

FIRST-TIER TRIBUNAL ASYLUM SUPPORT

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Telephone: 020 7538 6171 Fax: 0126 434 7902 Appeal Number AS/22/11/44439 : & AS/22/10/44379

> 20/06/01643 & ASC/5275446 and 22/08/03495 & ASC/5271990

UKBA Ref.

ASAP Ref.

T/S/RLB and T/O/RLB

Date: 16/01/2023

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

Principal Judge	Mrs Sehba Haroon Storey
Appellant (1)	ST
	+ 2 Dependants (GHT and MT)
Appellant (2)	ОТ
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 and gives reasons for the decisions made on Tuesday 3rd January 2023, dismissing the above-mentioned appeals.
- 2. The appellants and their dependants are all nationals of Pakistan. They appeal against the decisions of the Secretary of State dated 2 November 2022 and 14 October 2022 respectively, refusing them asylum support under section 95 of the Immigration and Asylum Act 1999 (the 1999 Act). The respondent contends that the appellants do not meet the statutory definition of asylum seekers specified in the 1999 Act. This is because their asylum claims lodged on 21 August 2019, were explicitly withdrawn on 2 August 2020 and the family left the United Kingdom (UK) under the Voluntary Returns Service process. The respondent's records suggest the return date was 1 September 2020. This is incorrect. It is not disputed that the correct return date is 28 August 2020.
- 3. The hearing took place at Import Building, London. It was audio-recorded. The appellants were represented by Mr Low-Beer of the Asylum Support Appeals

Project (ASAP). The respondent was represented by Mrs Crozier, Senior Presenting Officer.

- 4. ST the first appellant, and OT the second appellant are related as mother and son. They attended the hearing in person, accompanied by ST's two dependant sons (GHT and MT) and two daughters (MT2 and IT). For the avoidance of doubt, all five are siblings. There is a sixth sibling (AT) who did not attend the hearing. All save MT are now over 18 years of age. MT2 and IT have applied for asylum in their own right and their applications have been recorded by the respondent as first applications for asylum. At the date of hearing, IT had been granted section 95 support but MT2's claim was rejected. The latter decision has since been withdrawn by the respondent. GHT reached the age of majority on 26 November 2022 and I was informed that he too intended to apply for asylum as an adult. It is likely that once his claim is recorded by the respondent, subject to satisfaction of the destitution requirements, he too is likely to become entitled to section 95 support. The youngest sibling (MT) is a minor aged 13 years and will most likely remain the only child dependant on ST's claim.
- 5. At the hearing on 8 December 2022, the first appellant was provided with an interpreter in the Urdu language. The second appellant is fluent in English.
- 6. The appellants were represented at the hearing by Mr Ravi Low-Beer of the Asylum Support Appeals Project. The respondent was represented by Mrs Crozier. I am grateful to both representatives for their assistance. I am especially grateful to the respondent for undertaking to accommodate the appellants together as a family (with IT and MT2) until these written reasons are promulgated.

BACKGROUND

- 7. These appeals have a lengthy and complex history. The first appellant is the mother of six children all of whom are nationals of Pakistan. The family lived in Pakistan with her husband and the children's father (MS) until they moved to Dubai in or around 2014. The first appellant states that this was to escape persecution after she was targeted by Pakistan's Inter-Services Intelligence (ISI) owing to her familial connection with a prominent Baluchistan activist.
- 8. The family lived in Dubai from 2014 2019. ST described MS as a successful businessman who conducted an import/export business from Dubai, Pakistan and possibly also during his frequent visits to the UK. Sometime around 2018 2019, ST and MS decided to send their adult children to study in the UK. In OT's written statement signed and dated 22 September 2022,he recalls that this was in 2018. His sisters MT2 and IT refer to 2019 as the year they spent studying in the UK. I understand that another brother (AT) also entered the UK as a student around the same time and is presently an undergraduate at Kent university, and resides in student accommodation on campus. The extensive costs of travel from Dubai, family holidays, college/universities fees, maintenance and rented accommodation for AT, OT, IT and MT2 were all privately funded by MS.
- 9. In her statement dated 24 November 2022, ST said that MS was in the UK visiting OT and IT from January 2019 to April 2019. They lived together at a property he had rented in Coventry. ST joined them in March 2019 with her three younger children and returned to Dubai in April 2019. MS is said to have returned to Pakistan in April 2019 and from there travelled to Dubai. In May 2019, OT and IT returned to Dubai to celebrate Eid with the family and on 16 June 2019, ST and five of her six children travelled to the UK from Dubai, followed a few days later by

MS. The family (minus AT) once again resided at the Coventry address until 1 August 2019, when they moved to an address in Uxbridge which was rented for them by a friend but paid for by MS. The tenancy agreement records that a deposit of £2,200 was payable in addition to monthly rent of £2,200 paid in advance. The family lived together at this property until 28 August 2020.

- 10. In July 2019, it is alleged that ST and her children received threats to their lives if they returned to Dubai. ST states that although MS had also received threats to his life, the threats were primarily directed towards her and the children. As a result, she claimed asylum for herself and four of her six (minor) children whilst OT applied for asylum as an adult. MS and AT (who had been granted a three-year student visa) did not apply for protection. Nor did the family seek to apply for section 95 support. They continued instead to maintain and accommodate themselves and AT without recourse to asylum support.
- 11. Neither party has furnished precise particulars but given the frequency and length of MS's visits, he had probably been issued a multiple entry visit visa to the UK. RT says in her statement that MS's visa was due to expire in March 2020 and that he travelled to Dubai towards the end of January 2020 to "renew" the visa. She stated that he did not intend to be away for long and had planned to return as a visitor. However, his January 2020 visa application was refused and a second application in February 2020 followed by judicial review proceedings were also unsuccessful. ST and her children remained in the UK throughout this period.
- 12. It is at this point, said ST, that the family's financial situation became uncertain. She stated that MTMS found it difficult to manage his business and the restrictions on travel caused by the COVID -19 pandemic damaged his business. The family experienced difficulty paying their rent and living expenses and on 26 January 2020, ST applied for section 95 support from the respondent. There appears to have been considerable delay in the respondent seeking and ST providing evidence of destitution but on 26 June 2020, the respondent finally accepted destitution and advised ST that arrangements would be made for her and her four dependants to travel to their dispersal location.
- 13. The second appellant, OT, did not apply for section 95 support following his claim for asylum in 2019. ST has stated in her written statement that although OT was not part of her section 95 claim, he would have lived with her and his siblings as part of the family unit once they were allocated section 95 accommodation. In the end, however, they were not allocated section 95 accommodation because on 19 August 2020, ST and OT signed a declaration of withdrawal of asylum claim (form ASL5012) explicitly confirming that they (and their dependants) no longer wished to continue with their asylum claims and understood the implications of their decision to withdraw. As the parent and responsible adult for her minor children, ST's withdrawal constituted formal withdrawal of the claims of her four dependants. ST and OT, who were then the only adults in the group, did not provide an explanation for their decision to withdraw their asylum claims.
- 14. The appellants and their then dependants opted to return to Dubai and on 18 August 2020, visas for entry to the United Arab Emirates were obtained as part of the Voluntary Returns Service process. This did not, however, appear to have included financial assistance with the cost of their return with Emirates Airlines, which they paid themselves. I do not know how the appellants and their dependants were able to do so given ST's claim that MS alone managed the family finances and bank accounts, that OT did not have access to any bank accounts or funds, that she was destitute (a claim accepted by the respondent), and that she

