

# Effect of Income on Asylum Support

May 2024

## 1. Introduction

Occasionally people on asylum support receive an income other than the money provided by the Home Office (HO). This typically comes from working, but people may occasionally receive regular cash gifts from friends, family or organisations. This briefing looks at the effect that income has on asylum support. In order to properly understand this impact, it is necessary to have a good understanding of the destitution test. ASAP's website has a [series of resources](#) dedicated to destitution.

Whilst not covered in detail in this briefing, the same principles apply to people who have assets such as savings or have access to regular (non-cash) support from elsewhere.

The overarching legal principles are that:

- Entitlement to asylum support is subject to the destitution test
- All income must be declared to the HO even if it can be discounted when calculating destitution, regardless of the source of the income
- It is possible to be destitute and still have some (meagre) funds from elsewhere but; support will be adjusted accordingly
- A person on asylum support receiving income will not be financially better off through working (or receiving other income) as any incoming's will be offset against their asylum support

This is a complicated area of asylum support law, and at the time of writing, the HO has no adequate system for dealing with people who have an additional income.

This briefing will cover:

1. Why this issue has emerged
2. The main people affected
3. Relevant law & policy
4. Who is entitled to support when they have an income?
5. Step by step guide for assessing eligibility for support when someone has an income
6. Setting levels of support
7. Failing to declare income to the HO

## 2. Why this issue is emerging now

The issue of those on asylum support receiving additional income became more prominent in 2022, when the shortage occupation list ([SOL](#)) was expanded to include care workers. It has since been expanded again to include a number of professions in the building trade. These changes, combined with increasing HO delays in asylum decision-making opened up permission to work (PtW) to more people in the asylum system.

If a person has been waiting over 12 months for a decision on their first asylum claim, they are able to request PtW from the HO<sup>1</sup>. If PtW is granted it will be for jobs listed on the [SOL](#) and only until the claim is fully determined.

The 12-month rule also applies to people in the asylum system who have been waiting over 12 months for a decision on their further submissions. If granted, PtW lasts until a decision is made on the fresh claim, or all appeals are exhausted.

### 3. The main cohorts likely to have income

**People who have PtW via the 12-month rule.** This is the largest group we have encountered. They obtained PtW via an application to the HO and can only undertake employment on the SOL<sup>2</sup>.

**Individuals, or their dependents, who claimed asylum whilst they still had a current visa which included PtW.** This would be those on work or student, not visitor visas. The conditions and restrictions on their visas will continue, after they claim asylum. This is known as 3C leave<sup>3</sup>.

**Households where the recipient or a dependent has recourse to public funds.** Although this situation is more unusual, there are multiple scenarios that could lead to a person having access to public funds, for example they could have leave to remain (LTR) (for example discretionary leave as a victim of trafficking) or have a partner with LTR or British nationality. In these scenarios the income being received, or due to be received, will count towards the destitution threshold. If they have applied for benefits, it will be important to consider within what timeframe they will start to receive money as this might have an implication on asylum support. This is a very complex intersection and eligibility for support in this situation will be fact specific. ASAP has a [factsheet for mixed households](#).

**Students receiving grants or other funds from universities.** Many universities offer scholarships to asylum seekers to help with the cost of studying. Often this will include a bursary or grant to assist with essential living needs which will impact on asylum support.

**People receiving regular additional support from organisations/their community/friends/family.** Often people receive regular additional support from their community, this would likely constitute income for the purposes of asylum support and should be declared to the HO.

<sup>1</sup> [para 360 Part 11b of the Immigration Rules](#)

<sup>2</sup> [Shortage Occupation List](#)

<sup>3</sup> [para 3c Immigration and Asylum Act 1971](#)

All of the above scenarios are complex and eligibility for support will be fact specific. If you need further advice call our advice line on 020 3716 0283 Monday, Wednesday and Friday 2pm - 4pm.

