



**FIRST-TIER TRIBUNAL
SOCIAL ENTITLEMENT CHAMBER
ASYLUM SUPPORT**

Held at: East London Tribunal	Appellant: ML
On: 13 January 2026	Tribunal Ref: AS/25/10/50033
Before: Judge King	HO Refs: 16/03/00147&WMD/4936214
Respondent: Secretary of State for the Home Department	

Statement of Reasons for Decision

This statement is to be read together with the decision notice issued by the Tribunal.

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 TPR”) and gives reasons for my decision of 20 March 2026 that the power provided in section 103(3)(b) of the Immigration and Asylum Act 1999 permits the Tribunal to make a decision awarding section 95 support to a person who has appealed against a decision to discontinue section 4 support.

Rule 14 Anonymity Order:

2. By Rule 14(1)(b) of the TPR, the appellant’s name is not to be published. She is referred to in this Statement of Reasons as ML. Any application to vary this direction may be made on notice to the parties to the appeal.

Rule 18 Lead Case Order:

3. On 7 November 2025, this appeal was designated as a lead case pursuant to Rule 18 of the TPR and, as at today’s date, forty-four appeals are stayed behind it.
4. The common issue to be decided in the appeals is whether, in circumstances where:

(a) the Home Office has discontinued section 4 support on the basis that the appellant no longer meets the conditions of entitlement because they are not a failed asylum seeker; and

(b) the Home Office has indicated to the appellant that, following the termination of their section 4 support, they should apply for asylum support under section 95 because they are an asylum seeker; and

(c) the Home Office has required the appellant to make a new application for asylum support so that their eligibility for section 95 support can be determined.

the power provided in section 103(3)(b) of the Immigration and Asylum Act 1999 permits the Tribunal to make a decision awarding section 95 support to a person who has appealed against a decision to discontinue section 4 support.

5. The outcome of this appeal is academic for ML as the SSHD granted her application for section 95 asylum support on 10th December 2025. Her appeal continued nonetheless because resolution of the common issue above remains of central importance to the appellants in the stayed appeals and to those individuals who will appeal to the Tribunal against decisions raising the same issues in the future.

Decision under appeal:

6. On 30 September 2025 the Respondent wrote to ML telling her that a decision had been taken to discontinue her support under section 4(2) of the Immigration and Asylum Act 1999 from 23 October 2025 because she was no longer eligible to receive it (page 114). The letter explained that she had been awarded section 4 support on the basis that she was a failed asylum seeker who had made further submissions to the Home Office. Those submissions were refused with a right of appeal on 1 February 2022. On 8 February 2022, she had appealed against the refusal of her further submissions and her appeal remained outstanding. She no longer met the conditions of entitlement to section 4 support because she was an asylum seeker rather than a failed asylum seeker.
7. The discontinuation letter went on to tell ML that she “may be eligible for support under section 95” but that she must complete a section 95 application if she wanted to apply for it. She would be expected to leave her accommodation by 23 October 2025 and should make urgent arrangements to do so. Any funds remaining on her Aspen card after that would continue to be available to her for a further 28 days only.

The appeal:

8. With the assistance of her support worker at Adavu Jericho Foundation, ML lodged an appeal against the discontinuation decision on 14 October 2025. She said,

“I am currently on section 4 support and I have an upcoming [IAC] appeal hearing on 17 December 2025. Despite this the Home Office have written to me and asked me to leave my accommodation on 23/10/2025 and have stated that I need to apply for section 95 support instead.

“I am a survivor of Modern Day Slavery. I had a positive NRM [National Referral Mechanism] decision.

“I would be made street homeless and at risk of further exploitation”. (page 109)

9. ML’s appeal was made outside the time limit of 3 days from the date that she received the section 4 discontinuation decision letter. Her reasons for the delay were given in the appeal form,

“I was advised to make a section 95 application which I have done via Migrant Help, my support has not been reinstated and I was advised today to submit an appeal.” (page 110)

10. In these circumstances, applying the overriding objective in Rule 2 and using its case management powers under Rule 5 of the TPR, the Tribunal extended the time limit to admit the appeal.