had lost all contact with MS (although he had apparently cleared their arrears of rent). It is also the basis of ST's further submissions that MS was kidnapped by ISI Pakistan at Karachi airport in July 2020 and that she has not been able to establish his whereabout or whether he is alive or dead.

- 15. On 18 June 2022, ST, OT and his four younger siblings who had departed the UK on 28 August 2020, arrived back in the UK clandestinely by small boat from France and applied for asylum. I am told that ST gave a full account of their history at her screening interview, including the withdrawal of their asylum claims made in 2019. It is said that despite full disclosure, the family were initially treated as asylum seekers and provided with accommodation. Not surprisingly, a fingerprint match confirmed the 2019 withdrawn claims, and resulted in the 2022 claims being treated as void. Both appellants and dependants were notified that having withdrawn their 2019 asylum claims in 2020, they did not fall within the statutory definition of asylum seeker.
- 16. On 28 June 2022, ST applied for section 95 support with GHT and MT as her dependants. On 29 September 2022, she lodged further submissions by appointment in person at the respondent's specified Service and Support Centre. On 2 November 2022, she was refused section 95 support and on 8 November 2022, she appealed to this tribunal against that decision.
- 17. On 4 July 2022, OT applied for section 95 support. He was first refused support on 29 July 2022 but his appeal against the decision was withdrawn by the respondent on 15 August 2022 upon service of OT's written submissions relying on section 94(5) of the 1999 Act. The respondent's withdrawal of the decision under appeal brought the matter to an end. On 21 September 2022, OT was again refused section 95 support and his appeal against this decision was heard by Judge Wilkin on 6 October 2022. Mr Low-Beer's arguments placing reliance on section 94(5) were known to the respondent but were not addressed in the respondent's submissions or in response to directions issued by the tribunal seeking the same.
- 18. On 5 October 2022, OT lodged further submissions by appointment in person at the respondent's specified Service and Support Centre. Consideration of these remains outstanding.
- 19. On 6 October 2022, Judge Wilkin remitted the appeal to the respondent at the request of Presenting Officer Mr O'Monaghan, who conceded that the Secretary of State had failed to address the section 94(5) arguments but felt unable to do so on her behalf. Judge Wilkin was of the view that the arguments raised important issues of wider principle which the respondent ought to decide first before they could be adjudicated upon by the tribunal.
- 20. On 14 October, the respondent again rejected OT's claim for asylum support against which OT exercised his right of appeal on the same date. The latter appeal was listed before me as a landmark case of legal significance upon which there is no clear legal precedent of the higher courts and some conflict between First-tier Tribunal judges, (a matter to which I shall return later).
- 21. On 2 November 2022, ST was refused section 95 support for herself and her (then) two minor dependants. She appealed against the decision on 8 November 2022 and sought to rely on identical legal arguments to OT concerning section 94(5) to the facts of her case. She applied to link her appeal with OT's and this was granted. The hearing was adjourned with the consent of both parties to 8 December 2022, to enable full legal arguments supported by documentary evidence to be produced for the hearing. The respondent additionally gave an undertaking to continue the provision of accommodation to the appellants and ST's two daughters.

THE HEARING

- 22. On 7 December 2022, I received two level arch files containing over 1000 pages of documentary evidence in support of the appeals, including 320 pages of authorities. A further supplementary bundle filed by the respondent was not placed before me until the hearing on 8 December 2022.
- 23. The factual background to the appeals set out in paragraphs 7 20 aforesaid, is not in dispute and save for some minor corrections of dates, the appellants' evidence was not challenged by the respondent.

EVIDENCE AT THE HEARING The first appellant

- 24. ST was not called to give oral evidence. She relied on her written statements and documentary evidence filed in advance. A considerable amount of this evidence concerned the alleged disappearance of her husband and her efforts to seek confirmation of his whereabouts. Included in the evidence are media reports of her husband's alleged disappearance and photographs of MT2 and IT raising their father's alleged disappearance with former Prime Minister Boris Johnson.
- 25. It is ST's case that she and her children withdrew their asylum claims in August 2020 under duress. She stated in written evidence that a week after her husband's alleged kidnapping on 19 July 2020, she received threats that if she and her children did not withdraw their asylum claims, her husband would be killed. Reflecting on the threat, she and her children decided they had no option but to withdraw their asylum claims. Further information about what happened to her family is said to be included in her further submissions.
- 26. The first appellant also produced medical evidence that she is suffering from long standing advanced chronic kidney disease. A letter dated 18 November 2022 from Dr Cove-Smith, Consultant Nephrologist at Barts Health NS Trust, confirms that the appellant is at the stage where she needs to prepare for kidney replacement therapy, dialysis or a kidney transplant. Dr Cove-Smith confirmed that ST is cared for by "her children" who accompany her to hospital appointments and advocate for her as RT does not speak English well.
- 27. As at the date of hearing, ST's further submissions remained outstanding.

The second appellant's evidence

- 28. OT's evidence is consistent with that of ST. He confirmed that he had lived with his mother and younger siblings at all times from June 2019 to date. They were currently housed together in two rooms in accommodation provided by the respondent. He shared one room with his brothers whilst his mother and sisters occupied the other. He confirmed that the family wished to remain together. Plainly wishing to emphasise this, OT's siblings interjected to reaffirm the appellant's desire to be accommodated as one family unit.
- 29. As at the date of hearing, OT's further submissions remained outstanding.

