

12<sup>th</sup> November 2024

Factsheet 7

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

**This Factsheet looks at what can be done to help asylum-seekers and refused asylum-seekers when an appeal to the First-tier Tribunal (Asylum Support) (AST) is unsuccessful.**

## 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 Mondays, Wednesdays and Fridays 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.

## Could a further application for support be submitted?

The judge hearing the appeal tells the asylum-seeker (the appellant) at the end of the hearing whether the appeal is allowed, dismissed or remitted and gives them a Decision Notice. The judge must then give full reasons for any decision and these are published in a Statement of Reasons (SoR) which is sent to the appellant or their representative within 3 working days of the hearing. It is important to examine the SoR very carefully as this will outline the reasons why the appeal has been dismissed. The law states that the Home Office (HO) has to be satisfied that there has been a 'material change of circumstances' before it will entertain a further application after a dismissed appeal.<sup>1</sup>

However, and especially when the issue was destitution, in many cases, it will be appropriate to re-apply for support. For example, the funds a client did have at the time of the appeal may have run out or they have lost their accommodation or charitable support. In some cases, the asylum-seeker may have obtained an important piece of evidence which will help to address the reason why they lost the appeal. See ASAP [Factsheet 5](#) on proving destitution.

Alternatively, if the issue in the appeal was not destitution, a client may have made a fresh claim for asylum or have new circumstances which mean it is unreasonable to expect to leave the UK to alleviate their destitution. It is important to make clear on the ASF1 form how this application contains additional evidence or information which was not available (or did not exist) at the time the appeal was dismissed.

<sup>1</sup> Immigration and Asylum Act 1999 s103(6)

## Reasonable Steps to Leave the UK

If a person has had their asylum claim refused and any subsequent appeal rights have been exhausted, they can apply for s4 support if they are taking reasonable steps to leave the UK voluntarily (see [Factsheet 2](#)). Reasonable steps would usually include applying for assistance with voluntary return to their country of origin and/or contacting the relevant Embassy. Support can be discontinued if the person stops taking reasonable steps to leave the UK. The person should consider carefully any decision to return voluntarily and ideally obtain immigration advice prior to making a voluntary return application.

## Further submissions

If, since their dismissed appeal to the AST, a person has lodged further submissions which have not yet been looked at by HO they may become eligible for s4 support again. They will need to provide destitution evidence in any further application for asylum support. See [Factsheets 2 and 12](#).

## Local Authority Assistance

There is the potential for local authorities to support two distinct groups, under different legislation.

Disabled asylum-seekers may be eligible for support (including accommodation and essential living needs) from social services under the Care Act 2014. As this form of support takes precedence over asylum support (should a person qualify for it) then it is possible that someone whose appeal has been dismissed will not qualify for Care Act support. This is because they should already have been on Care Act support, not asylum support. The relationship between Care Act support and HO support is complicated and advice from ASAP and a specialist community care solicitor should be obtained.

When there is a dependent child(ren) under 18 living in the household when the asylum claim of a family is fully determined, they will usually remain on s95 support whilst the child(ren) in the household are under 18. This is because under s94(5) they continue to be treated as asylum-seekers for support purposes<sup>2</sup>. However, if their support is discontinued (for example for breach of conditions) and they lose their AST appeal on that issue, then they should apply to social services for support for Children Act 1989 s17 support. This is because the child(ren) in the household would be a child 'in need' under s17, if the family is destitute<sup>3</sup>.

## Judicial Review

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<sup>2</sup>Immigration and Asylum Act 1999 s94(5)

<sup>3</sup> Please see the Project 17 website for more information on Section 17

As there is no asylum support Upper Tribunal, if you consider that the AST's decision to dismiss your client's appeal may be unlawful, then a potential remedy is judicial review. A more common and effective solution will often be for your client to obtain further evidence and re-apply for support, as set out above.

Judicial review is a legal challenge of an unlawful decision of a public body (including the AST). It is much more limited than a right of appeal, and can only be used where there is no right of appeal or the appeal process has been exhausted.

The AST's decision may be challengeable by way of judicial review if, for example, it has given too much weight to irrelevant considerations or insufficient consideration to relevant considerations. Or if the AST has failed to follow correct or fair procedures or has drawn conclusions that no 'reasonable Tribunal' could have come to.

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 specialist solicitor as soon as possible. Please See ASAP [Factsheet 13](#) 'Introduction to Judicial Review' for more information and call the ASAP advice line for case specific advice.