Appellant’s immigration history:

11. ML is a Filipino national in her early 50s. She is accepted to be a victim of human trafficking, brought to the UK with a family from Saudi Arabia by whom she had been employed as a domestic worker.

12. A Home Office employee, Tracy Bridgett, of the Asylum Support and Transformation Team, provides the following chronology of ML’s immigration history in Exhibit A to her witness statement of 6 January 2026:

(a) *“She was issued an entry clearance visa on 30 July 2015, valid to 30 January 2016.*

(b) *She entered the UK on 8 August 2015.*

(c) *She was accepted into the National Referral Mechanism on 21 October 2015, this had a conclusive grounds outcome on 4 October 2016, however no leave was granted as a result of this application.*

- (d) *She claimed asylum on 28 October 2015 and was granted Section 95 support on 8 March 2016. Her asylum claim was refused non-certified on 26 February 2019, and she became appeal rights exhausted on 3 February 2020. Her Section 95 support was discontinued on 15 September 2020.*
- (e) *Further submissions were lodged on 21 July 2020. An application was made for Section 4 support on 10 September 2020; this was then granted on 17 September 2020. The further submissions were refused as not a fresh claim, with no right of appeal, on 1 September 2021.*
- (f) *A Pre-action Protocol (PAP) letter was submitted against the decision to not treat the submissions as a fresh claim, subsequently the decision was reconsidered and refused as a fresh claim, and a right of appeal given, on 1 February 2022. An appeal was lodged against this decision on 8 February 2022, this appeal is currently still outstanding.*
- (g) *Section 4 support was discontinued on 30 September 2025, an appeal was received against this decision on 14 October 2025.*
- (h) *An application was made for Section 95 support on 12 October 2025, this application declared a HSBC bank account that had not been declared on the previous Section 4 application; therefore, a request was made for further information regarding her financial situation on 23 November 2025. A response was received on 5 December 2025, and support was granted on 8 December 2025". (page 189-90*

13. During the hearing the Government Legal Department produced a copy of the ASF1 Form dated 12 October 2025 and said their instructions from the Home Office were that the form had been received (from Migrant Help) on 27 October 2025.

The issue before the Tribunal

14. The issue before the Tribunal was whether the power provided in section 103(3)(b) of the Immigration & Asylum Act 1999 permits the Tribunal to make a decision awarding section 95 support to a person who has appealed against a decision to discontinue section 4 support.

The Legal Framework

15. In so far as is relevant to these proceedings **Section 4 of the Immigration & Asylum Act 1999** ("IAA 1999") says:

4. Accommodation.

[...]

(2) The Secretary of State may provide, or arrange for the provision of, facilities for the accommodation of a person if—

(a) he was (but is no longer) an asylum-seeker, and

(b) his claim for asylum was rejected [or declared inadmissible (see sections 80A and 80B of the Nationality, Immigration and Asylum Act 2002)]

16. **Section 95 IAA 1999** says:

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.

17. An “Asylum seeker” is defined in **section 94 IAA 1999** s “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.

18. **Section 103 IAA 1999** sets out provisions for appealing against asylum support decisions. Those relevant to the present appeal are as follows:

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.

[...]

(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.

(....)

The hearing

19. The appeal was listed for a face-to-face hearing at Import Building, East London on 13 January 2026. It was attended by counsel for ML, Mr Mackenzie (instructed via the Asylum Support Appeals Project's duty scheme), and counsel for the respondent, Mr Irwin. His instructing lawyer from the Government Legal Department attended, as did three observers from the Asylum Support Appeals Project. The instructing lawyer and observers did not participate in the hearing but supported counsel by providing information as and when appropriate.
20. The Tribunal had before it an indexed and paginated bundle comprising 520 pages, the contents of which are a matter of record. The page numbers referred to throughout this statement of reasons relate to the Tribunal's bundle.
21. During the hearing the respondent submitted additional evidence comprising an email attaching the appellant's ASF1 form (application for asylum support).
22. A digital recording of the hearing was made and stands as the record of proceedings. At the end of the hearing the decision was reserved.
23. Given that the appeal raised only matters of law, the Tribunal took the view that it was unnecessary for ML to participate in person. In Case Management Directions dated 10 December 2025 she was informed that she was welcome to attend either in person or remotely should she wish to do so (page 229). In the event, she chose not to attend but to provide detailed witness statement with the assistance of her support worker. She says in her statement that she had produced the statement because she wanted her history of trauma and exploitation to be understood by the Tribunal.