GHT'S evidence

30. GHT was asked to comment on a document produced by the respondent in which it was stated that he was emotionally dependent on OT. GHT denied having said that his emotional dependence on OT was more than on other members of the

family. He asserted that he had said they were a close family and he wished to live with them collectively.

Miscellaneous

31. I was informed that IT's asylum claim has been recorded by the respondent and her application for section 95 support has been approved. It was anticipated that the asylum claims of MT2 and GHT would also be recorded and that they too would be eligible for section 95 support. This is because IT, MT2 and GHT were minors when their asylum claims were withdrawn by ST, the first appellant. I was also informed that the local authority had indicated its willingness to support ST and MT temporarily but not OT, GHT, MT2 or IT.

SUBMISSIONS FOR THE APPELLANTS

- 32. Mr Low-Beer made detailed submissions in support of both appellants and the two dependants in these appeals. The essence of his submissions is that the appellants are eligible for support under section 95 of the 1999 Act by virtue of section 94(5). This he submits, is because:
 - a) Contrary to the view expressed by Judge Wilkin in his Statement of Reasons dated 10 October 2022, section 94(5) properly construed, does not require an application and grant of section 95 support for an asylum seeker and their dependant(s) prior to the ending of their asylum claim. As such, it is submitted that OT was entitled to the benefit of section 94(5), notwithstanding that he did not make an application for asylum support before withdrawing his asylum claim on 20 August 2020.
 - b) The appellants' household included a child under 18 who is said to be a dependant of both ST and OT for the purposes of section 94(5).
 - c) In relation to ST, it is said that throughout the period 21 August 2019 (the date she claimed asylum) to 20 August 2020 (when she withdrew her asylum claim) on) ST's household included at least one minor child under 18 who was at all material times dependent on her and who are therefore her dependant for the purposes of section 94(5) by virtue of section 94(1)(b) of the 1999 Act.
 - d) In relation to OT, it is said that when he withdrew his asylum claim on 20 August 2020 and ceased to be an 'asylum seeker' for the purposes of section 94(1), and at all materials times thereafter, his household had included at least one minor child under18 who was his dependant by virtue of:

i) regulation 2(4)(c) of the Asylum Support Regulations 2000 (the 2000 Regulations) because they are members of OT's close family and are under 18; and

ii) regulation 2(4)(d)(i) of the 2000 Regulations, because they are under 18 and had lived as part of OT's household for at least 6 months at the time the application for section 95 support was made for them by ST on 26 January 2020.

e) Accordingly, I am asked to find that the first and second appellants and their dependants are entitled to rely on section 94(5) notwithstanding

that they:

- i) withdrew their asylum claims on 20 August 2020;
- ii) left the UK on 28 August 2020; and
- iii) returned to the UK on 18 June 2022 to re-claim asylum.

SUBMISSIONS FOR THE RESPONDENT

- 33. Mrs Crozier invited me to apply the ordinary meaning to the language of section 94(5), in particular, the key words 'continuing', 'while' and 'remain'. She asked me to find as fact that the appellants and their dependants voluntarily withdrew their asylum claims and left the UK. She cast doubt on the family's account of their journey to the UK, their claimed fear of abduction and their reasons for maintaining a distance from the sixth sibling who she described as studying and possibly working in the UK.
- 34. Mrs Crozier questioned why the family chose to travel across Europe on foot rather than claiming asylum in Albania or any of the other countries they claimed to have travelled through. She questioned why it was so important for the family to be housed together in section 95 accommodation and why "they are so hell-bent on being granted Section 95?"
- 35. Mrs Crozier suggested the appellants could continue to maintain a close family life in receipt of a mixture of section 95, local authority and schedule 10 support. She suggested that the family were motivated by a desire to continue living "in a big house" to which they had become accustomed rather than a genuine need arising from the dependency of GHT and MT on the second appellant and their sister IT. She noted the evidence adduced from the school of MT's claimed dependency on OT and other siblings. She questioned the reason for this, noting the absence of medical evidence to support the claimed dependency and suggested it arose more from expediency than genuine need. Mrs Crozier did not dispute that the first appellant is suffering from advanced chronic kidney disease or the evidence from her treating physician that she is reliant on "the children" for care and support, including with communication with her medical team.
- 36. In Mrs Crozier's submission, Parliament cannot have intended that persons like the appellants should be provided with section 95 support long after they had withdrawn their asylum claims and left the UK. She did not agree with Mr Low-Beer's interpretation of section 94(5) and submitted that it could only continue to benefit those who remained in the UK after their asylum claim was determined.
- 37. Mrs Crozier noted that the respondent had not addressed the issue of destitution and opined that had the SSHD done so, this would have resulted in more robust decisions. In the light of her comments, I take the view that whilst the issue of destitution is not before me, this is not conceded by Mrs. Crozier.

THE LEGAL FRAMEWORK

38. The legal framework is set out in **Appendix A** to this statement of written reasons.

THE ISSUES FOR DETERMINATION

39. These appeals raise multiple of questions. The answers to some are easily established on an ordinary reading of the relevant legislative provisions but others

are not so straightforward, with there being little guidance in the judgments of the higher courts. Perhaps not surprisingly, there is therefore some difference of approach amongst judges of this tribunal. The questions are as follows:

- a) What is the meaning of the term "household"?
- b) Who can be treated as a member of a household?
- c) Are MT and GHT dependent on OT for the purposes of Part VI of the 1999 Act?
- d) When is a claim for asylum determined?
- e) Is a claim for asylum that is recorded as withdrawn, a determined asylum claim?
- f) Does a person who leaves the UK having made a claim for asylum before that claim has been determined, remain an asylum seeker?
- g) Is a person who has lodged further submissions that are recorded by the Secretary of State, after their claim for asylum has been determined or withdrawn, an asylum seeker for the purposes of Part VI of the 1999 Act?
- h) Does section 94(5) require the asylum seeker to have applied for section 95 support before the asylum claim is negatively determined?
- i) For the purposes of section 94(5), is it sufficient that the asylum claim is:
 - i) only recorded, irrespective of outcome; or
 - ii) determined negatively?
- j) For section 94(5) purposes, for what period is the asylum seeker's presence required in the UK?
- k) What is meant by the terms "continuing" and "remain" in section 94(5)?
- I) Does a person who leaves the UK having withdrawn their asylum claim before it is determined, whose household includes a child under 18, who was a dependant of his before the asylum claim was withdrawn, remain an asylum seeker under section 94(5) on return to the UK?

