FIRST-TIER TRIBUNAL ASYLUM SUPPORT

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Appeal Number 1: AS/24/02/46289

Appeal Number 2: AS/23/12/45967

Appeal Number 3: AS/24/02/46319

Appeal Number 4: AS/24/02/46333

IMMIGRATION AND ASYLUM ACT 1999
THE TRIBUNAL PROCEDURE (FIRST-TIER TRIBUNAL)
(SOCIAL ENTITLEMENT CHAMBER) RULES 2008

Tribunal Judge	Principal Judge Sehba Storey
Appellant 1	MAH
Appellant 2	LKL
Appellant 3	GK
Appellant 4	NZ
Respondent	Secretary of State for the Home Department

STATEMENT OF REASONS

1. This Statement of Reasons is made in accordance with Rule 34(1) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (the AST Procedure Rules) and gives reasons for the decisions made on Wednesday 5 June 2024, as detailed in paragraph 128 below.

2. The four appellants appeal against decisions of the Secretary of State to discontinue their subsistence and accommodation support under section 95 of the Immigration and Asylum Act 1999 (IAA 1999) on the grounds that they no longer qualify for support because their application for asylum has been withdrawn. The SSHD contends that there is no right of appeal against these decisions.

3. The four appeals, give rise to common issues of law and fact and have been linked by the Tribunal to be heard together as a designated lead case pursuant to Rule 18 of the AST Procedure Rules. The four appellants are otherwise unconnected.

4. The appeal was heard on Wednesday 24 April 2024 with judgment reserved. The first and second appellants are represented by Counsel Mr Grigg of Garden Court Chambers, on the instructions of the Asylum Support Appeals Project (ASAP). The third appellant is represented by her solicitor, Mr Khan of Prestige Solicitors. The fourth appellant is represented by Mr Bircumshaw of Central England Law Centre. The Secretary of State for the Home Department (SSHD), the respondent in these cases is represented by Counsel Mr Biggs, on the instructions of the Government Legal Department (GLD).

5. Arrangements were made for three appellants to be provided with an interpreter. MAH was assisted by Mr. Hegazy in Sudanese, GK was assisted by Mrs. Sharma in Punjabi. NZ was assisted by Mr Karimi in Kurdish Sorani. LKL did not require an interpreter.

6. MAH and LKL attended the hearing in person accompanied by their representatives. GK and NZ together with their representatives attended by video link. The proceedings were recorded.

THE ISSUES

7. The parties are agreed that the following issues (whose ordering I have slightly altered) arise in the four appeals:

   a) Does the Tribunal have jurisdiction to hear appeals purportedly brought pursuant to section 103(1) of the IAA 1999 by appellants whose applications for support under section 95 of the IAA 1999 are refused on the basis that the applicants did not qualify for support under that section because their claim for asylum has been deemed withdrawn?

   b) Does the Tribunal have jurisdiction to hear appeals purportedly brought pursuant to section 103(2) of the IAA 1999 by appellants whose support under section 95 of the IAA 1999 is discontinued following the recording of their claim for asylum as withdrawn?

   c) Does the Tribunal have jurisdiction to consider the lawfulness, and/or the merits, of a decision by the SSHD to treat an appellant's claim for asylum as withdrawn?

   d) What is the correct disposal of the appeals in the light of the answers to issues (a)-(c)?

BACKGROUND

MAH

8. The first appellant (MAH) is a 29-year-old national of Sudan. He claimed asylum in the United Kingdom (UK) on 18 September 2021. On 2 November 2022, he instructed Ms Bialach of Migrant Law Partnership (MLP) to represent him in connection with his asylum claim. On 26 October 2022, he was granted asylum support under section 95 of the IAA 1999. On 13 and 21 September 2023, MAH sent enquiries to his solicitor and an interpreter at MLP seeking an update on his asylum claim. He did not receive a response.

9. On 2 October 2023, the respondent sent an asylum interview letter to MAH to attend an interview on 16 October 2023. The Home Office decision letter to the appellant dated 4 January 2024 states that the asylum interview letter of 2 October 2023, was sent to MLP by post and email. The appellant did not attend, he says, because he did not receive the invitation letter from either the Home Office or MLP.

10. On 16 October 2023, the Home Office wrote to MAH at his hotel and emailed MLP requesting an explanation for his failure to attend his interview. MAH states that he collected the letter on 18 October 2023 from hotel reception but could not understand it. He states that he sought assistance from a friend who explained that he had failed to attend his asylum interview. MAH attempted to contact MLP by phone, email and WhatsApp messenger but did not receive a response.

11. On 23 October 2023, MAH's claim for asylum was withdrawn under paragraph 333C of the Immigration Rules because he had failed to attend his asylum interview on 16 October 2023. On 19 December 2023, MAH was sent the following communication:

> *" Following confirmation that your application for asylum has been withdrawn, I am writing to advise that you no longer qualify for support under section 95 of the Immigration and Asylum Act 1999. The support that you have been provided with is to be discontinued from 3rd January 2024…..*
> *….*
> *You should note that there is no right of appeal against this decision under section 103 of the Immigration Act 1999 to the First-tier Tribunal Asylum Support. …."*

12. In December 2023, MAH received help from PS, a college lecturer with expertise in information technology who conducted searches of MAP's email folders but did not locate any emails the Home Office or MLP concerning his interview invitation.

13. MLP maintains that all letters and documents received from the respondent were emailed to MAH. The latter denies receiving them.

14. On 9 November 2023, MAH received an email from MLP asking why he had failed to attend his interview. Attached was an earlier email that MAH had not received. He replied to MLP the same day, asserting that he did not receive the interview invitation letter, was unaware of the date, and was not contacted by telephone. MLP did not provide MAH with evidence of having forwarded the interview invitation letter to him on 2 October 2023, as later claimed. On 13 November 2023, MLP wrote to the respondent. In a carefully worded email, MLP requested another interview to be arranged on the grounds that MAH was "unaware" of the first interview. MLP do not accept having failed to communicate the date of the interview to MAH.

15. On 30 November 2023, MAH contacted the SSHD directly to explain why he failed to attend his interview. On 7 December 2023, the SSHD replied directly to MAH. He was informed that his asylum claim had been withdrawn on 23 October 2023.

16. MAH states that throughout October – December 2023, he made numerous efforts to communicate with his legal advisors, by email, telephone and WhatsApp messenger, without success. This included personal visits to the offices of MLP on several occasions. On one occasion he was told that his solicitor was not in the office. On 8 December 2023 he learnt that MLP had moved offices without informing him. And on 11 December 2023, he attended at the MLP offices and informed a solicitor he was in the building but was not seen.

17. On 29 February 2024, I issued directions to all parties. MAH's representative was directed to provide a statement from MLP setting out details of all work undertaken by

them on behalf of MAH and to provide copies of all correspondence received by them and sent to the Home Office. I also sought details of when and how MLP informed MAH of his interview date and if they did not do so, why he was not informed. MLP did not provide MAH's representatives with a statement as directed by the Tribunal. They eventually provided an advisor at Care4Calais with a chronology and copy emails.

18. MAH appeals against the discontinuation of support decision of 19 December 2023. The SSHD has continued to support MAH pending the outcome of his appeal.

LKL

19. The second appellant (LKL) is a 40-year-old national of Hong Kong (Specialist Administrative Region of China). He claimed asylum in the UK on 18 February 2022. He was provided with initial support under section 98 of the IAA 1999. I note that LKL remained on section 98 support for a period of two years between 18 February 2022 and 14 February 2024. There is no evidence before me to explain why LKL was never provided with section 95 support.

20. LKL states that in June 2013, he was absent from his hotel accommodation on a few nights when he stayed with his partner (CS). He states that on return to his hotel following one such absence he was given a warning by Serco, the Home Office accommodation provider (Serco) and told to speak to a housing officer, which he did. LKL states that he did not disclose the address where he was staying occasionally with his partner because she was pregnant and unwell. He states that it was also because his relationship had broken down with the housing officer following poor handling of his complaint of bullying by another tenant.

21. On 9 September 2023, LKL contacted Migrant Help, and sent evidence of CS's expected date of delivery during the week of 22 September 2023. He enquired how he could claim support for his child after birth. He messaged again on 18 September. In late September LKL informed his housing officer that he would be absent from the hotel for personal reasons but he did not explain that it was because his partner was due to give birth. He confirmed that his absence was temporary and that he intended to return to his accommodation. He was advised to contact Migrant Help to confirm the dates of his absence but warned that such absence was a breach of the rules.

22. LKL was absent from his accommodation from 28 September - 1 October 2023. He returned on 2 October 2023 and found a note in his room confirming his 4-day absence. He emailed the respondent on 2 October to explain that his fiancée was due to give birth soon and he needed to be with her at this vulnerable time. He confirmed that he would return to his accommodation twice weekly.

23. LKL's son was born two-weeks overdue on 5 October 2023, by caesarean section, during the course of which CS is said to have suffered considerable blood loss. LKL said that in the days that followed, he cared for CS and the baby. On 17 November 2023, he emailed the respondent and applied to add his son to his asylum claim as his dependant.

24. He returned to the hotel on 18 November 2023 to find his belongings had been removed. On the same date, he received the interview invitation letter of 1 October 2023 inviting him to attend a personal interview on 12 October 2023. A second letter dated 14 November 2023, informed him that his claim for asylum was withdrawn under paragraph 333C of the Immigration Rules because he had failed to attend his interview.

25. On 22 November, LKL emailed the respondent to explain the reason for his failure to attend his interview and requested a review of the SSHD's withdrawal decision. This was refused on 13 December 2023 and the withdrawal maintained. LKL did not challenge either the decision of 14 November 2023 or 13 December 2023.

26. On 5 December 2023, LKL applied for voluntary return but did not pursue this application. The application included his son.

27. On 8 February 2024, he applied for section 95 support for himself, CS and their son. This was refused on 14 February 2024. The refusal letter stated the following:

> *" You have made an application for asylum support under section 95 of the Immigration and Asylum Act 1999….*
>
> *Asylum support may only be provided to a person who is an asylum seeker as defined in section 94 of the 1999 Act.*
>
> *On the information available, I am not satisfied that you are an asylum seeker. You lodged your asylum claim as a sole applicant and this claim was withdrawn on 14/11/2024 [sic] as you had absconded and failed to attend your Asylum interview. You are therefore not eligible for section 95 asylum support as you are not an Asylum seeker as laid out in Section 94 of the 1999 Act."*

28. LKL is currently provided with subsistence and accommodation by NR a friend. The latter has confirmed in writing that such support is temporary.

29. LKL seeks to appeal against the decision of 14 February 2024. The SSHD has continued to support LKL pending the outcome of his appeal.

GK

30. The third appellant (GK) is a 39-year-old national of India. She arrived in the UK in December 2015. I do not know the basis on which she entered the UK. On 7 December 2019, she claimed asylum for herself and two minor children. On 31 January 2020, she was granted asylum support under section 95 IAA 1999. A letter of the same date, provided that in accepting support GK accepted the obligation to comply with "all of the following conditions" which were then set out over three pages. She was reminded that "in certain instances" she must comply with a condition in order to access support, whilst "in other instances" she must comply with a condition or her support may be suspended or discontinued. Under the heading, "providing information and attending interview" she was informed as follows:

> *" From time to time we (or other parts of the Home Office) may ask you for information relating to your asylum claim. If such a request is made, you must comply with it within a reasonable period. You must, unless instructed otherwise:*
>
> - *Provide information relating to your asylum claim within 10 working days of the day that you receive the request;*
> - *Provide information relating to your asylum support within 5 working days of the day that you receive the request.*
>
> *We may also ask you to attend an interview relating to your asylum support. You must attend on the day and at the time specified unless you can provide good reason why you cannot attend. If you breach this condition, we may suspend or discontinue the support we give you."*

31. On a date in November 2022, the SSHD wrote to GK asking her to attend an asylum interview on 24 November 2022. A copy of the letter is not included in the Home Office bundle of evidence. On 23 November 2022, Mr Khan of Prestige Solicitors emailed the respondent to advise that the firm was instructed to represent GK. He stated that GK had

received an invitation to attend an interview but was unable to do so owing to an ear infection. Mr Khan confirmed he was "in the process of obtaining medical evidence" and would forward it upon receipt. The email provided full contact details for Prestige Solicitors.