ML's evidence:

24. The witness statement sets out a harrowing account of ML's life experiences (pages 207-216). It explains that her father was shot and seriously injured when she was 11 years old and from then on she needed to work to provide for her family. Her employment as a nanny and domestic help for various employers placed her in perilous circumstances. She has been held prisoner in the homes of employers, starved, beaten, taunted, abused, raped and denied a basic standard of living. The man who she turned to for support as a partner drugged, raped and deceived her. Her four children were all conceived through rape.

25. In 2015, ML escaped from a hotel in Brighton where she was being mistreated by a Saudi Arabian family who brought her to the UK on a visitors' visa. The following year she received a positive conclusive grounds decision confirming her to be a victim of human trafficking.
26. ML has a history of self-harm and suicidal ideation, which she links to her life experiences. Since being in the UK, she has had counselling and is prescribed medication for depression and migraines in addition to various physical health problems. She says that she does not feel capable of feeling happy or normal and continues to have nightmares and flashbacks whenever she talks about her experiences.
27. ML concludes her statement by saying,

74. When I received the letter from the Home Office telling me to leave my accommodation and my support was going to end, I was so shocked and confused. I felt terrified of being made homeless and did not know what to do or where to go. I was so scared that I could not sleep. The letter arrived during the weekend, though it was dated 30/09/2025 it arrived on 4/10/2025.

75. I messaged my support worker, and she made an urgent appointment to see me on 6/10/2025. We contacted Migrant Help to request that a section 95 application is completed and referral to the Home Office is made before 23/10/2025. However, they failed to submit the referral before 23/10/2025. This caused me even more anxiety and panic.

76. Throughout this time, I felt so confused and scared of the Home Office. I did not understand what was happening or why. I kept thinking I was going to be homeless, and I would be hurt again by traffickers. My mental health declined and I was given extra medication by my GP to help me manage.

77. On 14/10/2025 my support worker assisted me in lodging an appeal to the tribunal regarding this matter. I found this very stressful and kept getting confused.

[.....]

79. On the 15/10/2025 my GP prescribed a two-week dose of 10mgs Amitriptyline. I was not sleeping due to the stress of this situation and felt I was going mad.

80. On 8/12/2025 my section 95 support was approved. My support worker informed the court on 12/12/2025.

81. *I feel I was very lucky because I had my support worker helping me during this very difficult time.*

82. *Given my extensive history of abuse, trauma, violence, rape, exploitation and poor mental health I am deeply troubled and have been further traumatised by the action that the Home Office took by deciding to discontinue my support. I do not wish this to happen to anyone else. (pages 215-6)*

Summary of submissions on behalf of the SSHD:

28. The SSHD submitted that the issue whether the Tribunal has jurisdiction to award section 95 support in an appeal against a decision to discontinue section 4 support is one of statutory construction.
29. It was emphasised that section 95 support is a discretionary form of assistance for which Parliament has expressly reserved primary decision-making responsibility to the SSHD. The statutory scheme requires an applicant to make a formal application on the prescribed ASF1 form, and to cooperate with enquiries undertaken by the SSHD. The Asylum Support Regulations 2000 (“the ASR”) set out a structured process for assessing destitution and identifying any statutory exclusions. Those steps cannot be bypassed by means of an appeal against a separate form of support.
30. The Witness Statement of Ms Tracey Bridgett and the *Assessing Destitution* policy document (v5) were relied upon in order to argue that applicants’ financial and personal circumstances can change, sometimes significantly, between the date they are granted section 4 support and any subsequent consideration of entitlement to section 95 support. Examples from the present and related cases were cited to illustrate that new information such as the discovery of bank accounts might only come to light as and when a fresh ASF1 application is made. Consequently, it was said that allowing the Tribunal to award section 95 support in an appeal against a section 4 discontinuation decision would improperly circumvent the statutory process for determining eligibility.
31. Turning to section 103(3) of the *Immigration and Asylum Act 1999*, the SSHD submitted that the Tribunal’s substitution power in section 103(3)(b) is expressly confined to “the decision appealed against”. On a plain reading, which means the Tribunal may substitute its own decision only in relation to the form of support which the Secretary of State has actually considered and refused or discontinued. If the Tribunal were to make a decision granting section 95 support without there having been an application to the SSHD or a decision by the SSHD, that is not a substitution of the decision under appeal, but rather the taking of an entirely new decision for which section 103 provides no jurisdictional foundation.

