

25 May 2021

Factsheet 20

**In this Factsheet:**

Eligibility for asylum support for current and refused asylum-seekers due to the Covid-19 pandemic

ASAP Factsheet 20

Covid-19 and asylum support

This Factsheet cover the changes in eligibility for asylum support as a result of Covid-19. It aims to be up to date as of 25/05/2021.

Please refer to Factsheet 1 regarding s95 support, and Factsheets 2 and 12 regarding s4 support. For those who have never applied for asylum please refer to ASAP's Briefings: Schedule 10 Support May 2021 and *Absconders and withdrawn asylum claims* May 2019. These Briefings explain how some categories of people may be eligible for Immigration Act 2016 sch10 para 9 support rather than s95 or s4 support (see section on sch10 below). You can find all our Factsheets and Briefings on our [website](#).

**Our telephone advice line**

If you still have questions or need further information and advice after reading this factsheet, please contact our advice line on 020 3716 0283. It is open on Monday, Wednesday and Friday from 2pm to 4pm. Please note, this is a second-tier advice line. This means that we can give advice to other advice workers but not to individual clients.

**Current asylum-seekers**

All destitute asylum-seekers who are currently in the asylum system, and are not yet appeals rights exhausted (ARE), are entitled to s95 support.

**Asylum-seekers who become refused asylum-seekers**

As a result of a case called QBB, on the 24 May 2021, the HO agreed to withdraw their March 2021 negative cessations policy. At the time of writing, there is therefore once again a pause on cessations of asylum support. As of September 2020, the HO is no longer transferring those who become ARE to s4 support.

**Refused asylum-seekers**

Usually the majority of refused asylum-seekers on s4 support have outstanding fresh claims (known as 'further submissions') as it has long been established that it is not reasonable to be expected to leave the UK when waiting for a decision on a fresh claim. This cohort's eligibility for s4 support is under Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regs 2005 reg 3(2)(e): *'the provision of support is necessary for the purpose of avoiding a breach of a person's Convention rights, within the meaning of the Human Rights Act 1998'*.

The Convention right relied on is ECHR Article 3 ‘*inhuman or degrading treatment*’, and the breach would arise if a person were left destitute in the UK without the right to work or access to benefits.

On 18 March 2020, the Further Submissions Unit in Liverpool was closed to face to face further submissions appointments and further submissions are now sent by email to [CSUEC@homeoffice.gov.uk](mailto:CSUEC@homeoffice.gov.uk).

Therefore, s4 eligibility will be created once the further submissions have been sent. Or before, if the submissions are sufficiently far advanced to enable the AST to conclude that they are not hopeless or abusive, and there is a good reason why they haven’t already been submitted to the HO. However, it is no longer necessary to have an outstanding fresh claim in order to be eligible under reg 3(2)(e), as set out below.

### Discontinuation of s4 for refused asylum-seekers

On the 27 March 2020, the HO stopped cessations of s4 and housed all destitute asylum-seekers who applied for s4 on the basis of the public health risks associated with the pandemic. The Home Office has twice attempted to begin cessations of asylum support, once in September 2020 and then again in April 2021. Both attempts to restart cessations of asylum support during a pandemic have been successfully challenged through litigation.

As a result of a case called QBB, on the 24 May 2021, the HO agreed to withdraw their March 2021 negative cessations policy. At the time of writing, there is therefore once again a pause on cessations of asylum support.

We do not know when the HO will restart (for a third time) cessations of asylum support. However, the pause *may* continue until Step 4 of the UK Government’s ‘roadmap’ for removing social restrictions. (Step 4 will not be before 21 June 2021.) When cessations restart, each refusal notice will give 21 days’ notice of actual eviction (for the first 3 months from the resumption of cessations). The HO have agreed to inform the National Asylum Stakeholder Support Forum of any decision to recommence cessation of s4 support. The HO has also agreed that any new policy on cessations will have regard to Public Health England advice and will review the existing Equality Impact Assessment.<sup>1</sup>

Those who are no longer destitute or who receive a positive decision on their fresh claim will still have their support discontinued.

### Refused Asylum-Seekers applying for s4 support

Unlike the situation in March – August 2020, the HO is continuing to *refuse* s4 applications.

<sup>1</sup> See QBB terms of settlement letter dated 24 May 2021 on our website: [http://www.asaproject.org/uploads/GLD\\_to\\_DPG\\_GMLC\\_24.5.21.pdf](http://www.asaproject.org/uploads/GLD_to_DPG_GMLC_24.5.21.pdf)

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On the 26 April 2021 the Principal Tribunal Judge of the AST made a decision in a case called *AM* in which she found that destitute refused asylum-seekers are entitled to support on Human Rights grounds until 21 June 2021. or whenever Step 4 occurs.<sup>2</sup> Para 74 reads:

*The appellant is entitled to accommodation under section 4(2) and regulation 3(2)(e) because he is destitute and the provision of accommodation is necessary for the purpose of avoiding a breach of a person's Convention rights, within the meaning of the Human Rights Act. In my judgment there is no objective justification for excluding failed asylum seekers who are not already accommodated from the category of the public. The appellant is entitled to accommodation only during the COVID-19 pandemic, in times of a very high alert, and national lockdown on public health grounds. Once lockdown comes to an end, which is presently expected to occur on 21 June 2021, the appellant's entitlement under regulation 3(2)(e) will come to an end, unless he can satisfy one or more of the conditions in regulation 3(2) of the 2005 Regulations.*

The Secretary of State is seeking to challenge *AM* by judicial review which is listed for hearing on 10-11 June 2021. To date *AM* has not been overturned. However, the Home Office is continuing to refuse s4 applications made on the basis of eligibility under 3(2)(e) due to public health risk caused by the pandemic.

The decision by the Principle Judge in *AM* is not binding, but it is treated as very persuasive and is being followed by other judges at the AST. Until Step 4 of the UK Government's 'roadmap' for removing social restrictions has commenced, which will not be before 21 June 2021, (in England) all destitute refused asylum seekers are eligible for s4 support.

However, *AM* may be overturned in the hearing in early June and at present eligibility will only extend until the 21 of June. By the time those applying now, have an appeal listed at the AST, *AM* may have been overturned or have been made redundant by the lifting of covid-related restrictions.

Furthermore, the temporary emergency procedure for applying for housing while waiting for a s asylum support hearing has come to an end. There is now no option for applying for emergency support while waiting for an appeal at the AST.

The circumstances of an individual case are relevant when assessing if it is in your client's interest to apply for s4 support. Please call our advice line to discuss individual cases.

It is important that good and detailed evidence regarding destitution is provided with the ASF1 (see Factsheet 5). Currently many s4 applications are also being

<sup>2</sup> *AM* has not been published on the AST database, but can be found on the ASAP website: <http://www.asaproject.org/resources/covid-19-guidance>

refused on the basis of 'not destitute'.

### **Schedule 10 support**

The arguments regarding s4 eligibility equally apply to sch10 applicants. Under the HO Immigration Bail interim guidance, those who can apply for s4 or s95 support *should not* apply for sch10 support. The main groups who may be eligible for sch10 are stateless applicants, Article 8 applicants and those with withdrawn asylum claims. The policy lists some of the relevant groups at p9.