32. On 18 July 2023, the respondent wrote to GK at her authorised address to advise that on 15 February 2023, her claim for asylum was withdrawn under paragraph 333C of the Immigration Rules because she failed to attend her arranged interview. The letter continued that this decision had been reviewed and "*in the light of the evidence and representations made*," the asylum claim had been reinstated. The letter did not state the nature of the evidence, the identity of the individual or organisation that made the representations or its content.

33. On 17 October 2023, the respondent wrote to GK only, to invite her to attend an interview on 1 November 2023 in Liverpool. The letter contained a warning that if GK did not attend the interview and failed to provide an explanation before or immediately afterwards, the respondent may treat her asylum claim as withdrawn. The respondent states that the letter was sent by tracked Royal Mail delivery, although no obvious tracking number is visible on the envelope. Delivery was attempted on 18 October 2023. The letter was returned to the sender on 23 October 2023 marked "addressee gone away."

34. On 1 November 2023, GK was contacted by telephone and asked why she did not attend her interview that day. She states that she told the caller she did not know about the interview and that she still lived at her authorised address.

35. It is claimed that on 1 November 2023, the respondent wrote to GK only, concerning her failure to attend her asylum interview and invited her to provide the reasons for her non-attendance. There is no reference in the letter to the telephone conversation with GK on 1 November 2023. Included in the respondent's bundle of evidence is a photocopy of an envelope addressed to GK as evidence of delivery. A stamp on the envelope records that Royal Mail unsuccessfully attempted delivery on 27 October. It was returned and received by the Home Office on 2 November 2023, marked "addressee gone away." I will advert to this later.

36. On 15 November 2023, the respondent wrote to GK alone and informed her that her asylum claim had been withdrawn and consideration of her claim discontinued owing to her failure to attend her asylum interview on 1 November 2023 at 13:10 without reasonable explanation. The letter was sent by tracked Royal Mail and a tracking number is provided. Delivery was attempted on 18 November and the letter returned undelivered to the Home Office on 22 November 2023, marked "addressee gone away."

37. On 22 February 2024, the respondent wrote to GK as follows:

> " *Following confirmation that your application for asylum has been withdrawn, I am writing to advise that you no longer qualify for support under section 98 or section 95 of the Immigration and Asylum Act 1999. The support that you have been provided with is to be discontinued with immediate effect and you will no longer be able to use your ASPEN card.*
> *……*
> *You should note that there is no right of appeal against this decision under section 103 of the Immigration and Asylum Act 1999….*
> *……*
> *As a failed asylum seeker, you are expected to make arrangements to leave the United Kingdom without delay. …It may be possible to provide you with short term support under section 4 of the 1999 Immigration and Asylum Act*."

The letter did not refer to her two minor children.

38. There is no evidence before me to suggest that any correspondence sent by the respondent to GK after 23 November 2022 (the date Prestige Solicitors placed themselves on the record as acting for GK) was copied to her representative. A Home Office CID note created on 1 November 2023 and updated on 15 November 2023 records that GK was contacted by telephone at 13:43 on 1 November 2023 and asked why she did not attend her interview. She is recorded to have said she did not know about the interview, could not make it to the interview and that she still lived at her authorised address. Notwithstanding that GK is a lone parent of two minor children, CID records state that there are no safeguarding issues.

39. On 28 February 2024, the respondent wrote a letter to GK headed "*Reinstatement decision letter: Refusal*." The letter recorded the names and dates of birth of her two minor children, who are her named dependants in her asylum application. GK was advised that her request for reinstatement of support was refused because her asylum claim had been withdrawn owing to her failure to attend her asylum interview. The letter did not contain a reference to whether there is a right of appeal against the decision – only that she no longer qualified for asylum support. GK was advised to submit a new ASF one form (claim for asylum support.)

40. GK seeks to appeal against the decision of 28 February 2024. The SSHD has continued to support GK pending the outcome of her appeal.

NZ

41. The fourth appellant (NZ) is a 27-year-old national of Iraq. He claimed asylum upon arrival in the United Kingdom (UK) on 12 September 2022. On 28 September 2022, he was granted asylum support under section 95 IAA 1999 subject to conditions. Under the heading, "*Asylum support conditions*" the grant letter set out a number of conditions with which NZ was obligated to comply. This included the following:

> *" You must meet Home Office requests. This includes requests for:*
>
> - *Information relating to your asylum claim*
> - *Information relating to your asylum support and*
> - *Your attendance at any interviews*
>
> *If you do not keep to the conditions of your support, you risk losing your support…."*

42. NZ was accommodated at various addresses by Serco. He took up occupation at his current authorised address (No.45a) on 11 December 2023, and signed his occupancy agreement with Serco on the same date.

43. On 23 December 2023, NZ was invited to attend his asylum interview on 10 January 2024, which he did not attend. A follow up letter requesting reasons for his non-attendance did not elicit a response. On 26 January 2024, his asylum claim was withdrawn due to non-compliance and on 15 February 2024, his asylum support was discontinued. The letter of discontinuance stated as follows:

> *" I am writing to inform you that a decision has been taken to discontinue your support. Following confirmation that your application for asylum has been withdrawn, I am writing to advise that you no longer qualify for support under section 98 or 95 of the Immigration Act 1999. The support that you have been provided with is to be discontinued with immediate effect …...*

Your eligibility for accommodation at …will cease on 29 February 2024, when you will be expected to leave…

The accommodation provider has been notified of this decision and will contact you separately.

You should note that there is no right of appeal against this decision under section 103 of the [IAA 1999] to the First-tier Tribunal Asylum Support…..”

44. All correspondence referred to above was sent to the No.131 address, instead of the No.45a address. It was sent only to NZ as he was unrepresented until 28 February 2024. On that date, he instructed Central England Law Centre. Around 28 February 2024, Serco served NZ with notice to vacate his accommodation. The address on the notice was neither No. 131 nor No.45a. This was manually deleted and the No.45a address inserted above the deleted address.

45. In response to directions from the tribunal, the respondent confirmed that NZ’s authorised address, as provided by Serco, is recorded on the Home Office accommodation portal as the No.131.

46. NZ seeks to appeal against the decision of 15 February 2024 to discontinue his asylum support. The SSHD has continued to support NZ pending the outcome of his appeal.

THE HEARING – ORAL EVIDENCE

47. At the hearing on 24 April 2024, Mr McVeigh of GLD, acting for the respondent, advised that the SSHD accepts NZ’s asylum claim was incorrectly withdrawn on 26 January 2024. This is because Serco had confirmed that at all material times, NZ had been resident at the No.45a address and had never resided at the No.131 address. As such, the withdrawal of NZ’s asylum claim was cancelled and his section 95 support was reinstated.

48. As NZ’s asylum claim has been reinstated and the provision of asylum support has resumed, there is no valid appeal before me.

49. Mr. McVeigh also accepted on behalf of the SSHD that at all material times, the respondent was aware that GK had instructed representatives but did not serve them with a copy of the interview invitation and other correspondence.

50. MAH was shown a copy of his witness statement dated 19 April 2024. He identified the signature as his and confirmed that the contents had been read to him by a Sudanese Interpreter, that they were true and he wished to rely on the same. MAH’s evidence was not challenged by the respondent.

51. LKL was shown a copy of his witness statement. He confirmed the contents as true and that he wished to rely on the same. He stated that prior to 21 June 2023, he slept at his hotel accommodation every night. He was absent from the accommodation for three nights from 21 June 2023 and returned on 24 June 2023. On his return to the hotel, he found a note in his room from the accommodation provider asking him to report to the office on his return. He did as he was asked. He admitted that at this stage he did not disclose his girlfriend’s pregnancy to anyone. He recalled being told that he could not be away from the accommodation for more than seven nights and acknowledged that he was absent for a further period of four nights from 28 September 2023 to 2 October 2023. Upon his return, LKL emailed the Home Office to inform them of his girlfriend’s pregnancy but he did not ask for permission to be absent from 2 October 2023 to 18 November 2023. He stated that he was absent throughout this period because his girlfriend had lost

"a lot of blood" during delivery and in the weeks following the birth she was unable to care for herself. He needed to care for her and the baby.

52. In response to questions from Mr Biggs, LKL agreed that he did not provide the Home Office or Serco with the address where he was residing because it was his partner's privately rented accommodation. He explained that the baby, though due on 22 September 2023, was not born until 5 October 2023. He said he wanted to be close to his girlfriend in the lead up to the birth.

53. GK was shown a copy of her witness statement and identified the signature as hers. She confirmed that the contents were true and that she wished to rely on the statement. She confirmed that she had received the first invitation to attend an asylum interview but was unable to keep the appointment because she had an ear infection. The infection resulted in loss of hearing and an increase in body temperature. She confirmed that Mr Khan of Prestige Solicitors is her representative but she did not know whether he had received a copy of her first interview letter. She recalled personally sending medical evidence to the Home Office to confirm she was unfit to attend the first interview. She maintained that she did not receive a letter from the Home Office inviting her to attend an interview on 1 November 2023 nor was she told about it by Mr Khan. On 1 November, she received a telephone call around 13:30pm asking why she had not attended her interview that day. She said that she was shocked to hear this and told the caller she had not received a letter, email or telephone call and was unaware that she had needed to attend an interview that day. The caller insisted that a letter had been sent to her and she repeated that she had not received it. She informed Mr Khan about the telephone call.

54. In response to questions from Mr Biggs, GK stated that it was only during the Home Office telephone call on 1 November 2023, that she realised she had missed her interview. She said she sent a letter from her GP to the Home Office on 2 November 2023 to confirm that she had a doctor's appointment on 1 November 2023. She said her solicitor did not receive a copy of the letter inviting her to an interview on 1 November 2023, nor a letter seeking an explanation for her failure to attend the interview.

OTHER EVIDENCE

55. I have received five witness statements in support of MAH's appeal, as follow:

- NDW an asylum seeker who resided at the same hotel as MAH in 2023;
- PS, a Lecturer in Computer Science and Information Technology at Croydon College, where MAH was a student;
- NH a volunteer, from Care4Calais, a charity that helps and supports asylum seekers;
- MD a Sudanese translator also from Care4Calais; and
- KN, a trainee solicitor at Duncan Lewis Solicitors.

56. In her statement dated 19 April 2024, NDW states that she has known MAH since mid-July 2023. She states that English is her first language whereas MAH struggled to understand English. She therefore helped him read and write letters, emails, and messages to and from the Home Office and his solicitors, MLP. In particular, she recalled writing to MLP on 13 and 14 September 2023 seeking an update on MAH's asylum claim. She said she helped MAH to check his account for emails. On 18 October 2023, MAH asked her to read a letter from the Home Office which stated that he had failed to attend his asylum interview on 16 October 2023. She said that MAH was both surprised and upset to read this as he could not understand how he had missed an interview. She said that she checked his inbox but there were no emails relating to an asylum interview

appointment. She said that MAH attempted to contact MLP many times by phone and also sent messages via WhatsApp Messenger to MLP's translator/interpreter. On 9 November 2023 she was shown an email from MLP in which the solicitor claimed to have tried to contact MAH but had not heard from him. In the same letter, MLP also asked MAH why he had failed to attend his interview. NDW states she found it strange that MLP were claiming to have attempted to contact MAH when it was MAH who had tried to contact the Solicitor. She said that it was because MLP had failed to respond to MAH, that she helped him draft an email to the Home Office on 30 November 2023 explaining why he had missed his interview appointment. On 7 December 2023, she explained the contents of a Home Office letter to MAH, which stated that his asylum claim had been withdrawn in October 2023. On 11 December 2023, she accompanied MAH to MLP's offices, but he was told that his solicitor was unavailable. She then helped him draft an email to another Solicitor in the firm.