32. The SSHD further submitted that general principles governing statutory appeals support her view. An appeal is ordinarily concerned with reviewing the lawfulness or merits of the decision actually taken by the primary decision-maker. It is not a mechanism permitting a tribunal to assume first-instance decision-making powers in relation to matters that had not been placed before the SSHD. The structure of section 103 itself, which provides distinct appeal routes for different forms of support, was said to reinforce this.
33. The SSHD acknowledged that the Tribunal has previously made decisions in which section 95 support was granted in section 4 appeals, for example, in the case of *AJ v Secretary of State for the Home Department* AS/22/01/43710. However it was said that in that appeal no submissions had been heard on the jurisdictional point and that the judge's decision had been wrong in law.
34. For these reasons, the SSHD said that the Tribunal lacks jurisdiction to award section 95 support in an appeal against a section 4 discontinuation decision and invited the Tribunal to agree.

Summary of submissions on behalf of the appellant:

35. The core submission advanced on behalf of the appellant was that the Tribunal's jurisdiction under section 103(3) permits it to substitute a decision awarding section 95 support in an appeal arising from a section 4 discontinuation decision.
36. It was argued that the statutory framework, relevant case law and human rights considerations all point toward a broad and flexible Tribunal jurisdiction, designed to avoid gaps in essential support for asylum seekers and failed asylum seekers who are destitute.
37. Counsel for the appellant contended that the Secretary of State's narrow construction of the Tribunal's powers creates unnecessary procedural barriers, risks periods of destitution, and is inconsistent with both the shared application process for sections 4 and 95 support and the established principle that appeals to the Asylum Support Tribunal are determined on the facts as they stand at the date of the hearing.
38. Particular reliance was placed on case law in which the Tribunal has previously substituted section 95 entitlement in section 4 appeals, and on the implications of section 103(6), which was said to presuppose that the Tribunal may determine entitlement to either form of support within a single appeal.
39. For these reasons the appellant invited the Tribunal to confirm it has jurisdiction to substitute the section 4 discontinuation decision with a decision granting section 95 support and to allow the appeal on that basis.

Findings of fact:

40. I accept the evidence given in ML's witness statement in its entirety as there is no reason not to do so. What she says is not undermined by any contradictory evidence. Aspects of her account are supported by independent evidence, for example the immigration chronology provided in Ms Bridgett's witness statement and the positive conclusive grounds decision confirming ML to be a victim of human trafficking. The SSHD has not cast any doubt upon ML's credibility in these proceedings.
41. It is accepted by the SSHD that ML was a failed asylum seeker on 17 September 2020 when she was awarded section 4 support and that her status reverted to that of an asylum seeker on 1 February 2022 when she was given a right of appeal against the refusal of her fresh asylum claim. It follows that from that point onwards she no longer met the statutory criteria for an award of section 4 support.
42. I find that the SSHD did not take any action to review ML's entitlement to section 4 support until three and a half years later, on 30 September 2025, when the discontinuation decision under appeal was made [p114-5]. Clearly, if there had been a review in the meantime, section 4 support would have been discontinued earlier. That analysis is consistent with the SSHD's submission that a "cohort of people" remained on section 4 support despite reversion to asylum seeker status due to "complications with many aspects of Home Office operations" during the covid 19 pandemic. The position was not remedied until a review of section 4 case working procedures disclosed that practice was not in line with Home Office policy (page 158).
43. The discontinuation letter sent to ML dated 30 September 2025 gives her an eviction date of 23 October 2025 (page 115).
44. ML applied via Migrant Help for section 95 support on 12 October 2025 and her application was received by the Home Office on 27 October 2025 (email from GLD in evidence handed in during the hearing). Section 95 support was eventually granted on 8 December 2025 (page 195). Thus it took 56 days from application to award, 45 days of which fell after ML's eviction date.