#### 4. Relevant law

The law around assessing destitution is explained in our [e-learning here](#) and other ASAP materials [here](#) and we will not seek to reproduce it in this briefing.

The key legislative provisions can be found in:

- *Immigration and Asylum Act 1999 (IAA 1999) section 95*
- *Asylum Support Regulations 2000 regulations 5-9*

The key HO policy document is [Assessing Destitution](#) however this document barely contemplates a situation where a destitute person might also be receiving an income. These other documents contain some information as the HO's position:

- The [information booklet](#) given to asylum seekers when they claim asylum
- Grant of support letters
- Letter granting the person the right to work

The destitution test for s95 and s4 is the same<sup>4</sup> so everything that is said in this briefing applies equally to s95 and s4 (except when stated otherwise).

The following sections go through the questions that advisers need to answer in order to determine the impact of income on a person's support. We recommend working through these questions in the order we have laid out here.

#### 5. Is the person destitute?

To be eligible for s4 and s95 it is a pre-requisite to be destitute regardless of other qualifying factors. The HO has very little guidance on how they calculate destitution when a person has an income. Therefore, much of the next section is based on ASAP's interpretation of what we think should happen.

##### Step 1: what is the person's situation?

General principles that apply when considering the person's situation:

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<sup>4</sup> [Regulation 2 of The Immigration and Asylum \(Provision of Accommodation to Failed Asylum-Seekers\) Regulations 2005](#)

- When deciding whether an asylum seeker is destitute, the Home Office must take into account income (ie money received regularly), assets or support that they either have or might reasonably be expected to be available to them<sup>5</sup>.
- The financial situation of dependants who are included in the support package will also be included in any assessment of destitution (IAA 1999 s95(4)).
- The financial situation of some immediate family members (e.g partners and children) not included in the support package *might* be relevant too ([see our Mixed households briefing](#))

### **Case study 1:**

*Ali is an asylum seeker. He is **applying** for asylum support for himself, his wife and his 8yr old son. They will both be dependents on his application. He works 10hrs a week and earns £114 for this. He has no assets, but he has £75 in his bank account saved through working. They are living with friends but need to leave. His wife does not work and does not have any funds in the UK or abroad. They do not own any property or investments. Together the family have access to Ali's weekly income of £114 and £75 savings.*

### **Case study 2:**

*Samer is an asylum seeker with no dependents, he is **on** s95 support and living in a shared house in Newcastle. He has been waiting over 12 months for a decision on his claim and recently obtained the right to work. He is looking for jobs on the shortage occupation list. The only income that Samer has at this point is his asylum support.*

## Step 2: Disregarding Income

HO policy provides a non-exhaustive list of resources that should be disregarded<sup>6</sup>:

- Assets that cannot be accessed within 14 days (if applying for support) or 56 days (if on support). However, if they later become available, the person may lose support if they have funds above the destitution threshold and be required to pay back money owed<sup>7</sup> (*see below*).
- Income that is not related to covering accommodation or essential living needs (ELN). For example, local authority (LA) funding for disability or care needs; charity funds for travel to classes and; funds for study materials.
- Funds from Salvation Army or sub-contractors for victims of modern slavery, because these funds take into account that s95 or s4 will be meeting the persons ELN.
- One-off small donations from charities.

<sup>5</sup> [Reg 6 Asylum Support Regulations 2000](#)

<sup>6</sup> [P12 Assessing Destitution](#)

<sup>7</sup> [Reg 17 Asylum Support Regulations 2000](#)

- Lump sums of back payments of asylum support.

It is arguable that certain types of other regular income, not mentioned in the HO policy, should also be disregarded. One example of this might be child benefit, as this is an entitlement based on the child, with specific focus on the child's needs. If you are unsure, please call the ASAP advice line to discuss the specific situation.

### ***Income from universities***

Income derived from scholarships to study at university or college is likely to count, unless specifically stated that it is for course materials or other non-ELN (e.g travel). Any element of the scholarship which is for ELN will impact on asylum support, for example if someone receives either a one-off or regular sum of money designed to assist with the cost of living.