57. In his statement dated 17 April 2024, PS states that he knew MAF as a student at Croydon College and described him as a nice, well presented and pleasant student. He said that in December 2023, MAF told him that he had missed his Home Office interview on 16 October 2023 but did not know of it until he received an email saying that he had failed to attend. He said that MAH was upset because he was certain that he had not received any advance notification of his interview either from MLP or the Home Office. Given his background in Information Technology, he offered to help MAH to search his email folders, but despite extensive efforts he was unable to find any documentation from MLP or the Home Office. PS sent several emails to Home Office, Newcastle, and Asylum Outcome Review. In his email sent 2 January 2024, PS stated as follows:

> "Upon thorough investigation of [MAH's] email folders – Junk, Sent, Inbox, Delete Items – no records of any communication from HMRC regarding an appointment were found. As a professional, I can confidently affirm that MAH did not receive any appointment-related emails from his solicitor or HMRC."

PS subsequently confirmed that the reference to "HMRC" was incorrect and should have said Home Office.

58. In his statement dated 22 April 2024, NH confirmed that he is a volunteer at Care4Calais. In late October/early November 2023, he met MAH at a drop-in session at his hotel .MAH sought advice concerning his missed interview appointment. NH advised him to contact his solicitor. He next met MAH in December 2023 at another drop-in advice session. On learning that MAH's asylum claim had been withdrawn, NH agreed to contact MAH's solicitor at MLP. A telephone call to her, however, was put through to a male solicitor who agreed to email the Home Office concerning MAH's withdrawal. This was on 14 December 2023. NH stated that save for taking this telephone call, MLP ignored all his communications until 5 March 2022 when he provided the solicitor with a copy of the Tribunal's directions dated 29 February 2024 in which this Tribunal had asked for a statement from MLP setting out the work undertaken by MLP on MAH's behalf. The solicitor agreed to provide copies of emails on file stating that this would stand as the firm's statement for the purpose of the Tribunal direction. NH described the "radio silence" from MLP between 14 December 2023 and 5 March 2023 as "very odd" especially as he was trying to work with MLP and not against them.

59. In his statement dated 16 April 2024, MD confirm that he is a qualified interpreter and volunteer for Care4Calais. He stated that he was asked by NH to translate 13 WhatsApp messages dated between 10 September - 13 December 2023. I have seen screenshots of the messages. MD's literal translation of the Arabic script appears immediately beneath the Arabic. The messages are exchanged between MAH and the MLP interpreter and include an image of the failure to attend notice dated 16 October 2023. MAH stated that he has received an interview on 16th October but comments that there must be a mistake with the date. He asked for help to change it. There is no response to

this message. Most of the 13 messages are requests for help to which there is no response. There are also three voice calls two of which are unanswered. In response to the third voice call, the interpreter responds that he is unable to take the call. There are repeated references throughout the messages to MAH experiencing difficulty making contact with his MLP solicitor. He asked for her to call him. There is no confirmation that the request had been or would be passed to the solicitor.

60. I have received a considerable body of copy emails from those assisting MAH. These are written on behalf of MAH to his solicitors, Newcastle asylum, Asylum Outcome Review, Migrant Help, and the Legal Ombudsman. The emails relate to MAH's missed interview, and belief that he did not receive an invitation for interview from Newcastle Asylum or MLP. More generally, they assert his desire to pursue his asylum claim and request that his interview should be rearranged.

61. Lastly, I have been provided with copy emails between MLP and MAH, Newcastle Asylum, NH and PS. These include a chronology of MLP's claimed communications with MAH and Newcastle Asylum. In the chronology, MLP assert that: they were instructed on 2 November 2022 and placed themselves on Home Office record the same day. They claim to have received an email from the Home Office on 2 October 2023 in which the Home Office stated that a letter had been sent to MAH inviting him to an interview on 16 October 2023. They state that they emailed the invitation letter and attached travel tickets to MAH on 2 October; they then emailed the tickets again on 5 October. Copies of these and other emails are provided. The copy email that MAH's solicitor claims she sent to MAH enclosing the invitation letter and travel tickets bears unusual markings. It also appears to have been sent from her colleagues iPhone, and not from her own email address. Two further emails of note are dated 13 November 2023 and 14 December 2023 that were sent to the respondent. The first explains that MAH did not attend his interview because "he did not receive any correspondence related to his interview." The second email requests reconsideration of the decision to withdraw MAH's asylum claim. They are the only emails from MLP included in the Home Office bundle of documents.

62. In her statement dated 18 April 2024, KN provides information concerning her firm's contact with asylum seekers referred by Care4Calais whose claims had been withdrawn. She states that since October 2023, her firm had received around 30 such referrals.

63. The Home Office evidence bundle includes the following submissions and evidence:

    a) The interview appointment letter was sent by post and email to MAH's representative on 2 October 2023. Copies of both are included as evidence. It is further stated that "[it] is the representative's responsibility to pass this information to their client."
    b) The failure to attend notice of 16 October 2023, was sent to MAH's hotel.
    c) A Home Office database entry on 17 November 2023 states, "withdrawal maintained – no contact from app or reps despite correspondence."
    d) Copy emails of 13 November and 14 December 2023 from MLP are included.
    e) Copy emails from NH at Care4Calais and from PS are also included.

64. On behalf of LKL, I have been provided with a copy of his partner's maternity certificate (MAT B1 form) confirming her pregnancy and expected date of confinement during the week of 22 September 2023. I have also seen his son's birth certificate on which SC is named as the mother and LKL as the father of a male child born on 5 October 2023.

Tribunal Decisions on Implicit Withdrawal

65. The parties have placed before me, 12 decisions of this Tribunal representing different approaches from that taken by me in three lead cases addressing this Tribunal's

jurisdiction, two of which relate to implicit withdrawal as asylum claims. These latter two decisions are included in the 12 decisions produced in evidence. Some of these decisions represent the SSHD's preferred approach whilst others are preferred by those representing appellants.

66. The issue of this Tribunal's jurisdiction was considered in three lead cases, namely *HS* AS/21/03/42880, dated 7 April 2021 (*HS*), *AJ* AS/22/01/43710, dated 17 March 2022 (*AJ*), and *AW and others* AS/23/11/45804, dated 5 February 2024 (*AW*). *HS* and *AJ* had their claim for asylum withdrawn. *AW* had their support discontinued under section 103(2). In all three cases the SSHD was represented. In each case the Tribunal found it had jurisdiction and either substituted its decision for the decision under appeal or remitted the decision for further consideration by the SSHD. The SSHD did not bring judicial review proceedings to challenge my findings on jurisdiction.

67. In AS/19/11/40826, dated 21 November 2019, the appellant's asylum claim was withdrawn for failure to attend her interview. She admitted to having absconded from her authorised accommodation. The judge decided that she was a failed asylum seeker entitled to the provision of support under section 4(2) IAA 1999. This decision was promulgated before the three lead cases but this approach is no longer favoured by Tribunal judges. It nevertheless remains one that is often cited by appellants and their representatives, who seek to argue that a person whose claim for asylum has been treated as withdrawn is a failed asylum seeker entitled to the provision of section 4(2) support.

68. In the lead case of *HS,* the appellant was a young person in care whose claim for asylum was implicitly withdrawn for failure for attend his interview and for having absconded from his accommodation. I found errors in the SSHD's approach, namely a failure to remain in contact with *HS*' solicitor and with the Local Authority responsible for housing the *HS,* and specifically that *HS* had not absconded from his accommodation. I decided that the SSHD had incorrectly withdrawn the appellant's asylum claim and that *HS* was entitled to the provision of section 95 support. I further concluded that a person whose asylum claim was correctly treated as withdrawn was not entitled to support under section 95 or s4(2) because s/he was neither an asylum seeker nor a failed asylum seeker.

69. In the lead case of *AJ*, the appellant's asylum claim was treated as implicitly withdrawn. On the facts as found, I decided that the SSHD had incorrectly withdrawn the asylum claim, that there were numerous errors in the SSHD's administrative decision-making process and that under the Withdrawal Policy an incorrect withdrawal must be cancelled. I substituted my decision for the decision of the SSHD.

70. The lead case of *AW* concerned an appeal against discontinuance of support following a breach of a condition on which support was granted. The SSHD made three decisions in respect of each appellant. A decision granting section 95 support; a decision requiring the appellant to move to the Bibby Stockholm Barge as a condition of support which did not carry a right of appeal; and a third decision discontinuing section 95 support on the grounds of a breach of a condition of support with a right of appeal under section 103(2). The SSHD agreed in advance of the lead case hearing that the Tribunal had jurisdiction and that all three appellants had a right of appeal to this Tribunal.

71. In AS/21/03/42923, dated 12 April 2021, AS/22/11/44492, dated 20 December 2022, AS/23/04/44970, dated 12 May 2023, and AS/23/07/45319, dated 10 August 2023 the judge, dismissed three appeals and struck out the fourth as having no reasonable prospect of success on the grounds that the tribunal had no jurisdiction over the respondent's decision to treat the appellants' asylum claims as implicitly withdrawn. In three of the four cases, he expressed agreement with *HS* and *AJ* but in the fourth case he did not express a view. The judge did not have the benefit of hearing submissions on binding legal precedents, the SSHD's Withdrawal Policy or on guidance from the superior

courts on application of the law of legitimate expectation.

72. In AS/21/11/43541, dated 8 December 2021, the judge followed the approach in paragraph 71 above but in AS/23/02/44695 dated 7 March 2023, the same judge adopted the approach taken in the lead case of *AJ*.

73. In AS/22/11/44480, dated 12 December 2022, and AS/23/02/44686, dated 1 March 2023, the two judges applied the approach in *HS* and *AJ*.

74. In AS/12/22/44526, dated 29 December 2022, the judge distinguished the reasoning in the cases set out in paragraph 71 and concluded that the Tribunal role is not to look at whether the respondent's decision to treat the appellant's asylum claim as withdrawn is wrong but rather whether the respondent followed his own policy and procedure before treating the appellant's claim as withdrawn. Where it was found not to be the case, the withdrawal decision had to be cancelled as stated in the policy.