DISCUSSION

Meaning of household and establishing dependency

40. I shall now proceed to examine the above questions a), b) and c).

a) What is the meaning of the term "household"?

41. In Sohrab and Others (continued household membership) Pakistan [2022] UKUT 157 (IAC), an Upper Tribunal (UT) Immigration and Asylum Chamber (IAC) panel comprised of the President of the Tribunal, Lane J, and Upper Tribunal Judges Smith and Sheridan considered the meaning of 'household' in the context of regulation 8(2) of the Immigration (European Economic Area) Regulations 2016 and membership of an EEA national's household. The UT held that membership of a household by reference to *its ordinary meaning*, will demonstrate a degree of physical and relational proximity to the EEA national, with the EEA national being the head of the household. Such relational proximity is likely to have a number of facets but will primarily include the persons living together as a unit, with a common sense of belonging.

b) Who can be treated as a member of a household?

42. In *R*(*SB*) 4/83 the Commissioner said [at 19] that the term "household or "members of the same household" were not terms of art in the general law of the land. The terms fall, accordingly, to be given their normal, everyday meaning and their

application by the determining authorities is primarily a matter of fact, commonsense and common experience. In *CJSA/1321/2007* Deputy Commissioner White provided a list of the matters that should be considered when taking a common sense and realistic approach. These included the circumstances in which the individuals came to be living in the same house; how they financed their accommodation; made arrangements for cooking, cleaning, gardening; and evidence of family life.

- 43. In this appeal, it is said that MT, the youngest of five siblings is close to and emotionally dependant on OT and that the five siblings, four of whom are now over 18 years of age, are dependent upon each other having lived together at the very least since June 2019.
- 44. In Uddin v SSHD [2020] EWCA Civ 338 (Uddin), Ryder LJ held [at 36] that:

"the existence of family life, after a young person has achieved his or her majority is a question of fact. There is no presumption, either positive or negative for the purposes of article 8. Continued cohabitation will be a highly material factor to be taken into account and while not determinative, a young adult still cohabiting with a family beyond the attainment of majority is likely to be indicative of the continued bonds of effective, real or committed support that underpin family life."

c) Are MT and GHT dependent on OT for the purposes of Part VI of the 1999 Act?

- 45. On the evidence before me, I find that the appellants and their dependants, together with MT2 and IT, are a family unit and that each provides real and committed support to other members of their household. The family have lived together under one roof since at least June 2019, when four of the five children (excluding OT, the second appellant) were minors. The Secretary of State has accepted that during periods when the second appellant and his siblings were studying in the UK, they lived together in a property rented for their benefit by MS, their father, which was also occupied from time to time by him and ST when they were in the UK as visitors. They have also lived together in Dubai and Pakistan and claim to have spent eleven months travelling across Europe in their bid to reach the UK. This suggests clear evidence of the continuing existence of family life and financial and emotional dependency upon each other.
- 46. I accept as highly probable that if, as is alleged, the father has been missing since July 2020, this would have had the effect of creating an emotional dependency for the younger siblings on OT, as the eldest male relative in a household of persons from a culture in which multi-generational households are common. The evidence of the existence of a financial and emotional dependency supports the view that the ties that bind them are real and effective and something more than normal emotional ties. I find as fact that there is strong evidence to support the claim made by the appellants that even after the GHT's recent attainment of majority, the second appellant, together with GHT, MT and their sisters MT2 and IT enjoy a bond of real and effective care and attention to ST whose needs arise from advanced stage kidney failure and providing care and emotional support to MT, the youngest sibling of the family. On the basis of *Uddin* [at 40] I find that there is no requirement to prove exceptional dependency.

Determination of a claim for asylum and the effect of a withdrawal

47. I deal next with questions d), e), f) and g).

d) When is a claim for asylum determined?

48. Pursuant to section 94(3), a claim for asylum is 'determined' when a decision is taken on the claim by the Secretary of State or when an appeal against that decision is finally decided and the claimant become appeals rights exhausted.

e) Is a claim for asylum that is recorded as withdrawn, a determined asylum claim?

- 49. Where an asylum claim is withdrawn explicitly or implicitly, consideration of the claim is discontinued without the making of a decision (see Articles 19 and 20 of Council Directive 2005/85/EC) and the claimant's file is duly noted by the respondent. This is neither a grant or a rejection of a claim and therefore does not amount to a determination. (See AS/21/03/42880 and AS/22/01/43710 for my earlier lead decisions on withdrawal). It is precisely for this reason that great care must be taken to ensure that an appellant understands the consequences of a withdrawal because save in exceptional circumstances, a withdrawal cannot be reversed except, where it can be shown that the withdrawal was procedurally flawed and the claim incorrectly withdrawn. Thus, I am satisfied that a claim for asylum that is recorded as withdrawn, is not a determined asylum claim.
- 50. Accordingly, section 94(5) cannot have the meaning Mr Low-Beer suggests and will not benefit asylum claimants like the appellants before me, who have withdrawn their asylum claims because a withdrawal is not a negative determination of an asylum claim.

f) Does a person who leaves the UK having made a claim for asylum before that claim has been determined, remain an asylum seeker?

g) Is a person who has lodged further submissions that are recorded by the Secretary of State, after their claim for asylum has been determined or withdrawn, an asylum seeker for the purposes of Part VI of the 1999 Act?

- 51. Mr Low-Beer relied upon the following decisions of this tribunal, namely AS/18/08/38542, AS/21/01/42789, AS/19/10/40692, and AS/14/05/31375, in which AST Judges were said to have followed the approach advocated by him. These cases are often cited as persuasive authority in cases involving entitlement to support under section 94(5) and therefore need examining more closely.
 - a) In AS/21/01/42789, the appellant (ATM) plus four dependant children, applied for asylum and explicitly withdrew the claim the same day. The respondent argued that she was not entitled to receive section 95 support because she was neither an asylum seeker nor a failed asylum seeker. The Judge held that the definition of asylum seeker in section 94 does not require that the asylum claim is "progressed" only that it is recorded. She maintained that this interpretation of section 94(5) was supported by VC v NCC at paragraph 41 and allowed the appeal. I disagree. Giving the lead judgment in VC v NCC, Munby LJ held [at 41] that:

" the effect of section 94(5) is that if a person who makes an asylum claim has a dependent child under 18 at the date *the application is (negatively) determined,* that person continues to be treated as an "asylum seeker" for the purposes of Part VI, and thus continues to be eligible for section 95 financial support, until the child reaches the age of 18, notwithstanding that otherwise the parent would be regarded as a *'failed asylum seeker'*." (My emphasis). Hence, $VC \vee NCC$ established that a negative determination of an asylum claim is a prerequisite for entitlement under section 94(5) and excludes a person who has withdrawn their asylum claim.