Reasons:

45. The Asylum Support Tribunal (then known as the Asylum Support Adjudicators) was created by the Immigration & Asylum Act 1999 to decide appeals against the refusal or discontinuation of asylum support. Its work was transferred to the First Tier Tribunal by the Transfer of Tribunals Functions Order 2008, paragraph 5(1) and Schedule 1.
46. In *R (SSHD) v FTT (AS)* [2025] EWHC 694 (Admin), Chamberlain J said,

'The Tribunal's function is to provide an efficient, convenient and accessible forum in which disputes about eligibility for asylum support can be determined' (at paragraph 83, page 327)

47. The scope of the Tribunal's jurisdiction to decide appeals is set out in section 103 IAA 1999. In this appeal I have to consider whether the power in section 103(3)(b) for the Tribunal to "*substitute its decision for the decision appealed against*", allows me to grant section 95 support when the appeal is against a decision by the SSHD to discontinue section 4 support.
48. It is relevant to note at the outset that the Tribunal has previously decided that it can do so, for example in the cases of:
- (a) AS/20/04/42034 (7 May 2020) – in which Judge Wilkin held that "the Tribunal had the power to substitute a decision entitling the appellant to section 4(2) support" in an appeal against the SSHD's decision to refuse section 95 support. In doing so, he found that,
- "The administration of asylum support requires the respondent to adopt a flexible approach to ensure that destitute asylum-seekers/failed asylum-seekers are provided with the support to which they are entitled in a timely fashion..... [page 362 para 26(b)]*
- "The Tribunal's jurisdiction encompasses appeals against refusals of both section 4(2) support and section 95 support and to accordingly reach a decision on entitlement to both forms of support; I could see no reason why the power in Section 103 of the 1999 Act to substitute its own decision for the respondent's decision precluded the Tribunal from adopting an equally flexible approach to ensure that an appellant is awarded the support to which they are entitled; this includes substituting an entitlement to Section 4(2) support in place of a refusal of section 95 support, where it is in the interests of justice for the Tribunal to consider entitlement to the alternative support." [page 362 para 26(c)]*
- (b) AJ (AS/22/01/43710 17 March 2022) – in which Principal Judge Storey (as she was then) substituted the SSHD's decision to refuse section 4(2) support with her own decision to award section 95 support (pages 366-82).
- (c) Guzel (AS/24/04/46675, 16 May 2024) – in which Judge Grewal substituted the SSHD's decision to discontinue section 95 support with her own decision to award subsistence only section 95 support, finding that the situation was analogous to Judge Wilkins' decision in AS20/04/42034A (above) and relying on his reasoning (page 383-7).

(d) Kwabena (AS/25/09/49901, 20 October 2025) – in which Judge Gandhi substituted the SSHD’s decision to discontinue section 4 support with her own decision to award section 95 support, finding that,

“... there is no statutory limit to the Tribunal’s jurisdiction to substitute a decision made under section 4 for entitlement to section 95.... In my view it serves little purpose and is unnecessarily onerous to expect the appellant to complete another application form for section 95 support with the risk that support may be discontinued before a decision is made on his eligibility for section 95 support (page 395-6, para 12).

(e) H (AS/25/10/49974 30 October 2025) in which Judge Mitchell substituted the SSHD’s decision to discontinue section 4 support with his own decision to award section 95 support. Central to his reasoning was that,

“ss.103(3) does not state that the Tribunal’s power to decide that a person is entitled to s.95 support arises only if the person has exercised the right of appeal set out in ss.103(1) or (2). If the intention of Parliament had been to limit the Tribunal’s powers in this way, then ss.103(3) would have said so” (page 404, para17(b)).