CLOSING SUBMISSIONS

Mr Biggs for the Respondent

75. With respect to the four issues that arise in this case, Mr. Biggs makes the following submissions:

   a) ***Issue 1 - the right of appeal under section 103(1) of the IAA 1999***

      i) Mr Biggs concedes that there is a right of appeal to this Tribunal under section 103(1) where an applicant applies for support under section 95 and the SSHD decides that the applicant does not qualify for support because they are no longer an asylum-seeker as their asylum claim has been withdrawn. This is supported he says by *R (SSHD) v. CASA and Malaj* [2006] EWHC 3059 (Admin) at [32] and Laws LJ's observations in *Dogan v SSHD and the CASA* [2003] EWCA Civ 1673 (*Dogan 2*), at [6].

   b) ***Issue 2 - the right of appeal under section 103(2) IAA 1999***

      i) Mr Biggs submits that the decisions under appeal in the three cases before me do not constitute appealable decisions pursuant to section 103(2) and 103(2A) because the effect of the withdrawal of the asylum claims is that the entitlement to section 95 support necessarily ended under the statutory scheme (given the definition of "asylum-seeker" in section 94).

      ii) Similarly, says Mr Biggs, there is no right of appeal if support ends because of the operation of a section 95(9) condition under the statutory scheme. He submits that this is reflected in *Dogan 2* at [17]-[18] and [17]-[24 where the Court of Appeal accepted that "*support would otherwise have come to an end"* for the purposes of section 103(2) where the person no longer satisfies the section 94 definition. This analysis is reflected, says Mr Biggs, in the respondent's policy entitled "*Ceasing Section 95 Support instruction*" version 2.0 (published 7 July 2023) which explains at pages 7-8 that a person who withdraws their asylum claim is no longer eligible for section 95 support (page 7) and that there "*is no right of appeal against termination of support where the asylum claim has been withdrawn*" (page 8).

   c) ***Issue 3 – the extent of the Tribunal's jurisdiction to consider the lawfulness/and or merits of a decision of the SSHD to treat an appellant's claim for asylum as withdrawn.***

i) Mr Biggs submits that subsections 103(1)-(2A) are clear as to the decisions which are appealable and these do not include a decision by the respondent that an asylum claim has been withdrawn or a decision to refuse to reinstate an asylum claim. As such, he says, the Tribunal cannot "*substitute"* its own decision as to whether an appellant has withdrawn their asylum claim, as this is not "*the decision appealed against."* Nor is it open to the Tribunal to require the SSHD to reconsider the matter because in the context of section 103(3)(a), the word "*matter*" cannot cover a separate decision by the respondent even if this decision explains why the decision under appeal was made.

ii) Mr Biggs acknowledges that whilst section 103 confers jurisdiction on the Tribunal to determine whether the decision under appeal is correct (*Malaj* at [31]-[32]), he submits there is no reason given the language, context, and purpose of the section to construe it as conferring any wider jurisdiction. Parliament did not provide, he says, for decisions to treat an asylum claim as withdrawn to be challengeable under this provision.

iii) Referring to the decision of the Supreme Court in *R (DN (Rwanda)) v. SSHD* [2020] UKSC 7, [2020] AC 698 at [12] and [17]-[18] and to authorities that have held that in some cases a court or tribunal may determine the legality of subordinate legislation, or entertain a collateral challenge to an historical decision, when this is determinative of a legal issue before it, these do not, says Mr Biggs, undermine his above submission. He directs me instead to the Supreme Court judgment in *R (Majera) v. SSHD* [2021] UKSC 46, [2022] AC 461(*Majera*) at [27]-[42]) which he submits, found that an administrative act or decision will be valid and effective until and unless it is successfully challenged before a court of competent jurisdiction and may remain valid and effective even then. Any reliance upon the suggestion that some courts may have jurisdiction to entertain a collateral challenge to a decision that is related to a decision in issue under some jurisdictions merely begs the question as to the scope of the Tribunal's jurisdiction in this case.

d) ***Issue 4 - What is the correct disposal of the three outstanding appeals?***

i) MAH – Mr Biggs asks me to find that the decision of 19 December 2023 does not carry a right of appeal pursuant to section 103(2) and that the Tribunal does not have jurisdiction to consider the legality or the merits of the 23 October 2023 decision. If contrary to the respondent's position, there is a right of appeal, the appeal must be dismissed.

ii) LKL - the decision dated 14 February 2024 to refuse his application for section 95 support carries a right of appeal pursuant to section 103(1) but the Tribunal does not have jurisdiction to consider the legality or the merits of the 14 November 2023 decision, to treat his asylum claim as withdrawn as this decision was lawful and correct.

iii) GK - The 22 February 2024 decision does not carry a right of appeal pursuant to section 103(2) as the Tribunal does not have jurisdiction to consider the legality or the merits of the 15 November 2023 decision, (to treat her asylum claim as withdrawn) as this decision was lawful and correct. If, contrary to the respondent's position, there is a right of appeal, the appeal must be dismissed because a reasonable explanation for her failure to attend an asylum interview was not provided.

Mr Grigg for MAH and LKL

76. With respect to the four issues that arise in this case, Mr. Grigg makes the following submissions:

a) ***Issue 1 - the right of appeal under section 103(1) of the IAA 1999***

i) Section 103(1) provides a right of appeal against any decision "*that the applicant does not qualify for support*". There could be no basis for reading into this a prohibition on appealing where the basis of the support refusal is that the applicant does not meet the definition of an 'asylum seeker' (s. 94(1) of the 1999 Act). The matter was decided in the decision in *R (SSHD) v CASA (Malaj interested party)* [2006] EWHC 3059 (Admin) (*Malaj*). The High Court held in that case that the Tribunal does have that jurisdiction: §33. While *Malaj* did not involve a withdrawn asylum claim, that is not a material distinction, says Mr Grigg. The reason why a withdrawal decision is significant is that a valid withdrawal will mean that an applicant is no longer an 'asylum seeker,' as was the issue in *Malaj*.

b) ***Issue 2 - the right of appeal under section 103(2) IAA 1999***

i) Mr Grigg invites the Tribunal to reject the respondent's submissions that there is no jurisdiction to hear an appeal under s. 103(2) against a decision to discontinue support because the applicant's asylum claim has been withdrawn because this is not a termination of support "*before that support would otherwise have come to an end.*" Citing *Dogan 2,* he asked me to find that the Tribunal has jurisdiction under s. 103(2) to consider an appeal where support is terminated following a decision to treat the appellant's asylum claim as withdrawn. He advances three reasons for this:

ii) Firstly, the respondent's construction is incompatible with the statutory language. In any appeal brought under s. 103(2) following an asylum withdrawal decision, it is likely to be the appellant's case that either as a matter of fact or law their asylum claim has not been, or not been validly, withdrawn, and that therefore support would not "*otherwise have come to an end*" absent the decision to discontinue support. The Respondent's approach begs the question, by presuming in all withdrawal cases that support would "*otherwise have come to an end*."

iii) Secondly, *Dogan 2* did not decide the issue in the respondent's favour. The question in *Dogan 2* was whether there is a right of appeal where support is terminated following a breach of conditions under s. 95(9) of the 1999 Act. In the passage cited by the respondent (§§17-18) the Court of Appeal was proceeding on the basis of, a concession by the appellant in that case that "*the circumstances in which section 95 support "would otherwise have come to an end" are, and are only, circumstances in which the Act itself requires that support be terminated, that is to say when the claimant for support ceases to be an asylum-seeker within the meaning given by s.94(1).*" There is nothing to indicate that either the appellant, when making that concession, or the Court, when accepting it, had in mind anything but the ordinary situation of a claimant ceasing to be an asylum seeker because their claim has been determined. The issue of withdrawal decisions was not raised at all. *Dogan* should not be read more broadly than the issue it decided.

iv) Thirdly, the respondent's guidance being consistent with Mr. Biggs' submission can have no bearing on the correct statutory construction.

c) ***Issue 3 – the extent of the Tribunal's jurisdiction to consider the lawfulness/and or merits of a decision of the SSHD to treat an appellant's claim for asylum as withdrawn.***

i) Mr Grigg submits that neither section 103(1) nor section 103(2) limit the grounds of appeal open to an appellant. Given the protective purpose of Part VI, IAA 1999 and the risk of an Article 3 ECHR breach if support is wrongly withdrawn, limitations on the grounds of appeal open to an appellant should not readily be read into the Act. Absent express words, compelling textual justification is required to support the proposition that it is not open to an appellant to raise any given issue which is relevant to the factual or legal correctness of the support termination. It is open to an appellant under section 103(1) to raise any issue of fact or law going to the correctness of the support termination: *Malaj* at §33 refers.

ii) Absent clear limitation, the validity of a prior asylum withdrawal decision is relevant to the correctness of the subsequent support termination. That is because, entitlement to section 95 support depends upon the claimant having an extant "*claim for asylum*". The validity or correctness of the decision to treat the asylum claim as withdrawn therefore bears directly on the continuing entitlement to support. This approach, he says, is consistent with a range of circumstances in which it has been recognised that the correctness or lawfulness of a decision may depend upon the correctness or lawfulness of a prior decision: see *R (DN (Rwanda)) v SSHD* [2020] UKSC 7, [2020] 2 AC 698 at §§12, 17-18 and other court judgments.

iii) The Appellant does not rely upon the Tribunal having any power to quash withdrawal decisions. It is not necessary for it to have such a power in order for it to consider how the lawfulness of the prior withdrawal decision bears upon the correctness of the support termination.

d) ***Issue 4 - What is the correct disposal of the three outstanding appeals?***

i) The Tribunal has jurisdiction to hear appeals under section 103(1) of the IAA 1999, where the appellant is refused support on the basis that their claim for asylum has been treated as withdrawn.

ii) The Tribunal has jurisdiction to hear appeals under section 103(2) of the IAA 1999, where the appellant's support under section 95 is discontinued following a decision to treat their asylum claim as withdrawn.

iii) In such an appeal, under section 103(1) or (2), the Tribunal has jurisdiction to consider the lawfulness of the SSHD's decision to treat the appellant's claim for asylum as withdrawn.

Mr Khan for GK

77. Mr Khan submits that the decision to withdraw GK's asylum claim is unlawful. This is because the SSHD knew that GK was represented by Prestige solicitors and was in possession of their contact details including the email address but failed at all times to provide him with a copy of the two invitation letters and the decision to withdraw GK's asylum claim. He submits that the Tribunal has jurisdiction and should allow her appeal against discontinuation of section 95 support.

LEGAL FRAMEWORK

The Immigration and Asylum Act 1999 (IAA 1999) as amended

78. So far as material, section 94 provides:**(***my emphasis added in bold)*

94 Interpretation of Part VI.

(1) In this Part—

"asylum-seeker" *means a person who is not under 18 and has made a claim for asylum which has been recorded by the Secretary of State but which has not been determined;*

"claim for asylum" means a claim that it would be contrary to the United Kingdom's obligations under the Refugee Convention, or under Article 3 of the Human Rights Convention, for the claimant to be removed from, or required to leave, the United Kingdom;

…

"dependant," in relation to an ***asylum-seeker or a supported person****, means a person in the United Kingdom who—*

(a) is his spouse;
(b) is a child of his, or of his spouse, who is under 18 and dependent on him; or
(c) falls within such additional category, if any, as may be prescribed;

…

"supported person" means—

(a) an asylum-seeker, or
(b) a dependant of an asylum-seeker,

who has applied for support and for whom support is provided under section 95.

(2) References in this Part to support provided under section 95 include references to support which is provided under arrangements made by the Secretary of State under that section.

(3) For the purposes of this Part, a claim for asylum is determined at the end of such period beginning—

(a) on the day on which the Secretary of State notifies the claimant of his decision on the claim, or
(b) if the claimant has appealed against the Secretary of State's decision, on the day on which the appeal is disposed of,

as may be prescribed.

(4) An appeal is disposed of when it is no longer pending for the purposes of the Immigration Acts or the Special Immigration Appeals Commission the Act 1997.

(4A) For the purposes of the definitions of "asylum-seeker" and "failed asylum-seeker", the circumstances in which a claim is determined or

rejected include where the claim is declared inadmissible under section 80A or 80B of the Nationality, Immigration and Asylum Act 2002.

(4B) But if a claim is—

(a) declared inadmissible under section 80B of that Act, and
(b) nevertheless considered by the Secretary of State in accordance subsection (7) of that section,

the claim ceases to be treated as determined or rejected from the time of the decision to consider the claim.