- b) Similarly, in AS/21/03/42892, the appellant claimed asylum on 20 January 2018 and her claim was recorded. However, she absconded from her section 98 accommodation and her asylum claim treated as implicitly withdrawn. The appellant's household included a child. The Judge rejected the submission that section 94(5) only applied to individuals who were appeal rights exhausted and allowed the appeal, wrongly in my judgment, because an implicit withdrawal of an asylum claim is not a negative determination.
- c) In AS/19/10/40692, the appellant and her two children claimed asylum in 2009 but became appeal rights exhausted in December 2009. In 2011 she left the UK and re-entered in July 2019. In August 2019 she was refused section 95 support because she was not an asylum seeker. Before this tribunal, her representative argued that she continued to be entitled to section 95 support by virtue of section 94(5) as she had two children under 18 years of age, notwithstanding that she had left the UK without authorisation from the Secretary of State. The Judge held that the appellant continued to be treated as an asylum seeker under section 94(5) but gave no reasons for his decision. Nor did he address the impact of the appellant's departure from the UK on her immigration status.

I take the view that this case was also wrongly decided. In my judgment, a person who leaves the UK, either after making a claim for asylum but before it is determined, or after it is finally determined, ceases to be an asylum seeker or failed asylum seeker within the meaning of the 1999 Act upon departure. Had this appellant not left the UK, she would have continued to benefit from section 94(5) until the youngest of her children reached 18. However, her departure from the UK had the effect of bringing her deemed status as an asylum seeker under section 94(5) also to an end. She was already appeal rights exhausted for asylum purposes.

d) The above cases can be distinguished from AS/14/05/31375, in which the appellant became appeal rights exhausted in May 2005. She left the UK but lodged further submission on re-entry in 2007. These were admitted as a fresh claim but rejected with a right of appeal. She claimed section 95 and was assessed as entitled to receipt of section 95 support but only after her further submissions were accepted as a fresh claim. This case provides support for the argument that departure from the UK brings an end to pre-departure immigration status and gives rise to the need to make further submissions on re-entry. If further submissions are lodged and recorded by the SSHD as a fresh claim for asylum, even if they are then refused, the claimant becomes an asylum seeker for the purposes of Part VI of the 1999 Act. AS/14/05/31375 was therefore correctly decided.

52. I turn next to questions 39 h), i), j) k) and l).

h) Does section 94(5) require the asylum seeker to have applied for section 95 support before the asylum claim is negatively determined?

- 53. By virtue of section 94, a person who is not under 18, is destitute and whose claim for asylum is recorded by the Secretary of State that has not been determined, is eligible for section 95 support. Such support will remain in payment until the asylum claim is finally determined, except where the asylum seeker's household includes a child under 18 and he and the asylum seeker remain in the UK.
- 54. In my judgment, section 94(5) does not require the person treated as continuing to be an asylum seeker to have applied for section 95 support before their claim for asylum is negatively determined. What is required is for the person to show, firstly, that before their claim for asylum was determined, their household included a dependant within the meaning of Regulation 2 of the 2000 Regulations; secondly, that at the "relevant time", that is to say the time when the application for asylum support is or was made, the dependant was under 18; and thirdly, that both the person claiming asylum support and the dependant are present in the UK.
- 55. This view is supported by Munby LJ's analysis in *VC v NCC* [at paragraph 55] that once VC's asylum claim was determined, prior to the birth of her first child, she became a failed asylum seeker to whom the deeming provision in section 94(5) had no application. However, after the birth of her child but only once her further submissions were accepted as a fresh claim for asylum, (notwithstanding that the claim was refused), VC once again became entitled to apply for section 95 support by virtue of section 94(5).

i) For the purposes of section 94(5), is it sufficient that the asylum claim is, i) only recorded, irrespective of outcome; or ii) determined negatively?

56. For section 94(5) to apply, the asylum claim must not only be recorded, but it must also be negatively determined. It is of no benefit to a person whose asylum claim remains outstanding as they would continue to be entitled to section 95 support. It is only when the claim is determined negatively and the asylum seeker becomes appeals rights exhausted that section 94(5) would enable section 95 support to remain in payment subject to the qualifying conditions.

j) For section 94(5) purposes, for what period is the asylum seeker's presence required in the UK?

57. In order to remain entitled to the benefit of section 94(5), the asylum seeker must remain in the UK throughout the period the youngest dependant in the household remains under 18. Departure from the UK will result in the deeming provisions of section 94(5) coming to an end. Such status cannot be revived upon re-entry to the UK.

k) What is meant by the terms "continuing" and "remain" in section 94(5)?

58. The term "continuing" in section 94(5) is not defined in legislation. Applying its common and ordinary meaning, it indicates that for the purpose of asylum support, the claimant whose asylum claim has in fact been finally determined will go on receiving section 95 support as if their asylum claim had not been determined negatively. The term "remain" means that the person in receipt of section 95 support under section 94(5) must continue to be physically present on UK soil at all times to continue to receive payment.

I) Does a person who leaves the UK having withdrawn their asylum claim before it is determined, whose household includes a child under 18, who was a dependant of his before the asylum claim was withdrawn, remain an asylum seeker under section 94(5) on return to the UK?

