4 support. To support his application the client provided a letter from the hospital showing that he was suffering from type1 diabetes, which needed to be under specialist monitoring. The hospital also stated that he had poor control of his diabetes and this was likely to have a negative impact on his long term health. Mr G also included a short letter from a local charity saying they had provided him with some financial support but due to a 'very heavy caseload and very limited resources we are unable to continue provided this support'.

Due to his destitution, Mr G was having problems feeding himself and as a result was having difficulty managing his blood sugar levels. He informed ASAP that the small amount of money he received from the local charity enabled him to buy breakfast, but evening meals were more difficult to obtain. For this, he relied on his friends to share their food.

Medical advice to those suffering from diabetes states they need to eat a healthy, well-balanced diet that is low in fat and high in fibre and carbohydrates (e.g. pasta, rice, potatoes). They also need 'to eat the same amount of carbohydrates each day and to try to eat three main meals and two to three snacks daily. Failure to control the diabetes can lead to more serious long term health problems such as strokes, heart disease and kidney and eye disease'⁹.

UKBA refused his application on the grounds that he failed to provide documentary evidence of how he had been supporting himself financially since

⁹ www.netdoctor.co.uk/diseases/facts/diabetesinsulindependent.html

his Section 95 support was terminated ten months previously. UKBA appears to have placed no weight on the evidence he provided from a local charity. It did, however, acknowledge his medical letter but only in the context that his condition did not amount to a physical impediment that would prevent him from leaving the UK.

The First-Tier Tribunal (Asylum Support) allowed his appeal and accepted he was destitute based on the evidence he had provided from the hospital and charity. They also stated that the oral evidence he gave was credible and that he provided a clear and frank account of his circumstances.

Quotes from UKBA decision letters

To illustrate our points further, we have included 10 quotes from the 40 UKBA decision letters we analysed for this report.

Quote 1

This applicant's claim for asylum and appeal had failed by October 2005.

'You state on your application form that you are destitute... on *** October 2002 your section 95 support stopped.

On your section 4 application form you have mentioned that you were street homeless since this date, you were hiding and moving from place to place, which is not a reasonable or credible statement. Moreover you have not provided any evidence to substantiate that you are destitute or with out (sic) access to support.

Therefore in the absence of this evidence, it is not accepted that you are destitute or that you are unable to access support through other means.'

ASAP comment - Quote 1: It is not clear what other documentary evidence the appellant could have provided apart from his own statement that he has been '*hiding and moving from place to place*'.

Quote 2

'Destitution

You state on your application form that you are destitute. You claimed to have been without support for a long time. You also claim that you have been sharing food with various friends and sleeping rough in one of your friend's sitting room. You claim that you have been asked to leave immediately and that none of your friends wants to know anything about you. You have not provided any detailed evidence from your friends that this form of support is no longer available to you. Based on the evidence

stated on your application form we are not satisfied that you are destitute given the extensive period that you were without asylum support since *** October 2006. It is clear that you have maintained some kind of support since your asylum support was stopped and that you are not street homeless or that you are unable to access support through other means.

Therefore, it is not accepted that you are destitute or that you are unable to access support through other means. Moreover, it is considered that you have not established the necessary standard to engage the high threshold of Article 3 of the ECHR given that you have accommodation and it is not credible, given that you have been without asylum support since *** October 2006 that this accommodation or any other accommodation is no longer available to you. Thus, on the basis of evidence you have provided on your application form, the secretary does not accept you are destitute.'

ASAP comment - Quote 2: It is not clear how the appellant was supposed to obtain documentary evidence from his friends who '*no longer want[s] to know anything about*' him. Also the length of time that this appellant went without statutory support was, unfairly, taken against him. In any event the wrong test of destitution (street homelessness) was applied.

Quote 3

'You have not submitted any substantial evidence to confirm that support is no longer available to you or that you are not able to access financial support. Consequently we are not satisfied that you are street homeless as or that you are unable to access support through other means. Therefore, we consider that you have not established the standard necessary to engage the high threshold of Article 3 of the ECHR. Thus, on the basis of the evidence you have provided in your application form, the Secretary of State does not accept you are destitute.'

ASAP comment - Quote 3: UKBA did not state what they required as evidence of the cessation of support. In any event the law does not require an applicant to produce 'substantial' evidence. UKBA's

reliance on the absence of 'substantial' evidence reflects the culture of disbelief referred to above i.e. if you are a failed asylum seeker UKBA will require significantly more persuasive evidence than is normally required. In addition to this, UKBA used the wrong test for destitution and 'adequate accommodation' instead requiring the applicant to meet a higher test i.e. street homelessness or a breach of Article 3 of the ECHR as a prerequisite to the grant of section 4 support.