49. Although the SSHD now contends that all of the above decisions were wrong in law, it is noteworthy that no attempt was made to challenge them when they were issued and no explanation has been given as to why not.

50. I agree with the findings referred to in paragraph 48 above because I can find no words in section 103 that place limitation on the Tribunal’s power to substitute. If Parliament had intended to restrict the power, it would have expressly set out the limitations in the legislation.

51. I find particularly persuasive support for the above analysis in section 103(6). On my reading, that provision means that the SSHD will not allow an appellant who loses their appeal to make a further application for either section 4 or section 95 asylum support unless they can show a material change of circumstances has occurred since the Tribunal’s decision to dismiss their appeal.

52. The SSHD says that the material change of circumstances in ML’s case is the change in her status from failed asylum seeker to asylum seeker again (page 159). I do not accept that submission because the change in ML’s status happened on 1 February 2022, three and a half years before the decision to discontinue her section 4 support was made. If the Tribunal were to adopt the SSHD’s narrow interpretation of section 103, there would be no alternative but to dismiss her appeal against the

section 4 decision of 30 September 2025 on the basis that she is no longer a failed asylum seeker. In that hypothetical scenario, following dismissal of her appeal the SSHD would be required by section 103(6) to refuse to entertain an application for section 95 support because there had been no material change of circumstances since the Tribunal's decision. That would leave ML without any support unless and until she could satisfy the SSHD of a material change of circumstances, even though the SSHD is satisfied that she meets the section 95 eligibility criteria of being both destitute and an asylum seeker.

53. In addition, the fact that s103(6) bars an unsuccessful appellant from applying for both s4 and s95 support, rather than limiting the bar to the type of support forming the subject matter of the appeal that was refused lends weight to the view that Parliament intended the Tribunal to have a broad jurisdiction to consider eligibility for both types of support in any one appeal.
54. In view of the above, I find that the SSHD's interpretation of section 103(3)(b) creates a real risk that individuals will fall into destitution if their section 4 support ends before they are able to apply for, or receive a decision on, an application for section 95 support. In ML's own words, the risk of destitution left her "terrified" and "so scared that I could not sleep... I kept thinking I was going to be homeless and I would be hurt again by traffickers". It follows that such gaps in support have the potential to expose individuals to breaches of Article 3 or Article 8 of the European Convention on Human Rights (ECHR). That cannot have been the intention of Parliament.
55. In addition, Rule 2 of the TPR sets out the overriding objective of the Tribunal. It includes requirements for the Tribunal to deal with cases fairly and justly by avoiding unnecessary formality, seeking flexibility in the proceedings, and using its special expertise effectively. None of those objectives are achieved by the SSHD's interpretation of s103(3)(b).
56. The SSHD submits that the text of section 95 makes it clear that the decision whether or not to grant support is a matter for the SSHD alone. She has sole responsibility for deciding whether an applicant is destitute or likely to become destitute within the prescribed period. I do not accept that submission for the following reasons:
- (a) In order to grant section 95 support a decision maker will need to find that the applicant is an asylum seeker (or their dependent) and is destitute (or likely to become destitute within the prescribed period).
 - (b) The answer to the question whether the appellant is an asylum seeker is unlikely to be controversial given that the reason why section 4 support was discontinued is that the SSHD has made a finding that their status changed from failed asylum seeker to asylum seeker.

- (c) It may well be the case that the issue of destitution is also uncontroversial, given that the appellant will have been on section 4 support until its discontinuation. That in itself is an indicator of destitution.
- (d) Where destitution is in issue, the Tribunal will decide it on the basis of the appellant's financial circumstances at the date of the appeal hearing rather than the date of the SSHD's decision. The reason is that regulation 7 of the ASR 2000 (page 426) sets the prescribed period as either 14 or 56 days "beginning with the day on which that question falls to be determined". Historically, the Tribunal has interpreted that to mean that the day the question falls to be determined will be the day of the appeal hearing.