- 59. Mr Low-Beer submits that the appellants' reasons for explicitly withdrawing their claims, namely that they did so under duress, is relevant to the question of whether their eligibility for support under section 94(5) survives the withdrawal of their asylum claim. He says that there is nothing in the wording of the 1999 Act to preclude an asylum-seeker who has withdrawn their claim from benefiting from section 94(5) and that the only category of claimant excluded by Parliament is the asylum claimant who is granted leave to enter or remain in the United Kingdom. As such, he asks that I refrain from inferring an intention on the part of Parliament to deny the appellants the benefit of section 94(5).
- 60. I can find no support for this proposition in binding case law. I reject the argument that the reasons put forward by the appellants two years after they left the UK for withdrawing their asylum claims without explanation, entitles them to be treated as asylum seekers for section 94(5) purposes. The appellants could have disclosed their reasons for withdrawing their claims in 2020. Paragraph 333C of the Immigration Rules and the Withdrawal Policy refer to the respondent's exercising of her discretion to allow an asylum claimant permission to travel outside the UK in exceptional circumstances, such that departure from the UK would not result in the claim being treated as withdrawn. Permission to leave was not sought by the appellants. In the absence of the same, I am satisfied that their claims were lawfully discontinued on receipt of their signed notices of withdrawal.
- 61. I understand that the appellants have lodged further submissions purporting to be fresh claims for asylum. These may provide an explanation for withdrawal of the asylum claims in 2020. If the respondent accepts the further submissions as amounting to a fresh claim for asylum, the appellants will once again become asylum seekers entitled to the provision of section 95 support. Until then, they remain neither asylum seekers entitled to the provision of section 95 support nor failed asylum seekers able to apply for section 4 support.

Findings of Fact

- 62. I make the following findings of fact:
 - a) I find that the first and second appellants together with GHT, MT, MT2 and IT, are one family unit, that each provides real and committed support to other family members who together make up a household;
 - b) The family has lived together continuously under one roof since at least June 2019, when four of the six children of the family (excluding OT, the second appellant and one other sibling) were minors.
 - c) The second appellant did not apply for section 95 support in 2019. Notwithstanding that he was an adult and not part of the first appellant's claim for support, he was nevertheless at all material times ST's dependent for the purposes of Regulation 2 of the 2000 Regulations.
 - d) The first appellant was accepted as destitute and granted section 95 support in 2020, but before accommodation was allocated, she, her then dependants and the second appellant withdrew their asylum claims and voluntarily left the UK for Dubai at their own expense.
 - e) I do not know how the travel to Dubai was funded for the first and second appellants and four dependents.
 - f) Upon leaving the UK in August 2020, the withdrawn asylum claims of both appellants and the four dependants lapsed.
 - g) The appellants, GHT, MT, MT2 and IT arrived in the UK by small boat in June 2022 and attempted to re-apply for asylum. I accept that the first appellant disclosed having previously applied for asylum in 2019 and thereafter having withdrawn her claim.

- h) ST is suffering from advanced chronic kidney disease and is reliant upon her OT, MT2 and IT for care and attention and assistance.
- I do not accept as credible that OT cannot recall the name of the bank where he held an account prior to his voluntary departure from the UK in August 2020.
- j) The first appellant has a sixth child (an adult) and who is a foreign student in the UK. I do not know how his studies are financed.

My Decision

- 63. Notwithstanding that I may not refer specifically to documents or submissions, I confirm that I have given careful consideration to all the evidence before me, including documentary evidence filed by the appellants and the respondent, submissions of both parties and the bundle of legal authorities before me.
- 64. I have made my findings of fact with reference to the available evidence. I am satisfied that the appellants and their dependant are not asylum seekers within the meaning of the 1999 Act and/or the 2000 Regulations. For the reasons stated, their asylum claims did not survive the withdrawal of their asylum claims in August 2020 or their voluntary departure from the UK. They are not therefore asylum seekers within the meaning of section 94(5) entitled to the provision of section 95 support.
- 65. I make no findings in relation to the appellants' stated reasons for withdrawing their asylum claims in August 2020. These will be considered by the Secretary of State in due course and a decision made on whether to accept them as a fresh claim. In the meantime, the appellants are neither asylum seekers entitled to the provision of section 95 support nor failed asylum seekers eligible for section 4 support.
- 66 The respondent submits that the first appellant could approach the Local Authority to request support under Section 17 of the Children Act 1989 for herself and MT. I am aware that the Local Authority has confirmed that they will provide support for the first appellant and MT, if this appeal should fail.
- 67. I understand that MT2 and IT, have claimed asylum as adults and their claims have been recorded by the Secretary of State. They are therefore eligible for section 95 support. At the hearing, it was said that GHT, who is now 18, may also claim asylum as an adult. It is likely that if his claim is treated in like fashion to MT2 and IT that his asylum claim will also be recorded by the Secretary of State.
- 68. The respondent submits that OT can apply for the provision of support under Paragraph 9 of Schedule 10. This provision is discretionary.
- 69. Thus, it is likely that the first and second appellants, together with GHT, MT, MT2 an IT may be eligible to receive either section 95 support, Local Authority support or schedule 10 support. In that event, the Secretary of State could be asked to exercise her discretion under section 96 of the 1999 Act to providing support to the family as a single unit.
- 70. The appeals are dismissed.

Signed:

Principal Judge FTT – SEC Asylum Support

Dated: 16 January 2023

THE LEGAL FRAMEWORK

The Immigration and Asylum Act 1999 (as amended)

40. In so far as is relevant to the issues before me, Part VI of the 1999 Act, headed "Support of Asylum Seekers" provides as follows:

1.1 **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;

"the Department" means the Department of Health and Social Services for Northern Ireland;

"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;

"the Executive" means the Northern Ireland Housing Executive; "housing accommodation" includes flats, lodging houses and hostels;

"local authority" means—

- in England and Wales, a county council, a county borough council, a district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;
- (b) in Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

"Northern Ireland authority" has the meaning given by section 110(9)

"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 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.

(6) Subsection (5) does not apply if, on or after the determination of his claim for asylum, the asylum-seeker is granted leave to enter or remain in the United Kingdom (whether or not as a result of that claim).

1.2 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.

(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.

1.3 **96 Ways in which support may be provided**

(1) Support may be provided under section 95—

- (a) by providing accommodation appearing to the Secretary of State to be adequate for the needs of the supported person and his dependants (if any);
- (b) by providing what appear to the Secretary of State to be essential living needs of the supported person and his dependants (if any);

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(2) If the Secretary of State considers that the circumstances of a particular case are exceptional, he may provide support under section 95 in such other ways as he considers necessary to enable the supported person and his dependants (if any) to be supported.

1.4 **122 Support for children**

(1) In this section "eligible person" means a person who appears to the Secretary of State to be a person for whom support may be provided under section 95.

(2) Subsections (3) and (4) apply if an application for support under section 95 has been made by an eligible person whose household includes a dependant under the age of 18 ("the child").