(4C) For the purposes of subsection (3), notification of a declaration of inadmissibility under section 80A or 80B of that Act is to be treated as notification of the Secretary of State's decision on the claim.]

(5) If an asylum-seeker's household includes a child who is under 18 and a dependant of his, he is to be treated (for the purposes of this Part) as continuing to be an asylum-seeker while—

(a) the child is under 18; and
(b) he and the child remain in the United Kingdom.

……

79. Section 95 IAA 1999 provides:

95. — Persons for whom support may be provided.

(1) The Secretary of State may provide, or arrange for the provision of, support for—

(a) asylum-seekers, or
(b) dependants of asylum-seekers, who appear to the Secretary of State to be destitute or to be likely to become destitute within such period as may be prescribed."

(2) In prescribed circumstances, a person who would otherwise fall within subsection (1) is excluded.

(3) For the purposes of this section, a person is destitute if—

(a) he does not have adequate accommodation or any means of obtaining it (whether or not his other essential living needs are met); or
(b) he has adequate accommodation or the means of obtaining it but cannot meet his other essential living needs…. (emphasis added)

*(4) **If a person has dependants**, subsection (3) is to be read as if the references to him were references to him and his dependants taken together.*

…

(9) Support may be provided subject to conditions.

(9A) …..

(10) The conditions must be set out in writing.

(11) A copy of the conditions must be given to the supported person.

80. ***98 Temporary support.***

(1) The Secretary of State may provide, or arrange for the provision of, support for—

(a) asylum-seekers, or
(b) dependants of asylum-seekers,

who it appears to the Secretary of State may be destitute.

(2) Support may be provided under this section only until the Secretary of State is able to determine whether support may be provided under section 95.

(3) ***Subsections (2) to (11) of section 95 apply*** *for the purposes of this section as they apply for the purposes of that section.*

…

81. Appeals in relation to decisions of the Secretary of State regarding section 95 support are provided for in section 103 of the 1999 Act. So far as material, this provides:

103.— Appeals.

(1) If, on an application for support under ***section 95****, the Secretary of State decides that the applicant does not qualify for support under that section, the applicant may appeal to the First-tier Tribunal .*

(2) If the Secretary of State decides to stop providing support for a person under ***section 95*** *before that support would otherwise have come to an end, that person may appeal to the First-tier Tribunal .*

(2A) If the Secretary of State decides not to provide accommodation for a person under ***section 4****, or not to continue to provide accommodation for a person under section 4, the person may appeal to the First-tier Tribunal.*

(3) On an appeal under this section, the First-tier Tribunal may—

(a) require the Secretary of State to reconsider the matter;
(b) substitute its decision for the decision appealed against; or
(c) dismiss the appeal.

(4) …..

(5) The decision of the First-tier Tribunal is final.

(6) If an appeal is dismissed, no further application by the appellant for support under section 4 or 95 is to be entertained unless the Secretary of State is satisfied that there has been a material change in the circumstances.

(7) The Secretary of State may by regulations provide for decisions as to where support provided under section 4 or 95 is to be provided to be appealable to the First-tier Tribuna] under this Part.

…..

82. Section 4(2) of the 1999 Act (as amended by section 49 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act), headed "failed asylum-seeker," allows the Secretary of State to provide, or arrange for the provision of, facilities for the accommodation of a person and his dependants if –

   i) he was (but is no longer) an asylum seeker; and
   ii) his claim for asylum was rejected.

83. The explanatory notes to section 49 state:

   "Section 49 gives the Secretary of State additional powers to support failed asylum-seekers. Section 4 of the 1999 Act currently provides that the Secretary of State may provide, or arrange for the provision of, accommodation of persons temporarily admitted to the United Kingdom or released from detention as specified in paragraphs (a), (b) and (c) of that section. However, the existing power does not allow the provision of accommodation to all categories of asylum-seekers whose claims for asylum have been rejected, should the Secretary of State decide to provide such accommodation in particular cases. Section 49 remedies this."

Asylum Support Regulations 2000

84. So far as material, the Asylum Support Regulations 2000 provide as follows:

   Persons excluded from support

   4.—(1) The following circumstances are prescribed for the purposes of **subsection (2) of section 95** of the Act as circumstances where a person who would otherwise fall within subsection (1) of that section is excluded from that subsection (and, accordingly, may not be provided with asylum support).

   (2) A person is so excluded if he is applying for asylum support for himself alone and he falls within paragraph (4) by virtue of any sub-paragraph of that paragraph.

   (3) A person is so excluded if—

   (a) he is applying for asylum support for himself and other persons, or he is included in an application for asylum support made by a person other than himself;
   (b) he falls within paragraph (4) (by virtue of any sub-paragraph of that paragraph); and
   (c) each of the other persons to whom the application relates also falls within paragraph (4) (by virtue of any sub-paragraph of that paragraph).

   (4) A person falls within this paragraph if at the time when the application is determined—

   (a) **he is a person to whom interim support applies;** or
   (b) he is a person to whom social security benefits apply; or
   (c) he has not made a claim for leave to enter or remain in the United Kingdom, or for variation of any such leave, which is being considered on the basis that he is an asylum-seeker or dependent on an asylum-seeker.

Asylum Support (Amendment) Regulations 2005

85. The Asylum Support (Amendment) Regulations 2005 (the 2005 Regulations) altered the previous Asylum Support Regulations 2000 by substituting a new regulation 20, which provides as follows:

Suspension or discontinuation of support

20.—*(1) Asylum support for a supported person and any dependant of his or for one or more dependants of a supported person may be suspended or discontinued if—*

…..

d) the Secretary of State has reasonable grounds to believe that the supported person or any dependant of his for whom support is being provided has ***abandoned*** *the authorised address without first informing the Secretary of State or, if requested, without permission;*

…

g) the supported person or, if he is an asylum seeker, his dependant, has not complied within a reasonable period, which shall be no less than ten working days beginning with the day on which the request was received by him, with a request for information made by the Secretary of State relating to his claim for asylum;

…

k) the supported person or a dependant of his for whom support is being provided has failed without reasonable excuse to comply with ***a relevant condition****.*

(2) …

(3) Any decision to discontinue support in the circumstances referred to in paragraph (1) above shall be taken individually, objectively and impartially and reasons shall be given. Decisions will be based on the ***particular situation*** *of the person concerned and particular regard shall be had to whether he is a* ***vulnerable person*** *as described by Article 17 of Council Directive 2003/9/EC of 27th January 2003 laying down minimum standards for the reception of asylum seekers.*

(4) No person's asylum support shall be discontinued before a decision is made under paragraph (1).

The Borders, Citizenship and Immigration Act 2009 (BCIA 2009)

86. The BCIA 2009 provides, so far as relevant to this case, as follows:

"55 ***Duty regarding the welfare of children***

(1) The Secretary of State must make arrangements for ensuring that—

(a) the functions mentioned in subsection (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and

(b) any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge

of a function mentioned in subsection (2) are provided having regard to that need.

(2) The functions referred to in subsection (1) are—

(a) any function of the Secretary of State in relation to immigration, asylum or nationality;
(b) any function conferred by or by virtue of the Immigration Acts on an immigration officer;
…..

The Nationality, Immigration and Asylum Act 2002 (NIA 2002)

87. The NIA 2002 introduced changes to section 103 IAA 1999, as follows: *emphasis added throughout*)

" 53. Asylum-seeker: appeal against refusal to support

The following shall be substituted for section 103 of the Immigration and Asylum Act 1999 (asylum support appeal)—

103. Appeals: general

(1) This section applies where a person has applied for support under—

(a) section 95,
(b) section 17 of the Nationality, Immigration and Asylum Act 2002, or
(c) both.

(2) The person may appeal to an adjudicator against a decision that the person ***is not qualified*** *to receive the support for which he has applied.*

(3) The person may also appeal to an adjudicator ***against a decision to stop providing support*** *under a provision mentioned in subsection (1).*

(4) But subsection (3) does not apply—

(a) to a decision to stop providing support under one of the provisions mentioned in subsection (1) if it is to be replaced immediately by support under the other provision, or

(b) to a decision taken on the ground that the person is no longer an asylum-seeker or the dependant of an asylum-seeker.

88. However, Paragraph 41(d) of schedule 11 to the Immigration Act 2016 (IA 2016) contains a prospective amendment to the above cited paragraph 53 of the NIA 2002 by providing for its repeal. As at the date of this decision, neither section 53 NIA 2002 nor Paragraph 41(d) of schedule 11 to the IA 2016 is in force.

Immigration Rules part 11: Asylum
Withdrawal of applications

89. Paragraph 333C of the Immigration Rules provides as follows:

If an application for asylum is withdrawn either explicitly or implicitly, it will not be considered.

(a) *An application will be treated as explicitly withdrawn if the applicant signs the relevant form provided by or on behalf of the Secretary of State, or otherwise explicitly declares a desire to withdraw their asylum claim.*

(b) An application may be treated as implicitly withdrawn if the applicant:

(i) fails to maintain contact with the Home Office or provide up to date contact details as required by paragraph 358B of these Rules; or

(ii) leaves the United Kingdom (without authorisation) at any time before the conclusion of their application for asylum; or

(iii) fails to complete an asylum questionnaire as requested by or on behalf of the Secretary of State; or

(iv) fails to attend any reporting events, unless the applicant demonstrates within a reasonable time that the failure was due to circumstances beyond their control; or

(v) fails to attend a personal interview required under paragraph 339NA, unless the applicant demonstrates within a reasonable time that that failure was due to circumstances beyond their control.

(c) The applicant's asylum record will be updated to reflect that the application for asylum has been withdrawn.

Personal interview

90. So far as relevant, Paragraph 339NA of the Immigration Rules provides as follows:

339NA. Before a decision is taken on the application for asylum, the applicant shall be given the opportunity of a personal interview on their application for asylum with a representative of the Secretary of State who is legally competent to conduct such an interview.

The personal interview may be omitted where:

(i) the Secretary of State is able to take a positive decision (a grant of refugee status or humanitarian protection) on the basis of evidence available;
(ii) the Secretary of State has already had a meeting with the applicant for the purpose of assisting them with completing their application and submitting the essential information regarding the application;
(iii) the applicant, in submitting their application and presenting the facts, has only raised issues that are not relevant or of minimal relevance to the examination of whether they are a refugee, as defined in Article 1 of the Refugee Convention and/or has only raised issues that are not relevant or of minimal relevance to the

examination of whether they are eligible for humanitarian protection;

(iv) *the applicant has made inconsistent, contradictory, improbable or insufficient representations which make their claim clearly unconvincing in relation to having been the object of persecution or serious harm;*

(v) *the applicant has submitted a subsequent application which does not raise any relevant new elements with respect to their particular circumstances or to the situation in their country of origin;*

(vi) *the applicant is making an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in their removal;*

(vii) *it is not reasonably practicable, in particular where the Secretary of State is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond their control; or*

(viii) *the applicant is an EU national whose claim the Secretary of State has nevertheless decided to consider substantively in accordance with section 80A(4) of the Nationality, Immigration and Asylum Act 2002.*

The omission of a personal interview shall not prevent the Secretary of State from taking a decision on the application.

Where the personal interview is omitted, the applicant and dependants shall be given a reasonable opportunity to submit further information.

Paragraph 339NA does not stipulate that a personal interview can be omitted where an applicant has absconded but it stipulates that the omission of a personal interview shall not prevent the Secretary of State from taking a decision on the application**.**

Home Office - Relevant Guidance And Policy (*emphasis added throughout*)

91. The Home Office guidance and policies relevant to the three outstanding appeals are: *Asylum interviews guidance*, version 9.0, published on 28 June 2022, *Withdrawing asylum claims*, Asylum Policy instructions, version 9.0, published on 11 December 2023, and the *Conditions of Support Guidance,* version 2.0, published on 7 March 2023.