This is equally applicable for any ELN support that is received in non-cash means, i.e supermarket vouchers. The key principle is that any money or vouchers given for ELN will impact on asylum support.

Furthermore, it is important to be aware that this could have an impact on the asylum support of a wider family unit if the student is on asylum support and has dependents, or is a dependent on someone else. The income they receive from the scholarship for their ELN will count towards the destitution calculation for anyone on that support package.

#### **Case study 1:**

Ali has now started to receive funds from a charity to help him with accessing English classes. This is by way of a cash payment for bus tickets of £15pw. He receives this in addition to his salary of £114pw.

As per the HO policy, the funds Ali is receiving from the charity should be disregarded as it is for travel to classes (as opposed to ELN). This means you can exclude the amount when calculating whether the family are destitute. The money should still be declared. It will be important to obtain evidence from the charity explaining how much they have provided and the specific purpose of the funds, this is to show the HO it should be disregarded when they assess destitution.

Ali's **relevant** financial resources continue to be his £114 income and £75 savings.

### Step 3: Calculating the destitution threshold

The destitution threshold is central to understanding how income affects asylum support.

The threshold derives from policy and not legislation. The HO and the Asylum Support Tribunal (AST) will refer to it when assessing applications for support or considering ongoing eligibility for support. However, it is only as starting point.

In the 2001 case of *Berkadle*<sup>8</sup>, which pre-dates the destitution threshold policy, the court found as follows, in paragraph 76(7):

*“In my judgment, it follows that whilst it is both lawful and sensible for the claimant to have regard to the table at reg 10 as a guide to its assessment of essential needs and whether they are likely or not to be met, there is no justification in the statutory scheme for a purely mathematical assessment, even if that is tempered by what, in practice, is a generous definition of exceptional circumstances.”*

In *Berkadle*, mainstream benefits were being provided for the applicant’s child. On this basis the HO refused the application for support as the total amount in benefits exceeded the amounts in the tables at regulation 10 of the Asylum Support Regulations 2000 (the AS regs) which lays down the asylum support rates for s95 support. As the above extract shows, when this case proceeded to the Administrative Court the judge found that a purely mathematical approach to destitution would be unlawful. Therefore, when calculating destitution, depending on the circumstances, it might be that it’s possible to argue that the threshold for destitution should be set higher than the one in the HO policy.

To calculate the thresholds, follow the steps below:

**If applying for support** it is a 14-day test, this is calculated using the formula: 14 days asylum support (£47.39 per person per week) + 14 nights local B&B rate (found by checking comparison site and using average of the 3 cheapest rooms)<sup>9</sup>.

**Case study 1:** Ali is applying for support including a wife and 8yr old son as dependents, they currently reside with a friend in Bristol but will be homeless in 7 days. The threshold is:  
 $\text{£}47.39 \times 3 \times 2 = \text{£}284.32 + \text{£}1067 \text{ (14 nights cheapest B\&B rate for a family room)} = \text{£}1351.34$

**If already on support** it is a 56-day test as per Regulation 7 of the AS regs: 56 days asylum support + 56 nights local B&B rate

<sup>8</sup> [R \(on the application of Secretary of State for the Home Department \(National Asylum Support Service\)\) v Asylum Support Adjudicators \[2001\] EWHC 881 \(Admin\)](#)

<sup>9</sup> [Reg 7 Asylum Support Regulations 2000](#)

**Case study 2:** Samer is on support with no dependents, he lives in Newcastle therefore the threshold is:

$$£47.39 = £47.39 \times 8 = 379.12 + £1184 \text{ (56 nights B\&B rate)} = £1563.12$$

Each case will have a different threshold depending on location and number of dependents.

#### Step 4: Is the person destitute?

The destitution threshold calculation needs to be compared to the person's income, assets and support calculation over the relevant period (i.e 14 or 56 days) taking out any income, assets or support that should be disregarded.