57. The above paragraph is of relevance in answering the SSHD's submission that the jurisdiction of the Tribunal is in keeping with the general position that appeals are limited to considering the lawfulness of the decision actually challenged (*Michalak v General Medical Council [2017] UKSC 71 [2017] 1WLR 4193*). However, that is not the position that has been adopted by the Tribunal since the time of its inception. The practice is to consider the appellant's entitlement to support from the date of the hearing taking into account any changes of circumstances or evidence post-dating the SSHD's decision. In addition to the consideration of destitution described above, a very common example is that an appellant is refused section 4 support because they have not had a further submissions appointment with the Home Office. If the appointment has taken place by the date of the appeal hearing then in the absence of any other problems with eligibility, the Tribunal will allow the appeal on that basis.
58. In considering this issue it is instructive to note Home Office practice that an award of support made by the Tribunal takes effect on the date of the hearing. There is no provision for the SSHD to compensate the appellant for the monetary value of the support they have not been paid between the date of their application and that of the successful appeal. This is to be contrasted with social security benefits where the legislative framework prohibits the Tribunal from taking into account "matters not obtaining at the date of the decision" (*Social Security Act 1998, s12(8)(b)*) and sets down the date upon which a person's entitlement will commence.
59. Given what I have said above, it follows that I do not accept the submission that a person who has been in receipt of section 4 support (by definition found to have been a destitute failed asylum seeker) cannot be transitioned to section 95 support when their status changes back to asylum seeker because it is necessary they make a formal application on an ASF1 form as the SSHD needs to reassess destitution before the benefit can be awarded. That is because:

- (a) The issues to be decided are not usually controversial (for the reasons given at paragraph 56 above).
- (b) There are circumstances in which the SSHD can and does transfer individuals from section 4 to section 95 support without requiring completion of an ASF1 form and reassessment of destitution. For example, the Home Office policy document "*Ceasing Section 95 Support*" v5 (24 September 2025) says that Home Office staff will transfer an individual from section 4 support to section 95 support in circumstances where the SSHD decides to consider their asylum claim that has previously been declared inadmissible. Caseworkers are instructed to take the following steps:

"1. TCU caseworkers to notify the applicant that despite the inadmissibility decision, their claim is now being considered in the UK and provide information relating to support options.

2. TCU caseworkers to notify Asylum Support team the applicant's claim is now being considered and will be transferred from section 4 support to section 95 support of the 1999 Act.

3. Asylum Support team will transfer the applicant from section 4 support to section 95 support and notify the applicant this has been completed" (policy document page 10 - bundle page 507).

60. Although I accept that the SSHD will require to check entitlement to section 4 support from time to time, no explanation has been given as to why that financial assessment is needed before an individual in ML's position can be moved from section 4 support to section 95 support, thus adding delay and the risk of destitution. The SSHD can review destitution at any time and does not only have this one opportunity to do so. The SSHD says that the investigation of ML's finances proved relevant and valuable as she had opened a new bank account since her application for section 4 support in 2020. However, there is no evidence before the Tribunal of when that bank account was opened and, indeed, whether the SSHD had been notified of it at any time before the section 95 application was made. In any event, the existence of the account made no difference to the outcome of ML's application for section 95 support as she was still destitute.

61. By regulation 17A of the ASR (page 434) the SSHD has the power to recover the sum of any overpayment of asylum support made. Thus, if it were to be discovered that a recipient of support was not destitute at the time the support was provided, recovery action could be taken. In the context of this appeal, the provision means that any delay in re-assessment of destitution when an individual transitions from section 4 to section 95 support will not create an overpayment of benefit that cannot be reimbursed.

Appellant: ML

Tribunal Ref: AS/25/10/50033

Date of Hearing: 13 January 2026

Conclusion

62. For the reasons given above, I find that the power provided in s103(3)(b) of the *Immigration and Asylum Act 1999* permits the Tribunal to make a decision awarding section 95 support to a person who has appealed against a decision to discontinue section 4 support.

63. The outcome of this appeal is academic for ML as the Home Office granted her application for section 95 asylum support on 10th December 2025. Had that not been the case, the Tribunal would have substituted its decision that ML is entitled to section 95 support for the decision appealed against.

The above is a statement of reasons for the Tribunal's decision, under rule 34 of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008.

Signed: V A King

Date: 30 March 2026

Principal Judge King