Asylum Interviews Guidance

92. This guidance provides instructions for caseworkers on how to arrange and conduct interviews. It provides that unless one of the exceptions in paragraph 339NA of the Immigration Rules applies, the Home Office must invite claimants to attend an asylum interview using the standard invitation template adapted to include specific details for the date, time, and location of the interview and whether the interview will take place in person or by video conference. It instructs that a copy of the interview letter must be sent to the claimant's legal representative if there is one on record. A legal representative who is a qualified solicitor, is entitled to attend the interview with their client and the guidance directs, if possible, to accommodate their availability when arranging the interview.

Policy Instructions 'Withdrawing asylum claims' (Withdrawal Policy) (emphasis added).

93. Version 9.0 of the above policy instructions, published for Home Office staff, sets out three underlying policy objectives in treating an asylum claim as withdrawn, namely to:

- *maintain the integrity of the asylum process by focusing efforts on those claimants whose behaviour demonstrates they are serious about pursuing their asylum claim;*

- *treat claims as withdrawn where the claimant shows no real interest in pursuing their claim by failing to comply with the process, absconding or leaving the UK without permission before a decision; and*

- *demonstrate a commitment to make sure genuine refugees are given the protection they need quickly whilst robustly pursuing removal action against those who make unfounded claims and subsequently abscond.*

94. Under the heading "*failure to respond to first scheduled asylum interview letter,*" Home Office staff are urged to make enquiries before treating an asylum claim as withdrawn. The Withdrawal Policy provides that before treating the asylum claim as an implicit withdrawal, a failure to respond to an asylum interview letter (ASL.3724) must be sent immediately to the claimant and their immigration advisor (if applicable) to establish why the claimant did not attend. If further information or evidence is required to assess the circumstances, staff should contact the claimant. Where no explanation is received by the deadline, the asylum claim may be treated as implicitly withdrawn. If an explanation is received within the deadline, staff must consider whether there is sufficient evidence to show that failure to attend was due to circumstances beyond the claimant's control and decide whether to rebook the interview or treat the claim as implicitly withdrawn.

95. This policy further states that the onus is on the claimant to provide an acceptable explanation for non-attendance, for example, reliable evidence of confirmation of their current address to explain why they did not receive the letter, illness or travel disruption. Where the claimant is not represented and no valid address has been provided, staff are advised to serve the ASL.3724 to file but not to action the withdrawal until the letter is served.

96. The Withdrawal Policy requires decision makers to confirm that there is evidence on the Home Office file that a warning has been recorded as having been issued before treating the claim as implicitly withdrawn**.** Where there is no evidence of notification, the implicit withdrawal procedure cannot be applied until a claimant is notified. In this situation an invite to asylum interview letter may be issued and if they fail to attend that interview the claim may be treated as withdrawn.

97. Under the heading '*Recording the application as Implicitly Withdrawn,'* the Policy requires that decision makers *must* file copies of all correspondence and minutes on the Home Office file and *must* update Home Office databases to show that the asylum claim has been implicitly withdrawn. In cases where it is clear that an asylum claim has been withdrawn incorrectly, the Policy directs that the withdrawal is cancelled and the claimant and their representative informed that the claim will be considered substantively.

98. The Withdrawal Policy requires caseworkers to be mindful of the duty under Section 55 of the BCIA 2009 to carry out their functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK., and to ensure that the process of withdrawing an asylum claim operates alongside existing child safety procedures and considerations so that a decision to treat an asylum claim as withdrawn does not adversely impact on the best interests of a child. Thus, where a family asylum claim is implicitly withdrawn, the Withdrawal Policy provides that the child's claim is be considered "*as an independent claim in its own right following the Children's asylum claims guidance unless or until the child also withdraws their claim*."

Conditions of Support Policy Guidance

99. This Guidance is directed at caseworkers. On page 13, under "*Discontinuance of Support*," caseworkers are reminded that any decision to discontinue support for breach of conditions must be taken individually, objectively and impartially, and the decision should be based on the particular situation of the supported person. This Guidance also states that particular attention should also be given to whether the supported person is a vulnerable person as described by Regulation 4 of the Asylum Seekers (Reception Conditions) Regulations 2005. The Regulation state that a vulnerable person includes a lone parent with a minor child.

GUIDANCE FROM THE COURTS

Jurisdiction

100. The case of Dogan before Silber J in the Administrative Court (R *on the Application of SSHD v CASA* [2002] EWHC 2218 (Admin) (*Dogan1)),* concerned an application by the SSHD to quash my decision to allow an appeal under section 103(2) IAA 1999 against a discontinuation of support. Silber J held [at 32] that:

> *"….a decision to stop support to an asylum seeker only gives rise to an appeal under section 103(2) if before the decision under challenge to stop payment is made, the claimant already possessed an existing right to section 95 support which then had been prematurely terminated by the decision under challenge in the appeal proceedings. The claimant could only have possessed that right to pre-existing section 95 support if he or she had already and previously been granted to him or her. (sic) In other words, the right of appeal under section 103(2) of the 1999 Act for a stoppage appeal only arises if the asylum seeker can show that two separate decisions had been made, namely a first one to grant it and then a second later one, being the one being challenged, to terminate it prematurely."*

101. Before the Court of Appeal (*Dogan v SSHD v CASA* [2003] EWCA Civ 1673 (*Dogan* 2)), the proceedings were conducted on a public interest basis to determine as a matter of principle, the scope of the appeal jurisdiction conferred by Section 103(2) IAA 1999. Giving the lead judgment, Laws LJ, with whom Buxton LJ and the Vice Chancellor agreed, upheld Silber J in the Administrative Court. During the course of that judgment, Laws LJ [at 6] said this, concerning appeals under Section 103 (1):(*emphasis added*)

> "6. ….. *The Secretary of State might, no doubt, decide in a particular case that the asylum seeker is not destitute and so decline support. In that case a non-qualification appeal would lie under Section 103 (1). But it would also lie if the Secretary of State concluded that the claimant was not an asylum seeker within the meaning of that expression given in the interpretation section, that is Section 94 (1). It defines "asylum seeker" as –*
>
> > " ..... a person who is not under 18 and has made a claim for asylum which has been recorded by the Secretary of State but which has not been determined."
>
> *There is provision which I need not read as to when a claim will be taken to have been determined. The Secretary of State might have concluded* ***for one reason or another*** *that the claimant before him does not fall within this definition and then, too, there would be a non-qualification appeal under Section 103 (1)."*

102. The judicial review claim of *R (SSHD) v. CASA and Malaj* [2006] EWHC 3059 (Admin),

before His Honour Judge Gilbart (as he then was - sitting as a deputy High Court Judge) arose out of the AST decision of 3 October 2005, to dismiss the appeal of the Interested Party against the SSHD decision of 18 August 2005, that she did not qualify for support under Section 95 of the IAA 1999.

103. The facts were that the Interested Party applied for asylum on 28 November 1999. Her claim was refused on 2 March 2001. She became appeal rights exhausted on 6 February 2002. She applied for further leave in 2005 which was refused on 7 March 2005. She applied for section 95 support, but the SSHD decided that she did not qualify for support and she appealed to this Tribunal. At the hearing before me in the First-tier Tribunal, the SSHD argued that I did not have jurisdiction to hear the appeal. I determined I had jurisdiction but went on to dismiss the appeal. The SSHD brought judicial review proceedings to establish the limits of the Tribunal's jurisdiction.

104. Citing with approval the above *obiter dicta* comments of Law LJ [at 6] of *Dogan 2,* which Judge Gilbart said carried "considerable persuasive force," he held [at 32] that the Tribunal had jurisdiction to hear an appeal under section 103(1) which relates to the existence or otherwise of the factual circumstances permitting the grant of support under section 95 of the IAA 1999, and to arguments of law relating to those issues. He added that, "if the factual circumstances are not established, then [the Tribunal] will be bound to dismiss the appeal."

105. In *R (Limbuela) v SSHD* [2005] UKHL 66, [2006] 1 AC 396, their Lordships made clear that the Tribunal is to read and give effect to the IAA 1999 and the Amendment Regulations 2005 in such a way as is compatible with ECHR rights. Thus, it is generally a breach of Article 3 ECHR for an asylum seeker to be left destitute in the United Kingdom. The House of Lords held, unanimously, that to leave a person street homeless would be both inhuman and degrading.

106. In *R(VC) and others v Newcastle City Council and SSHD* [2011] EWHC 2673 (Admin), the claimant was a failed asylum seeker with minor dependants. She had exhausted her appeal rights before the birth of her first child. After her first child was born, she made further submissions in support of her asylum claim, which although refused, were accepted as a fresh asylum claim by the SSHD. *VC* appealed unsuccessfully against the refusal of her fresh asylum claim. After becoming appeal rights exhausted for the second time, she applied again for support. The question before the High Court was whether support should be provided to her under section 4 of the IAA 1999 as a failed asylum seeker, or under section 17 of the Children Act 1989. Mumby LJ held that from the date the SSHD accepted her further submissions as a fresh claim, the claimant and her dependants were entitled to section 95 support. Furthermore, by operation of section 94(5), she and her children remained asylum seekers entitled to the provision of section 95 support even after the refusal of her fresh asylum claim.

107. In *Majera,* Lord Reed commented that even in the context of administrative acts and decisions, it is an over-simplification to say that an unlawful act has no legal effect at all [27]. There are a variety of circumstances in which an unlawful administrative act may have legal consequences [29 and 31]. However, *Majera* was not concerned with an unlawful administrative act but with an order of a tribunal. Lord Reed held that a court order must be obeyed unless and until it has been set aside or varied by the court or, conceivably, overruled by legislation [44]. It should not be ignored by anyone, including the government [45] and [49]. Furthermore, Lord Reed noted that the SSHD had had every opportunity to challenge the court order in question, if it were considered defective, and could have raised the matter with the First-tier Tribunal that made the order or applied for permission to seek judicial review.