If that income is below the destitution threshold, then support should be granted or retained (but with an adjustment for the income, see below). If the income is above the threshold then the person will not be destitute and not eligible for support.

**Case example 1:** As calculated above, the destitution threshold for Ali, as he is **applying** for support is £1351.34 (14 days asylum support + 14 nights local B&B rate).

In step 1 we established that his weekly earnings are £114, and he has £75 in savings. We have established that the £15 travel money should be declared but can be disregarded. Therefore, the total amount of money he can reasonably be expected to have over the next 14 days is £228 +£75 = £303.

In this case the family are destitute as £303 is under the threshold of £1351.34.

**Case example 2:** Samer has found a job, he works inconsistent hours as it's a zero-hours contract, but over the first 56 days his average earnings have been £87pw. As it is a 56-day test, the destitution threshold will be £1563.12 (56 days asylum support + 56 days local B&B rate).

If Samer is earning £87pw over 56 days he can reasonably expect to earn £696, he has not accumulated any savings and has £0 in his bank account. Therefore, as £696 is under the £1563.12 threshold, he is still destitute and eligible for asylum support.

In both of the above examples, the fact that the person on asylum support still meets the statutory definition of destitution does not mean their income won't affect their support.

## 6. Setting asylum support levels (s95 cases only)

To understand the possible outcomes, it will be important to consider key principles that apply in s95 cases (this information does not apply to s4)

The AS Regs 2000 permit the HO to do the following in s95 cases only (note that there is no statutory power under s4 regulations for the HO to vary the amount paid):

- **Reg 16<sup>10</sup>:** Where someone is destitute, but earning or receiving an income (below the destitution threshold), the HO can request contributions to their asylum support. For example, if someone is working in a low paid job and still destitute, the HO can request they contribute towards their support costs. As a matter of policy the HO reduces subsistence, or asks for contributions towards the accommodation, depending on income levels. The general rule is that once contributions are taken into account, the person will receive subsistence at the same level as asylum support, i.e they will not be better off through working.
- **Reg 17:** Where someone has an asset which they could not realise (i.e convert into cash) at the point of applying for asylum support, but where the asset now becomes realisable, the HO may recover on sum the amount not exceeding that which they have received in asylum support or, the value of the asset (whichever is the least). For example, if someone owned a property abroad which could not be sold but can now be/has been sold, the HO may recover whichever is worth the least out of total asylum support or the assets value.
- **Reg 17A:** The HO can request the repayment of any asylum support received during a period where an asylum seeker or their dependents were not destitute. The repayment cannot exceed the total amount of asylum support received by them or their dependents. However, if this is not repaid within a reasonable timeframe it could be treated as a debt by the HO. This is relevant where people's incomes (asylum support plus other) go above the destitution threshold for a period before coming back down under it, as the period where they were above the threshold could lead to a recovery of any support received (accommodation & subsistence).
- **Reg 18:** This relates to the way the HO can recover asylum support in relation to overpayments of support, and merely confirms it can be recovered by reducing asylum support to clear the debt. Most reductions are taken as a matter of policy; only overpayments which are the fault of the HO are dealt with in the regulations <sup>11</sup>.

<sup>10</sup> [Asylum Support Regulations 2000](#)

<sup>11</sup> The legality of this process is therefore unclear.



- **Reg 20:** Confirms that asylum support can be discontinued or suspended in the event that someone (or their dependants) has not informed the HO of receiving an income.

In practice, the HO reduces support but has no system in place for taking contributions or other payments from individuals. This section is therefore based on our understanding of what is happening in practice and our own view of what individual should do.

**The person is receiving income below subsistence rate.** They will receive a reduced subsistence rate, this is calculated as follows: *asylum support - income = new subsistence rate*<sup>12</sup>

**Case example 1:** Ali has now been granted asylum support subsistence and accommodation, he receives a total of £142.17. He is earning £70pw from his current job.

Therefore, his subsistence rate will be reduced to reflect this. Moving forwards, he will receive £72.17pw (£142.17 - £70 = £72.17).