Quote 4

This applicant's claim for asylum and appeal had failed by April 2005

'You state on the application form that you are destitute...You were previously supported under Section 95 for the period of *** January 2005 until *** June 2005. Since that time it is reasonably clear that you have maintained some kind of support. You state that various friends have been supporting you but some of them are fed up to see you again. You have not supplied any supporting evidence or reasons why this arrangement cannot continue or what has precipitated this change, consequently in view of the length of time you have been without support and the lack of corroboration of your statement it is not accepted that you are destitute or that you are unable to access support through other means. Moreover, it is considered that you have not established the necessary standard to engage the high threshold of Article 3 of ECHR given that you already have accommodation and it is not credible, given that you have been without asylum support since *** June 2005 that this accommodation or any other accommodation is no longer available to you. Thus, on the basis of the information you have provided in your application form, the Secretary of State does not accept you are destitute.'

ASAP comment – Quote 4: It is not clear how the appellant can reasonably obtain documentary evidence from friends '*who are fed up to see [him] again*'. It is difficult to understand the reasoning that 'it is not credible' that some accommodation is not available simply because friends had supported the applicant from June 2005 (which friends are now 'fed up with' him). Again, the length of time that he managed to rely on his friends and other informal sources of support counts against the

appellant. Rather than coming to the natural conclusion that the generosity of friends will eventually be exhausted (here after 3 years) UKBA comes to the bizarre conclusion that as friends have supported the applicant for so long, it is incredible that support is no longer available.

Quote 5

‘Destitution

You were offered section 4 support on *** February 2008. Despite 2 attempts to accommodate you, you failed to travel to your arranged accommodation. I do not find it acceptable that in your application of *** February 2008 you stated that you had been sleeping on the streets at that time for the past 3 months. You claim that you have been racially attacked. The letter of *** May 2007 clearly states that your complaint to the Staffordshire Police is not being treated as racially motivated. I do not accept your reasons for not wanting to reside outside of Birmingham which is the are (sic) you have requested to reside in.

According to your destitution claim, it would mean that you have been sleeping on the streets for the past 6 months even though accommodation has been offered to you on two occasions. You have not provided any witness statements to verify that you have been sleeping rough such as the Red Cross. You have failed to satisfy the destitution criteria.’

Quote 6

‘Destitution

You claim to be destitute. Records show that you have claimed asylum in June 2003 which was refused in August 2003. I note that you have not claimed any NASS support since this time. I also note that your addresses have always been private accommodation. I do not find it credible that you have managed to maintain yourself in the UK since 2003 without the support of benefits yet you now claim that this support is no longer available without even providing a detailed explanation of where you have been living and how you have been

supported.

You have not provided any witness statements other than one that covers the last 3 months at an address that does not appear on the Home Office record database. I do not accept your destitution and for this reason you have failed to meet the section 4 criteria.'

Quote 7

'Destitution

Your application has been considered on the evidence that accompanied your section 4 application. You provided your previous section 4 address, as your current address on your application form. Our records indicate that your section 4 support was previously terminated on *** July 2008. You have not provided any evidence to explain how you have been supporting yourself since this date. Based on this I am not satisfied that you are destitute. I am not satisfied that you are street homeless or that you are unable to access support through other means.

Therefore for the above reasons I am not satisfied that you are destitute.'

ASAP comment – Quote 7: We understand that the applicant had been evicted from his section 4 accommodation in July 2008 but having nowhere else to go he continued to use the accommodation as a postal address. In this way UKBA could contact him with the response to his further claim. He was relying on other failed asylum seekers at the accommodation to be able to collect his post. It was perverse of UKBA to rely on the use of this address, where UKBA knew he could not reside, to arrive at the conclusion that he was not destitute.

Quote 8

'You are refused Section 4 support on the 19th August 2008 for the following

reason:

- On *** April 2008 you contacted Solihull Reporting Centre and advised that you wish to commence reporting as you have moved to the area. You provided a new address of: ***.

You then however contacted the Reporting Centre again on *** August 2008 and informed them that you have moved to: ***.

Therefore you don't meet the criteria for destitution as you have already moved to two different addresses since being evicted your friend's flat.'

Quote 9

'Dear Ms ***,

IMPORTANT LETTER! A decision on behalf of the Secretary of State has been made to refuse you support. If you wish to appeal against this decision you must do so in the timeframe stated below.

Thank you for your application for support under Section 4 of the Immigration and Asylum Act 1999.

Your application has been carefully considered by myself on behalf of the Secretary of State, but I am not satisfied that you satisfy the criteria set out in regulation 3 of the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005 (the Regulations).

You are refused Section 4 support on *** October 2008 as it is not considered that you have shown yourself to be destitute as claimed.

Under section 103(2A) Immigration and Asylum Act 1999 you have a right to appeal to an independent adjudicator. Should you wish to appeal you should complete the enclosed notice of appeal and send it to:

Asylum Support Adjudicator
Christopher Wren House
113 High Street
Croydon

CRO 1QG

The notice of appeal must be received by the Adjudicator not later than 3 days after the date on which you receive this letter.

Alternative help and advice for asylum seekers and those whose asylum claim has been refused who wish to return home voluntarily can be obtained from the International Organization for Migration. They can be contacted at:

21 Westminster Palace Gardens
Artillery Row
London
SW1P 1RR

Telephone: *** or ***

Website URL: www.iomlondon.org

Fax: (020) ***

E-mail : ***

Yours sincerely

UK Border Agency'

ASAP comment - Quote 9: We decided to print this decision letter in full, as it gives no explanation whatsoever as to why the applicant was considered not to be destitute.