Published Policies and Legitimate Expectation

108. In *R (Lumba) v SSHD* [2011] UKSC 12, Lord Dyson, giving the lead judgment with whom the majority agreed, said [at 26] that:

> “a decision-maker must follow his published policy. unless …there are good reasons for not doing so. The principle that policy must be consistently applied is not in doubt: see Wade and Forsyth *Administrative Law,* 10th ed (2009) p 136. As it is put in *De Smith’s Judicial Review*, 6th ed (2007) at para 12-039:
>
>> *“there is an independent duty of consistent application of policies, which is based on the principle of equal implementation of laws, non-discrimination and the lack of arbitrariness.”*

109. Lord Phillips, giving a dissenting judgment in *Lumba*, quoted from the judgment of Laws LJ in *R (Nadarajah) v SSHD* [2005] EWCA Civ 1363, which though *obiter* was nevertheless, he said, “a compelling analysis” of the law of legitimate expectation. Law LJ [at 68 and 69] had said the following:

> *“…..Where a public authority has issued a promise or adopted a practice which represents how it proposes to act in a given area, the law will require the promise or practice to be honoured unless there is good reason not to do so. What is the principle behind this proposition? ….It is said to be grounded in fairness, and no doubt in general terms that is so. I would prefer to express it rather more broadly as a requirement of good administration, by which public bodies ought to deal straightforwardly and consistently with the public. In my judgment this is a legal standard which, although not found in terms in the European Convention on Human Rights, takes its place alongside such rights as fair trial, and no punishment without law. That being so there is every reason to articulate the limits of this requirement – to describe what may count as good reason to depart from it – as we have come to articulate the limits of other constitutional principles overtly found in the European Convention. Accordingly a public body’s promise or practice as to future conduct may only be denied, and thus the standard I have expressed may only be departed from, in circumstances where to do so is the public body’s legal duty, or is otherwise, to use a now familiar vocabulary, a proportionate response (of which the court is the judge, or the last judge) having regard to a legitimate aim pursued by the public body in the public interest. The principle that good administration requires public authorities to be held to their promises would be undermined if the law did not insist that any failure or refusal to comply is objectively justified as a proportionate measure in the circumstances.”*

FINDINGS OF FACT

110. Having considered the oral and documentary evidence as a whole, I make the following findings of fact in relation to MAH:

    a) He does not speak English and communicates through an interpreter.
    b) He was not sent a copy of the 2 October 2023 invitation to interview letter inviting him for a personal interview on 16 October 2023 to his hotel address. The said letter was only sent to MLP, the appellant’s representatives. It was not sent to MAH, as required.
    c) MLP did not send the interview invitation to MAP as claimed. In the alternative, if MLP did send the letter of 2 October, MAH did not receive it.
    d) He learnt of the scheduled interview on 18 October 2023, upon receipt of notification dated 16 October from the Home Office that he had failed to

attend his interview.

e) MAH made concerted efforts from 18 October 2023 to contact MLP by telephone and email to seek assistance. His solicitor did not return his calls.
f) MAH sent 13 WhatsApp messages from 10 September 2023 to MLP's interpreter in Arabic seeking help to contact his solicitor. These were largely ignored or in any event did not result in his solicitor making contact.
g) MAH was assisted by NH and AS who wrote to the Home Office on his behalf. They also helped him to make a complaint to the Legal Services Ombudsman concerning the quality of assistance he received from MLP on Legal Aid.
h) Representations were sent on MAH's behalf to the Home Office by NH and AS.
i) MLP's email of 13 November and 14 December were received by the Home Office. The email of 13 November advising the Home Office that he did not receive his invitation to interview, was received before MAH's asylum claim was treated as withdrawn by the respondent on 17 November 2023.
j) Home Office record (CID entry 17 November 2023), which states that the withdrawal was maintained as no contact from MAH or MLP, is inaccurate.
k) MAH had reasonable excuse for failure to attend his interview for reasons beyond his control.

111. I make the following findings of fact in relation to LKL:

a) He understands English to a reasonable standard and does not require the service of an interpreter.
b) In June 2023, he was often absent from his accommodation during the day but, save for returned to sleep at the authorised accommodation.
c) He was absent from his accommodation for 4 nights between 28 September – 1 October 2023, and for this received a warning.
d) He was aware that unauthorised absence from the accommodation may result in loss of support.
e) He was in a relationship with CS, who was expecting their child during the week of 22 September 2023. The baby was overdue and was born on 5 October 2023.
f) He left his accommodation on 2 October and returned on 18 November 2023.
g) He emailed the Home Office on 2 October to advise that he would need to be with his partner whose delivery had been delayed.
h) He did not provide dates of absence, the address where he would be staying and did not wait to receive permission before leaving his accommodation.
i) His absence was not permanent as he intended to return.
j) His son who was born on 5 October 2023, is his dependant.
k) He did not attend his interview on 12 October 2023. He did not provide an explanation for his failure within the time period stipulated.
l) His asylum claim was withdrawn on 14 November 2023. The appellant requested a review of the decision but the withdrawal was maintained.
m) LKL did not receive a refusal decision on his claim for section 95 support.
n) On 17 November, LKL asked for his son to be included in his asylum application as a dependant.
o) On 5 December 2023, he applied for voluntary return. His son was included on the application.
p) The SSHD was aware that LKL had a dependant son.
q) On 8 February 2024, he made a fresh application for section 95 support. This was refused on 14 February 2024. This is the decision under appeal.
r) LKL had reason excuse to be absent from his authorised accommodation for 14 days but not the entire period.
s) I do not accept that he could not have made contact with the respondent or his housing office by telephone or email at any point over a six-week period

in order to provide an explanation for his absence and details of his whereabouts. Had he done so, I would have found that he had demonstrated reasonable excuse.

t) He and his son are currently provided with subsistence and accommodation by friends on a temporary basis. LKL and his son are destitute.

112. I make the following findings of fact in relation to GK:

a) She does not speak English and communicates through an interpreter.
b) She has 2 minor children who are her dependants on her asylum claim. Home Office correspondence records one child as an Indian national and the second child as a British Citizen.
c) She has at all material times been represented by Prestige Solicitors.
d) In November 2022, the SSHD invited her to attend a personal asylum interview on 24 November. The invitation letter was not sent to her representatives.
e) On 23 November 2023, her solicitor emailed the respondent to advise that she was unfit to attend her interview.
f) On 17 February 2023, her asylum claim was withdrawn. The decision was not served on GK or her solicitors.
g) On 18 July 2023, the SSHD wrote to GK to advise that her asylum claim had been reinstated. She was unaware that it had been withdrawn.
h) On 17 October 2023, the SSHD wrote to GK giving notice of a personal interview on 1 November 2023. GK did not receive the letter. It was returned marked “gone away” to the sender.
i) The letter was not sent to her solicitor.
j) On 1 November 2023, GK received a telephone call from the Home Office enquiring why she did not attend her interview. She advised that she was not informed of the interview.
k) She did not receive the SSHD’s letter purported letter of 1 November 2023 seeking reasons for her non-attendance.
l) The purported proof of delivery of the letter of 1 November does not relate to the letter in question as the Royal Mail Stamp shows delivery was attempted 5 days before it was written. It was returned to and received by the Home Office on 2 November, the earliest date it could have been received by GK.
m) Her asylum claim was withdrawn by letter dated 15 November 2023 for failure to attend her interview without reasonable explanation. It was returned undelivered on 18 November 2023.
n) On 22 February 2024, her section 95 support was discontinued with immediate effect without a right of appeal. The letter was received by GK.
o) On 27 February 2024, Prestige solicitors enquired about the progress of GK’s asylum claim. They complained that notwithstanding they are on record as acting for GK, they have never received a decision on her application.
p) On 28 February 2024, her request for reconsideration of the decision of 22 February 2022 and reinstatement of support was refused. The letter was received by GK.
q) On 6 March 2024, SERCO confirmed that GK had resided at her authorised address since 14 February 2020.

DISCUSSION

Tribunal Jurisdiction

113. It is salient to briefly recapitulate the case law on tribunal jurisdiction. The IAA 1999 provides that the Tribunal can only entertain appeals by applicants for asylum support in two specific circumstances, namely: under section 103(1) when the SSHD on an

application for support under section 95 has decided that an applicant does not qualify for support; or under section 103(2), when the SSHD decides to stop providing support for a person under section 95 before that support would otherwise have come to an end.

114. Support under section 98, is often referred to as temporary or interim support, and may be provided only until the SSHD is able to determine the claim under section 95. There is no right of appeal against refusal or termination of section 98. Where a person in receipt of section 98 interim support is found not to qualify for support, the right of appeal, where one exists, is against refusal or discontinuance of section 95 support and not section 98.

115. Support under section 95 and 98 may be provided subject to conditions (section 95(9)). There is a right of appeal against discontinuance of asylum support for a breach of conditions except in relation to decisions as to where support is provided (section 103(7)).

116. In the Administrative Court (*Dogan 1*), Silber J referred to appeals under section 103(1) as "non-qualification appeals"; appeals under section 103(2) as "stoppage appeals"; and appeals under section 103(7) as "location appeals". He held that a right of appeal to this tribunal only arises if the asylum seeker can show that two separate decisions had been made, namely a first one to grant support and then a second later one, being the decision under challenge, to terminate it prematurely.

117. In the Court of Appeal, Laws LJ acknowledged that the case raised "a question of some importance." He agreed with Silber J on the construction and effect of section 103(2) but went on to comment that an appeal would also lie if the SSHD concluded that the claimant was not an asylum seeker within the meaning of Section 94 (1). This comment, whilst *obiter* was considered by Judge Gilbart, sitting as a deputy High Court in *Malaj,* to carry such considerable persuasive force that he allowed the appeal and held that this Tribunal has jurisdiction to determine appeals and to examine the existence or otherwise of the factual circumstances permitting the grant of support.

Issue 1 – Is there a right of appeal under section 103(1) of the IAA 1999?

118. LKL's appeal is the only one of three outstanding appeals that falls under section 103(1).

119. Mr Biggs accepts that pursuant to the judgment in *Malaj*, this Tribunal has jurisdiction to determine appeals under section 103(1). However, this does not, he submits, extend to consideration of the legality or the merits of a decision to treat an asylum claim as withdrawn. Mr Grigg argues that there is no basis for reading into section 103(1) a prohibition on appealing where the basis of the support refusal is that the applicant does not meet the definition of an 'asylum seeker' in section 94(1) of the 1999 Act because their claim is withdrawn.

120. As I read it, what *Malaj* says is that it matters not why "a person" is refused section 95 support or that they have ceased to be an asylum seeker within the meaning of section 94(1) "for whatever reason." The argument that Mr Biggs put forward before me was also made before Judge Gilbart. He responded thus [at 24 – 25]:

> *"….Miss Grange was driven to submit that where the Secretary of State had made factual findings which led to a finding that an applicant was not an asylum seeker or a dependant of one, then the only remedy for the applicant would be in judicial review, and no use could be made of the statutory appeals system, which plainly operates swiftly and conveniently, and will result in appeals being dismissed if the persons making them do not qualify for support.*

I regard such an outcome as not only highly undesirable but also quite artificial, and in conflict with the clear meaning of section 103(1) , which gives a right of appeal where the issue of qualification for support is in issue, whatever that reason may be. It will be noted that it does not limit the right of appeal to "asylum seekers" but grants it to a person who has applied for section 95 support. If Parliament had intended to limit the right to appeal to "asylum-seekers" as defined, it could have done so."

121. Furthermore, Judge Gilbart noted [at 26] that Parliament's subsequent proposed amendment of section 103 in section 53 of the NIA 2022 (see paragraph 87 above), would be quite unnecessary if the respondent's case were correct since in enacting section 53 of the NIA 2022, Parliament would have restricted a right of appeal which, as argued by Miss Grange then, and Mr Biggs now, does not exist. In drafting the amendment to section 103, Parliament was clearly choosing to restrict the right of appeal of those who are no longer asylum seekers or their dependants. Had section 53 of the NIA 2022 been brought into force, Mr Biggs would win the argument but it has remained pending. In fact, section 41 of Schedule 11 to the IA 2016 (see paragraph 87 above) repeals section 53 without that provision ever having come into force. I should add that section 41 of Schedule 11 is also pending but be that as it may, it is a clear indication that Parliament's intention differs from that of Biggs.

122. I therefore agree with Mr Grigg that I have jurisdiction to consider the existence or otherwise of the factual circumstances permitting the grant of support under section 95, and to arguments of law relating to those issues, as per the clear judgment of Judge Gilbart in *Malaj*.

Issue 2 – Is there a right of appeal under section 103(2) IAA 1999?

123. The appeals of MAH and GK fall to be decided under section 103(2).

124. Mr Biggs submits that there is no right of appeal under section 103(2) and 103(2A) because a decision to discontinue support where an asylum claim is withdrawn is not an appealable decision. This is because, he says, the effect of the withdrawal of the asylum claim is that entitlement to section 95 support has ended under the statutory scheme (given the definition of "asylum-seeker" in section 94). Similarly, says Mr Biggs, there is no right of appeal if support ends because of the operation of a section 95(9) condition under the statutory scheme. He submits that this is reflected in *Dogan 2.* Mr Grigg disagrees.