(3) If it appears to the Secretary of State that adequate accommodation is not being provided for the child, he must exercise his powers under section 95 by offering, and if his offer is accepted by providing or arranging for the provision of, adequate accommodation for the child as part of the eligible person's household.

(4) If it appears to the Secretary of State that essential living needs of the child are not being met, he must exercise his powers under section 95 by offering, and if his offer is accepted by providing or arranging for the provision of, essential living needs for the child as part of the eligible person's household.

(5) No local authority may provide assistance under any of the child welfare provisions in respect of a dependant under the age of 18, or any member of his family, at any time when—

- (a) the Secretary of State is complying with this section in relation to him; or
- (b) there are reasonable grounds for believing that—
 - (i) the person concerned is a person for whom support may be provided under section 95; and

 (ii) the Secretary of State would be required to comply with this section if that person had made an application under section 95.

(6) "Assistance" means the provision of accommodation or of any essential living needs.

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

2. Section 18 of the 2002 Act provides that:

18 Asylum seeker: definition

- (1) For the purposes of this Part a person is an "asylum-seeker" if-
 - (a) he is at least 18 years old,
 - (b) he is in the United Kingdom,
 - (c) a claim for asylum has been made by him at a place designated by the Secretary of State,
 - (d) the Secretary of State has recorded the claim, and
 - (e) the claim has not been determined.

(2) A person shall continue to be treated as an asylum-seeker despite subsection (1)(e) while—

- (a) his household includes a dependent child who is under 18, and
- (b) he does not have leave to enter or remain in the United Kingdom.

The Children's Act 1989

3. Section 17 of the Children's Act 1989 provides as follows:

17 Provision of services for children in need, their families and others

(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part)—

- (a) to safeguard and promote the welfare of children within their area who are in need; and
- (b) so far as is consistent with that duty, to promote the upbringing of such children by their families,

by providing a range and level of services appropriate to those children's needs.

(2) For the purpose principally of facilitating the discharge of their general duty under this section, every local authority shall have the specific duties and powers set out in Part 1 of Schedule 2.

(3) Any service provided by an authority in the exercise of functions conferred on them by this section may be provided for the family of a particular child in need or for any member of his family, if it is provided with a view to safeguarding or promoting the child's welfare.

The Borders, Citizenship and Immigration Act 2009

4. Section 55 of the 2009 Act provides that:

55 Duty regarding the welfare of children

- (1) The Secretary of State must make arrangements for ensuring that
 - (a) the functions mentioned in sub-section (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 sub-section (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 ...
- (3) A person exercising any of those functions must, in exercising the function, have regard to any guidance given to the person by the Secretary of State for the purpose of sub-section (1)".

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Immigration Rules

5. In so far as is relevant, the Immigration Rules provide as follows:

5.1 Withdrawal of applications

333C. If an application for asylum is withdrawn either explicitly or implicitly, consideration of it may be discontinued. An application will be treated as explicitly withdrawn if the applicant signs the relevant form provided by the Secretary of State. An application may be treated as impliedly withdrawn if an applicant leaves the United Kingdom without authorisation at any time prior to the conclusion of their asylum claim, or fails to complete an asylum questionnaire as requested by the Secretary of State, or fails to attend the personal interview as provided in paragraph 339NA of these Rules unless the applicant demonstrates within a reasonable time that that failure was due to circumstances beyond their control. The Secretary of State will indicate on the applicant's asylum file that the application for asylum has been withdrawn and consideration of it has been discontinued.

5.2 Fresh claims

353. When a human rights or protection claim has been refused or withdrawn or treated as withdrawn under paragraph 333C of these Rules and any appeal relating to that claim is no longer pending, the decision maker will consider any further submissions and, if rejected, will then determine whether they amount to

a fresh claim. The submissions will amount to a fresh claim if they are significantly different from the material that has previously been considered. The submissions will only be significantly different if the content:

- (i) had not already been considered; and
- taken together with the previously considered material, created a realistic prospect of success, notwithstanding its rejection. This paragraph does not apply to claims made overseas.
- 5.3 353A. Consideration of further submissions shall be subject to the procedures set out in these Rules. An applicant who has made further submissions shall not be removed before the Secretary of State has considered the submissions under paragraph 353 or otherwise.

The Asylum Support Regulations 2000 (the 2000 Regulations)

6. Paragraph 2 of the 2000 Regulations, provides the following interpretations:

(4) In these Regulations "dependant", in relation to an asylum-seeker, a supported person or an applicant for asylum support, means, subject to paragraph (5), a person in the United Kingdom ("the relevant person") who–

(a) is his spouse [or civil partner];

(b) is a child of his or of his spouse [or civil partner], is dependant on him and is, or was at the relevant time, under 18;

(c) is a member of his or his spouse's [or civil partner's] close family and is, or was at the relevant time, under 18;

(d) had been living as part of his household-

- (i) for at least six of the twelve months before the relevant time, or
- (ii) since birth,

and is, or was at the relevant time, under 18;

(e) is in need of care and attention from him or a member of his household by reason of a disability and would fall within subparagraph (c) or (d) but for the fact that he is not, and was not at the relevant time, under 18;

(f) had been living with him as a member of an [cohabiting couple] for at least two of the three years before the relevant time;

(g) Is living as part of his household and was, immediately before 6th December1999 (the date when the interim Regulations came into force), receiving assistance from a local authority under section 17 of the Children Act 1989;

(h) Is living as part of his household and was, immediately before the coming into force of these Regulations, receiving assistance from a local authority under–

(i) section 22 of the Children (Scotland) Act 1995; or

(ii) Article 18 of the Children (Northern Ireland) Order 1995; or

(i) Has 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 dependent on the asylum-seeker;

and in relation to a supported person, or an applicant for asylum support, who is himself a dependant of an asylum-seeker, also includes the asylum-seeker if in the United Kingdom.

(5) Where a supported person or applicant for asylum support is himself a dependant of an asylum-seeker, a person who would otherwise be a dependant of the supported person, or of the applicant, for the purposes of these Regulations is not such a dependant unless he is also a dependant of the asylum-seeker or is the asylum-seeker.

(6) In paragraph (4), "the relevant time", in relation to the relevant person, means-

(a) the time when an application for asylum support for him was made in accordance with regulation 3(3); or

(b) if he has joined a person who is already a supported person in the United Kingdom and sub-paragraph (a) does not apply, the time when he joined that person in the United Kingdom.