**The person receives income below the destitution threshold, but above subsistence rates.** Subsistence will be stopped, and contributions towards accommodation are likely to be asked for (*e.g income - subsistence rate = contribution amount*). In this situation, once contribution towards accommodation is accounted for, a person will be left with asylum support subsistence rates.

**Case example 2:** Samer is on s95 but is now earning a salary of £87pw. As calculated in step 4, the destitution threshold for him is £1563.12 (56 days asylum support + 56 days B&B rate).

Over 56 days Samer will reasonably be expected to earn £696 (£87pw x 8 weeks i.e 56 days). Therefore, he remains destitute.

However, as he is earning above subsistence rates (£47.39pw) he will be expected to make contributions to his asylum support accommodation. Essentially any earnings above the subsistence rate, in this case £39.61 (earnings - subsistence rate) will need to be contributed. This would leave Samer with £47.39 from his earnings once he has made his contributions. In short, he would be left with the same money as he would receive if he was on asylum support (i.e salary would be reduced via contributions to match asylum support levels).

<sup>12</sup> [P15 Assessing Destitution](#) says "if some income and assets are available, but not enough to reach the threshold, support may be provided at a reduced level."

ASAP has been in communication with the HO regarding contributions towards accommodation costs. At the time of writing the HO do not have a system in place but are developing one. In the meantime, we recommend people regularly write to the HO via Migrant Help to offer to make the contributions and set the requisite funds aside. This does however, lead to a risk that support is discontinued due to the person having savings available due to saving this money. Nonetheless, ASAP is of the view that there would be strong arguments to have these funds disregarded for the purposes of the destitution test as they are a debt owed to the HO.

**Useful ASAP appeal:** In one case that ASAP was involved in, the person received an income (via a scholarship award) but continued to be destitute and entitled to support. However, his income was above subsistence levels. The HO in his letter granting support advised him he would need to make a weekly contribution to his accommodation of £45; the HO further clarified he should set this amount aside and will receive a “paying-in book”.

Despite the person writing numerous times to the HO offering to make these payments, he never received a paying in book and was repeatedly told that the HO would be in touch. Due to the appeal focussing on other issues, the AST did not make findings on whether the £45 the HO advised him to set aside could be disregarded. Nonetheless this case is an interesting window into how the HO deals with cases where a person on asylum support should be making contributions to their accommodation.

**The person receives income above the destitution threshold.** Eligibility for asylum support would cease as they are no longer destitute.

**Case example 2:** Samer is still working and earning £87pw. However, he has just received a one-off payment from his family abroad due to his parents selling some land. The total is £2k. The money has been paid into his UK bank account directly. He will need to report this to the HO, failing to do so would be a breach of conditions and an offence.

As he now has money above the destitution threshold (£1563.12) eligibility for asylum support will cease. He will need to support himself until a time where he is destitute and can reapply for support.

Should he fail to notify the HO and/or receive any asylum support whilst not destitute, he will be expected to pay this back. At the point he reapplies for support he will be subject to the 14-day test (14 days asylum support + 14 days B&B rate).

As the above examples show, the impact of income on asylum support is wide ranging and will be fact specific. Each case will have an individual threshold depending on family size and location that will need calculating. It will be important when advising someone to get a complete picture of their finances to understand whether they are firstly eligible, but also whether they will fall into any of the above categories.

**NB: this does not apply to s4.** The position in relation to s4 is currently unclear, but we think the HO do not have the power to reduce s4 support or request repayments and contributions.

## 7. Failing to tell the HO about income

The rules surrounding a failure to tell the HO about income are different for s95 and s4 and are beyond the scope of this briefing. A person who does not keep the HO informed of their financial situation risks losing their support due to a breach of conditions. Additionally, in s95 cases, they may end up in debt to the HO and also risk being prosecuted for failing to tell the HO about a change in their circumstances (although we are not aware of any prosecutions occurring).