



AFTER A NEGATIVE DECISION AT THE ASYLUM SUPPORT TRIBUNAL (AST)

It is frustrating and disappointing when an appeal to the AST is unsuccessful but it is important to act quickly as there may be steps that can be taken to avoid destitution.

Change of Circumstances

The AST must give full reasons for any decision and these are published in a reasons statement. It may be possible to make another application for asylum support should the client's circumstances change depending on the reasons for refusal. For example a client may become destitute if they no longer have any money, accommodation or charitable support or a client may have made a fresh claim for asylum (see below) or have new circumstances which render them unfit to travel (if applicable). If your client's circumstances change after they have been refused support make another application. Be aware that if your client makes another application for support and there is nothing different in their circumstances they are likely to be refused again.

Fresh Claims

If the client is an individual or part of a family and their asylum claim and any subsequent appeal rights have been exhausted they can get support whilst the client is taking steps to leave the UK voluntarily. This support can be withdrawn if the client does not take steps to leave the UK. If a client has made fresh representations to the Home Office they cannot be forced to leave the UK and support should continue until those representations have been considered and disposed of.

It is important to note that following two cases at the AST (ASA/05/04/9178 and ASA/05/07/9572) it is established that support cannot be refused on the grounds that fresh representations have no merit. The AST maintains that it is only the Home Office that can decide what constitutes a fresh claim however the AST accepts the position outlined in NASS Policy Bulletin 71 which states that the asylum support caseworker can consider representations not to amount to a fresh claim if they simply rehearse previously submitted representations or if they contain no detail whatsoever. If the client has further representations to make they should seek advice from an immigration solicitor.

Local Authority Assistance

A client may be able to approach Social Services for support at any stage in the asylum process.

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The information contained in this factsheet is intended for guidance only and whilst every effort is made to ensure it is correct at time of publication it should not be used as a substitute for legal advice. For client specific advice please contact the ASAP.

Under Section 21(1) of the National Assistance Act 1948 a Local Authority may make arrangements for providing (a) residential accommodation for a person aged eighteen or over who by reason of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them; and (b) residential accommodation for expectant and nursing mothers who are in need of Residential accommodation for expectant and nursing mothers who are in need of care and attention which is otherwise not available to them.

Under Section 17(10) of the Children Act 1989 a child is “in need” if he is disabled, or, if, without the provision of local authority services, he is unlikely to achieve or maintain a “reasonable standard of health or development” or his health or development is likely to be “significantly impaired”. Section 20(1) imposes a duty on Local Authorities to provide accommodation for any child in need in their area who appears to them to require accommodation as a result of the person caring for them being unable (whether or not permanently and for whatever reason) to provide them with suitable accommodation. Section 17 confers a power on Local Authorities to also accommodate the family with the child.

A person who is subject to section 115 of the Immigration and Asylum Act 1999 (i.e a person subject to immigration control) may not be able to access support under the above provisions. This includes a person who has not taken steps to place himself in a position to leave the UK voluntarily.

The exclusion does not, however, prevent any power or duty being exercised if failing to do so would result in a breach of a person’s Convention rights.

Advisers with clients who are destitute and have either dependent children or are unable to care for themselves should consider whether Local Authority assistance is appropriate. Further information is available in the ASAP Community Care fact sheet and via the ASAP helpline.

Judicial Review

Judicial Review is the process by which the courts can check and control the activities and decisions of public bodies that affect the public. The AST is a public body so is subject to Judicial Review. Judicial Review is not an appeal as it is concerned with how the decision is made rather than the decision itself. It can only be used when the appeal process has been exhausted. When support is refused, for example, there is a right of appeal to the AST so Judicial Review cannot be used until the appeal process is exhausted.

It may possible to seek Judicial Review against an AST decision to uphold a home office decision to refuse support if that decision is unreasonable, if the AST has given too much weight to irrelevant considerations (or not sufficient consideration to relevant considerations) or if the AST has failed to follow the correct procedure.

An application for Judicial Review should be made promptly and within 3 months of the AST decision so it is important that advisers seek advice from a solicitor as soon as possible.

For more detailed information about Judicial Review contact the Asylum Support Appeals Project (ASAP) for the Introduction to Judicial Review fact sheet.

For more information and factsheets, visit www.asaproject.org.uk

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