(7) Where a person, by falling within a particular category in relation to an asylum-seeker or supported person, is by virtue of this regulation a dependant of the asylum-seeker or supported person for the purposes of these Regulations, that category is also a prescribed category for the purposes of paragraph (c) of the definition of "dependant" in section 94(1) of the Act and, accordingly, the person is a dependant of the asylum-seeker or supported person for the purposes of person for the purposes of Part VI of the Act.

(8) Paragraph (7) does not apply to a person who is already a dependant of the asylum-seeker or supported person for the purposes of Part VI of the Act because he falls within either of the categories mentioned in paragraphs (a) and (b) of the definition of "dependant" in section 94(1) of the Act.

(9) Paragraph (7) does not apply for the purposes of any reference to a "dependant" in Schedule 9 to the Act.

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

- Version 6.0 of the above policy instructions, published for Home Office staff on 7 May 2020, 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.

Council Directive 2005/85/EC - Minimum Standards on Procedures in Member States for granting and withdrawing refugee status

8. Following the UK's Withdrawal Agreement from the European Union, EU legislation which applied directly or indirectly to the UK before 31 December 2020 has been retained in UK law as a form of domestic legislation known as 'retained EU legislation'. Articles 19 of Directive 2005/85/EC (headed 'Procedure in case of withdrawal of the application') and Article 20 (headed 'Procedure in the case of implicit withdrawal or abandonment of the application') provides the following:

8.1 Article 19

- 1. Insofar as Member States provide for the possibility of explicit withdrawal of the application under national law, when an applicant for asylum explicitly withdraws his/her application for asylum, Member States shall ensure that the determining authority takes a decision to either discontinue the examination or reject the application.
- 2. Member States may also decide that the determining authority can decide to discontinue the examination without taking a decision. In this case, Member States shall ensure that the determining authority enters a notice in the applicant's file.

8.2 Article 20

1. When there is reasonable cause to consider that an applicant for asylum has implicitly withdrawn or abandoned his/her application for asylum, Member States shall ensure that the determining authority takes a decision to either discontinue the examination or reject the application on the basis that the applicant has not established an entitlement to refugee status in accordance with Directive 2004/83/EC.

Member States may assume that the applicant has implicitly withdrawn or abandoned his/her application for asylum in particular when it is ascertained that:

- (a) he/she has failed to respond to requests to provide information essential to his/her application in terms of Article 4 of Directive 2004/83/EC or has not appeared for a personal interview as provided for in Articles 12, 13 and 14, unless the applicant demonstrates within a reasonable time that his/her failure was due to circumstances beyond his control;
- (b) he/she has absconded or left without authorisation the place where he/she lived or was held, without contacting the competent authority within a reasonable time, or he/she has not

within a reasonable time complied with reporting duties or other obligations to communicate.

For the purposes of implementing these provisions, Member States may lay down time-limits or guidelines.

2. Member States shall ensure that the applicant who reports again to the competent authority after a decision to discontinue as referred to in paragraph 1 of this Article is taken, is entitled to request that his/her case be reopened, unless the request is examined in accordance with Articles 32 and 34.

Member States may provide for a time-limit after which the applicant's case can no longer be re-opened.

Member States shall ensure that such a person is not removed contrary to the principle of non-refoulement.

Member States may allow the determining authority to take up the examination at the stage where it was discontinued.

Home Office Instructions "Dependants on an asylum support application" (Policy on Dependants)

- 9. Version 8 of the Policy on Dependants was last updated on 26 January 2015. It provides guidance to caseworkers on determining whether a person is a dependant and defines "dependant" for Asylum Support as a person who meets one or more of the definitions in regulation 2 of the 2000 Regulations.
 - 9.1 Paragraph 2.1 states that in line with regulation 2(4)(i) of the 2000 Regulations, a person should always be regarded as a dependant for support purposes if they are being treated as a dependant on an asylum claim. In this scenario, the dependant is not expected to provide any additional evidence of their relationship to the principal applicant.
 - 9.2 Paragraph 2.2 states that a person may be treated as a dependant for support purposes, even if they are not a dependant on an asylum claim, provided that they meet one of the criteria set out in regulation 2 of the 2000 Regulations. The prospective dependant will be expected to provide evidence to show that their relationship with the main support applicant is genuine. The level of evidence that is acceptable to demonstrate such a relationship will vary according to the circumstances of the particular case.....
 - 9.3 Section 5 states that applicants who are eligible for asylum support but are not dependents of each other (for example, adult siblings) may request to be accommodated together. When considering requests for separate support applications to be 'linked together' in this way, caseworkers should take into account the wishes of all parties, the availability of suitable accommodation, Article 8 ECHR considerations (right to respect for private and family life), and any restrictions on who may be accommodated together as laid out in Annex C of the COMPASS Statement of Requirements.....
 - 9.4 Section 6 provides that Children who have been accepted as a dependant on an asylum support application should not be expected to apply for support in their own right on turning 18 unless the main applicant is a failed asylum

seeker and has no other child dependants. Their support will continue until such time as the main applicant becomes ineligible for support.

.....

Home Office Instructions 'Immigration Bail'(Immigration Bail Policy)

10. Version 7 of the Immigration Bail Policy was published on 25 November 2022. The guidance tells decision makers how to process applications for support under Schedule 10 to the Immigration Act 2016. In the section headed

"Other categories of migrant likely to meet the Article 3 [ECHR] test," (see page 91) the guidance provides as follows:

'There are a small number of migrants who are likely to require accommodation under paragraph 9 to avoid a breach of their Article 3 rights, if they do not have accommodation or the means of obtaining it. They will have at one time claimed asylum but are not eligible to receive accommodation under sections 95, 98 or 4(2) of the 1999 Act. These are:

- people who have withdrawn their asylum claim, including where the claim has been treated as impliedly withdrawn under paragraph 333C of the Immigration Rules, but have since made further submissions and the submissions are still outstanding if it is decided to treat the further submissions as a fresh claim for asylum the person will be eligible to receive support under section 95 or 98 of the 1999 Act
- people who have withdrawn their asylum claim but are taking reasonable steps to leave the UK or are temporarily unable to take those steps because of a physical impediment or some other medical reason
- people who were refused asylum and exhausted their appeal rights before they reached 18 years of age and who are not eligible to receive support under the Children Act 1989 or equivalent legislation in Scotland, Wales and Northern Ireland.'