125. I accept that there is no right of appeal against a decision to treat a person's asylum claim as withdrawn, to any tribunal. But I disagree that there is no right of appeal against the decision to discontinue support under section 103(2). It appears that Mr Biggs has misunderstood the judgments of *Dogan1* and *Dogan 2*. Furthermore, his argument today runs counter to the submissions made to this Tribunal in the lead case of *AW* in which the respondent submitted that there is a right of appeal against a breach of a section 95(9)condition, namely where support is discontinued for breach of one of the provisions of Regulation 20 (a) to (k). This was said to include the scenario where the SSHD required a claimant to relocate to the Bibby Stockholm Barge (BBS) and the claimant failed to do so without reasonable excuse. In that case, it was submitted on behalf of the SSHD that the Tribunal's jurisdiction was limited to a consideration of whether the appellants had reasonable excuse for their failure to comply with the condition breached and whether that breach was persistent and unequivocal.

126. The appellants in *AW* did not seek to challenge the SSHD's decision requiring them to re-locate to the BBS, just as in the present appeals the appellants do not seek to appeal against the SSHD's decision to treat their asylum claims as withdrawn, since there is no

disagreement that the Tribunal has no jurisdiction to determine either, as they are matters for the Administrative Court. It was also accepted in *AW* by the SSHD's representative, on the advice of GLD, that the Tribunal had jurisdiction to consider the individual circumstances and any other relevant factors, such as whether the decisions were made in compliance with the SSHD published policies and guidance.

127. In the three outstanding appeals before me, the relevant breach of conditions is the failure to attend a personal interview, which falls squarely under regulation 20(k) of the 2005 Regulations (see paragraph 85 above). It is not disputed that there is a right of appeal against discontinuation of support under regulation 20(1). I note that regulation 20(4) provides that "no person's asylum support shall be discontinued before a decision is made under paragraph (1)."

128. Where an appellant is in receipt of asylum support subject to compliance with any relevant conditions, they are entitled to receive a regulation 20(1) appealable decision. MAH and GK were both served with written conditions of support that included attending an asylum interview. They were warned that if they did not keep to the conditions of their support, they risked losing their support. That is a section 95(9) condition and one that carries a right of appeal because, applying the reasoning of Silber J and Laws LJ in the *Dogan* judgments, two decisions were made in both MAH and GK, namely one granting support subject to the performance of conditions and a second decision made later to prematurely bring support to an end for failure to attend an asylum interview.

129. LKL was not issued with a similar letter because he was never granted section 95 support. I do not know whether he was provided with written condition of support in relation to his temporary section 98 support as required by section 98 (3). (see paragraph 80 above). No evidence has been produced before me to suggest otherwise.

130. I agree with Mr Gregg's submission that the *Dogan* judgments did not decide the issue in the respondent's favour. The question in *Dogan* was whether there is a right of appeal where support is terminated following a breach of a conditions requiring a person to locate to a dispersal address as a condition of support and that condition is breached. Silber LJ referred to it as a "location appeal" which was not an appealable decision because the SSHD had not made and has still not made regulations under section 103(7) providing for such an appeal.

131. The reference in Mr Biggs' submission to the respondent's policy entitled "*Ceasing Section 95 Support instruction*" version 2.0 (published 7 July 2023) does not persuade me. A policy must reflect the law. The SSHD may in the operation of his discretion choose to operate a more generous policy than that provided by statute, but a policy cannot operate to curtail or diminish the rights enshrined in law. In my judgment, the statement that a person who withdraws their asylum claim is no longer eligible for section 95 support may be correct in some circumstances, but it is entirely wrong for the above reasons, to state that there "is no right of appeal against termination of support where the asylum claim has been withdrawn."

Issue 3 – what is the extent of the Tribunal's jurisdiction to consider the lawfulness and/ or merits of a decision of the SSHD to treat an appellant's claim for asylum as withdrawn.

132. It has never been the position of this Tribunal that it has jurisdiction to quash the SSHD's decision to treat an asylum claim as withdrawn. What it can do, is to look behind that decision to see how and in what circumstances the decision to discontinue asylum support was reached. This approach was approved in *R (DN (Rwanda)) v SSHD* [2020] UKSC 7, [2020] 2 AC 698 at §§12, 17-18 and I adopt it.

133. The Tribunal can also require the SSHD to follow his published Withdrawal Policy. Thus,

where the facts and circumstances found by this Tribunal in the operation of its jurisdiction, support the conclusion that the administrative decision to withdraw an asylum claim was in some way deficient, it can require the SSHD to correct that error and cancel the withdrawal decision. As Laws LJ stated in *Nadarajah* and as was approved by Lord Phillips in the Supreme Court in *Lumb*a, it is for the judge to decide whether the SSHD has pursued the legitimate aims of his policy or not. In doing so, the Tribunal has jurisdiction to require the SSHD to comply with the principle of good administration and keep his promise.

134. Thus, where the withdrawal policy requires that an invitation to interview letter must be sent to the asylum seeker and copied to the representative, if there is one, caseworkers must comply with this provision. It is there for a good reason. No doubt it was inserted to make double sure that no genuine asylum seeker is deprived of the right to be heard on an issue of radical importance to them where withdrawal of their asylum claim may result in his or her life and safety being put at risk, or where the removal of support runs the risk of the person being left destitute in the UK, which their Lordships in the House of Lords judgment of *Limbuela* unanimously held is (generally) a breach of Article 3 ECHR.

135. The policy requires that the asylum seeker who fails to attend their interview must be given the opportunity to explain their reasons, again, to avoid a genuine claimant being deprived of protection through no fault of their own. It further provides that even where discontinuation is merited, caution should be exercised especially where the claimant is a vulnerable individual such as a lone parent, and to be mindful of the need to safeguard and promote the welfare of children because every child matters. I can see no evidence of this being considered either in relation to GK's two children or LKL's 8-month-old son.

136. Where caseworkers fail to follow the SSHD published practice guidance, and to do so consistently, this Tribunal will exercise its jurisdiction and require the promise or practice to be honoured unless there is good reason not to do so. Thus, I cannot accept Mr Biggs' submission, that the failure by caseworkers to send MAH his invitation to interview letter or to send a copy of GK's invitation letter to her solicitor was not fatal. I can see no good reason why these simple steps were not taken. As Laws LJ stated in *Nadarajah,* the principle that good administration requires public authorities to be held to their promises would be undermined if the law did not insist that any failure or refusal to comply is objectively justified as a proportionate measure in the circumstances. There can be no justification for not sending a letter to a claimant and copying the same to their representative (if there is one).

Issue 4 - What is the correct disposal of the three outstanding appeals?

137. Having considered the helpful submissions of Mr Biggs and Mr Grigg and the extensive evidence placed before me by them (notwithstanding that I have not expressly referred to every judgment in the authorities bundle), I make the following decisions in the three outstanding appeals:

a) **MAH**

I find MAH a credible witness and I also accept the evidence of his witnesses in support. I am satisfied that he is invested in his asylum claim and did not miss his interview without good reason. I am satisfied that he was let down by his solicitor who did not send him the invitation to interview letter. But even if I am wrong on that, I am satisfied on the evidence of PS in particular that the emails from MLP did not arrive. In any event, the SSHD did not comply with his own policy because it is accepted that the invitation to interview letter was not sent to MAH. Accordingly, the SSHD's decision to withdraw his asylum claim was based on erroneous facts and should be reviewed. I remit the case to the SSHD and require that he reconsider the matter.

b) GK

I found GK's evidence at the hearing difficult to follow. Quite possibly this was because she did not understand the interpreter or because her solicitor interrupted her evidence unnecessarily. Unhelpful though this was, the respondent accepts that GK's solicitor was not copied into correspondence and was not sent copies of two invitation to interview letters. There is no dispute that GK did not receive the letters in question because for unknown reasons the letters were returned to the respondent. I am also concerned at the authenticity of the letter purportedly written by the respondent to her on 1 November 2023, which I am asked to believe Royal Mail attempted to deliver four days before it was written. Such occurrences merely serve to cast doubt on the veracity of the process followed in GK's case. A matter of further concern in GK's case is that she is a lone parent of two children but no consideration was given to this by the respondent when deciding to treat her asylum claim as withdrawn and directing her to vacate her accommodation with immediate effect. Given the errors in applying the Withdrawal policy, I remit the case to the SSHD and require that he reconsider the matter.

c) LKL

i) I find LKL a credible witness and accept his version of event leading to the withdrawal of his claim and discontinuation of his temporary section 98 support. In the absence of evidence to show that LKL was served with conditions of support in writing, I have difficulty finding that he was in breach of the conditions of his temporary support.

ii) LKL was served with a decision to treat his asylum claim as withdrawn but I have seen no evidence that he was served with a decision refusing his original claim for section 95 support, to which he was entitled. Before making that decision, the SSHD should have taken section 55 BCIA 2009 into account and the need to safeguard and promote the welfare of LKL's 6-week-old baby (as he was then) before discontinuing LKL's support. I am satisfied that LKL's baby was then and remains now, entitled to the protection of section 94(5) so long as the child is under 18 and LKL and the child remain in the UK. It matters not, in my judgement that LKL applied for section 95 as a single person before the birth of his son and that the child is not recorded as a dependant on his application. On my reading of the judgment of Mumby LJ in *VC,* it is the birth in the UK of a child born to a parent at a time when their asylum application is under consideration that engages the protection of section 94(5) and not that the recorded asylum application includes the child as a dependant. Dependency is a matter of fact and on the available evidence, I find that LKL's child is his dependant within the meaning of Part VI of the IAA 1999.

iii) Even if my above analysis is wrong, the SSHD's statutory duty under section 55 BCIA 2009 requires that he must protect the interests of the child so long as the child remains in the UK. This includes ensuring the child's protection against the risk of destitution. I am satisfied that in LKL's case, the duty under section 55 and the requirements of the Withdrawal Policy to safeguard and promote the welfare of LKL's child was not given any consideration by caseworker. Accordingly, I remit the case to the SSHD and require that he reconsider the matter.

CONCLUSION

138. The SSHD's preferred option, that the Tribunal should follow the approach taken by the judge hearing the withdrawal cases listed in paragraph 71 does not, in my judgment, reflect the approach this Tribunal is required to take by law and precedent. The SSHD has had ample opportunities over a period of 18 years to challenge the Tribunal's approach to jurisdiction in its lead cases by applying for judicial review but has elected not to do so. Notwithstanding binding and persuasive authority of the Administrative

Court and Court of Appeal, unchallenged in a court of competent authority since 2005, the SSHD prefers instead to pursue his challenge in this Tribunal relying on four non-lead decisions of another First-tier tribunal Judge. I remain of the view that *HS, AJ* and *AW* were correctly decided, their reasoning being in conformity with the decisions of superior courts in *Dogan 1*, *Dogan 2* and *Malaj* and the respondent's submissions in *AW.*

139. If the SSHD now considers that this approach to the Tribunal's jurisdiction is wrong and should not be followed, he should seek judicial review of this decision, so that asylum support judges can have authoritative guidance from the Courts on jurisdiction in implicit withdrawal cases.

140. The respondent is asked to note that there are currently 13 cases stayed behind this case. I understand that the appellants are supported by the respondent pending the outcome of this case. In normal circumstances the 13 cases would now be listed and heard in accordance with this judgment. However, in the event that the SSHD intends to seek permission to apply for judicial review of this judgment, it may be apposite to await the judgment of the Administrative Court before listing the 13 cases for hearing. The SSHD is asked to notify the Tribunal as soon as possible whether he requires the 13 stayed cases to be heard or to remain stayed.

Signed: **Date: 14 June 2024**

Sehba Haroon Storey
Principal Judge Asylum Support

Appendix A
MAH, LKL, GK, and NZ
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