Quote 10

'Destitution

Home Office records indicate that you claimed asylum in February 2005, this was refused on *** April 2005. Your appeals against this decision were unsuccessful and you subsequently exhausted all your appeal rights on *** November 2005. NASS records indicate that your section 95 support was discontinued on *** December 2005.

You previously made an application for Section 4 support on *** February 2006 which was refused as you failed to meet the criteria which you applied under. You did not appeal the refusal decision. It is clear that you have

maintained your support since that time. You have provided a letter from a friend that states he can no longer provide you with support. This letter is dated ***

December 2005. You also state in your destitution statement dated *** October 2008 that you met a man in the street and then found out that he was your father. You have been residing with your father but due to his mental health, you do not wish to continue to live with him. You have not provided a letter to verify that you had indeed been residing with him for any period of time. You are in your third month of pregnancy. You have failed to provide evidence to show why you are not relying on the support of your partner despite your medical records dated *** September 2008 detailing that you attended your antenatal scan with your partner *** and that you both decided against the test for ***. Consequently we are not satisfied that you are street homeless and that you are unable to access support through other means. Therefore, we consider that you have not established the standard necessary to engage the high threshold of Article 3 of ECHR.'

ASAP comment – Quote 10: Again, UKBA is confused about the test of destitution. The decision-maker here seems to assume that the applicant needs to meet the 'high threshold' of Art 3 of the ECHR in order to meet the destitution criterion of Section 4 support.

Section 4 support is a legal entitlement not a discretionary form of support

If meeting the destitution eligibility criteria is a fundamental part of Section 4 asylum support decision-making, why is UKBA not applying a fair, consistent and legal assessment of destitution?

ASAP believes that this situation has arisen partly because UKBA continues to treat Section 4 support as a discretionary form of support (i.e. as 'hard case' support as explained below*), failing to recognise it as a legal entitlement. We believe that this is also evident in UKBA's widespread delay¹⁰ and maladministration in securing support for those who UKBA has accepted are entitled to section 4 support. It regularly takes days and sometimes weeks for the support to be provided despite a decision of entitlement.

*The power to provide Section 4 support was introduced under the Immigration and Asylum Act 1999. Initially it was provided on a purely discretionary basis to some refused asylum seekers and was commonly known as 'hard case support'. Regulations setting out the criteria in full were not introduced until March 2005¹¹. Those regulations also introduced the right of appeal to the Tribunal against a decision to refuse or discontinue Section 4 support. The establishment of Section 4 support regime in 2005 ensured that a larger number of refused asylum seekers could access support¹².

¹⁰ From the outset the provision of Section 4 support has been plagued with delays. For example, despite UKBA's targeted response time of two to five days, there is a wealth of evidence to show that individuals are likely to wait up to three times that before receiving a response to their asylum support application. Individuals also experience delays following a decision to award them support, or following a successful appeal in which a decision not grant support was successfully overturned. ASAP's records show that between July and September 2008 14 out of 22 individuals who were represented by ASAP and had successful appeals had to wait 14 days or more before they were given accommodation and vouchers after their appeals.

¹¹ The Immigration and Asylum (Provision of Accommodation to Failed Asylum Seekers) Regulations 2005

¹² Figures provided by Refugee Action show that prior to 2005 only around 500 individuals were in receipt of hard case grant. Section 4 Delays Briefing, Refugee Action June 2008

Conclusion

Our research shows that UKBA's asylum decision-making on destitution issue does not clearly and properly adhere to the governing legal framework and UKBA often appears to approach asylum seekers' accounts of destitution with great suspicion.

This creates serious problems for destitute and refused asylum seekers. Firstly, their support is often unfairly and unlawfully refused or terminated. Secondly, they will not be able to understand clearly why UKBA did not believe they are destitute. Thirdly, they will not know what further evidence they need to submit or further steps they need to take in order to demonstrate to UKBA that they are destitute.

70% of the cases analysed for this report were won on the appeal with assistance from ASAP. In these cases, ASAP believes that UKBA failed to assess the individual's circumstances of destitution properly.

This systematic failure within UKBA's asylum support decision-making process is unnecessary prolonging the destitution of individuals who are lawfully entitled to support. In addition it is wasting public resources requiring appeals to be lodged and heard in order to arrive at decisions which should have been made promptly at the outset. ASAP believes that an underlining problem is that UKBA treats section 4 support as if it is a discretionary form of support rather than a legal entitlement.

Based on our findings, ASAP recommends that:

- UKBA outlines the legal test of destitution in all section 4 decision letters
- UKBA applies the appropriate legal test of destitution when assessing applications for section 4 support
- UKBA improves the quality of decision-making on destitution issue

It is expected that UKBA will start using a new Section 4 application form in 2009. ASAP hopes that this new form will clearly outline what evidence the applicant needs to provide in order to prove her/his destitution, in relation to both lack of adequate accommodation and an inability to meet essential living needs. But the crux will still be the quality of UKBA's decision-making on that evidence.