

POLICY BULLETIN 80

BACKPAYMENT OF ASYLUM SUPPORT

1 Introduction

- 1.1 This policy bulletin provides guidance on the situations in which backpayments of asylum support may or may not be allowed.
- 1.2 Claims for backpayment of asylum support usually fall into one of two categories:
- those where the supported person's actions (or inactions) have not contributed to the non-payment of support (see section 2), and
 - those where the supported person's actions (or inactions) may have contributed to the non-payment of support (see paragraph 3).
- 1.3 Caseworkers should bear in mind, when dealing with backpayments, that the overriding principle is one of fairness, both in terms of the operation of the system and in terms of how the system is seen to operate.

2 Claims Where the Supported Person's Actions (or Inactions) Have Not Contributed to the Non-Payment of Support

- 2.1 As a general rule, where the claimant was supported by the UK Border Agency both before and after the relevant period (i.e. the period between when the error occurred and when it was rectified) claims for backpayment should routinely be paid. They can be made as an addition to the amount payable as regular support.
- 2.2 In the particular case where the error occurred at the outset, so that although the person was eligible for support, the initial payment was delayed, but in other respects the claimant fulfils the criteria set out in paragraph 2.1, the claim should be paid.
- 2.3 Claims by those who now have status (indefinite leave to remain – with or without refugee status, exceptional leave to remain, humanitarian protection or discretionary leave) should be examined closely to check that a need to make a backpayment actually remains. Claims by those who are now refugees should not usually be paid, as any shortfall on the part of the UK Border Agency should be made good in their claim for backpayment of income support; but where a refugee can prove that their NASS 35 is incorrect, claims may be payable. If the claimant is no longer in the country, backpayment would be inappropriate.
- 2.4 Claims by those who *would* have been eligible on this basis, were it not for suspension of backpayments from August 2003 – March 2004, should be examined closely to see whether any unfairness would result from not paying the claim.

2.5 All other claims need to be examined on a case by case basis.

2.6 If in doubt, caseworkers should seek advice.

3 Claims Where the Supported Person's Actions (or Inactions) May Have Contributed to the Non-Payment of Support

3.1 Where the claim for backpayment has arisen as a result of actions (or inactions) by the supported person, such claims should not normally be paid. The expectation is that asylum seekers will follow the instructions they are given in order to obtain their support. The exception is where the claimant was unable to obtain their support because of an inability to do so. Guidelines for particular cases are given below.

3.2 **EST (or similar) not used within deadline.**

There should be no reimbursement, as asylum seekers are clearly informed of expiry dates applicable to tokens/vouchers. The only exception to this is if the applicant was too ill to exchange the token within the deadline, and informs the UK Border Agency without undue delay. If the caseworker is satisfied that this exception applies (proof will be required, in the form of a doctor's letter or similar), *and* the delay in informing the UK Border Agency was five working days or less (or if more than five days, the caseworker is satisfied that the UK Border Agency was nonetheless informed as soon as possible), a new token may be sent. However, if the asylum seeker accesses support via an ARC, reimbursement should be made as an addition to regular payments.

3.3 **EST lost or misplaced.**

No reimbursement should be made, as it is the asylum seeker's responsibility to safeguard important documents.

3.4 **EST not received.**

No reimbursement should be made, as asylum seekers are clearly informed of actions they must take in order to receive their token, and have two opportunities to receive it. The only exception is if the courier is unable to contact the occupant or leave a card, because of the layout or design of the particular premises. If the caseworker is satisfied that this exception applies, an IST may be issued as a replacement.

3.5 **Weekly support payment missed due to claiming at the wrong post office.**

No reimbursement should be made, as asylum seekers are clearly informed about the need to attend a particular post office to collect their support. But caseworkers should ensure that the claimant had up-to-date advice of the correct post office; if not, the claim may be payable.

3.6 **Weekly support payment (made via an ARC) missed due to illness or infirmity.**

For a one-week, unsubstantiated claim, payment should be made in the form of an addition to the regular support payment, but the claimant must be warned that future claims may be more closely scrutinised, and may not be repaid. This is important, as claimants may in fact be absent from their authorised address, and to issue payments routinely will undermine the ARC process. For short-term illness,

with the practical effect that a person is not well enough to visit the post office to use his ARC, ESTs may be issued for up to six weeks. Claims should be made as soon as possible, and normally within 5 working days of the missed payment. For claims extending beyond one week, proof (in the form of a doctor's certificate) should be sought. NOTE: For a longer term illness, a dependant aged over 18 can be designated as the main applicant for asylum support purposes. In appropriate cases the UK Border Agency can invoke the Westminster judgement and seek local authority support for the asylum seeker.

3.7 Weekly support payment (ARC) missed due to absence.

One of the reasons often given for absence is visiting friends or relatives, which in itself is an insufficient ground for justifying making a backpayment. Note that (under Regulation 20(1)(e) of the Asylum Support Regulations) any supported person who is absent from his or her authorised address for more than seven consecutive days and nights, or a total of more than 14 days and nights in any six month period, without permission, can be liable to have his or her support suspended or discontinued. In the particular case where absence is due to hospitalisation, a missed payment may be reimbursed, but allowance should be made for the fact that support is not payable to an individual whilst he or she is in hospital.

3.8 Delay in informing the UK Border Agency of changes in circumstance.

This could include change of address or the addition or removal of dependants. It is the claimant's duty to notify the UK Border Agency of any relevant changes without delay. Assuming the change occurred before the UK Border Agency was notified, reimbursement should be made from the date of notification. In practical terms, this means when the UK Border Agency updated its records following receipt of notification of the change (or within five working days of receipt, whichever is sooner).

3.9 Non payment of support resulting from a missed reporting event - For claimants included in the Reporting with ARC (RepARC) Pilot.

Asylum seekers included in the RepARC pilot may have their support suspended if they fail to attend their reporting events.

The issue of non-payment of support will only arise once the ARC has been rendered inoperable and support becomes inaccessible.

An asylum seeker who fails to attend a reporting event but provides a reasonable excuse for doing so, will receive their support. After two consecutive missed reporting event, the asylum-seeker will be unable to collect his support. However, if a reasonable excuse is subsequently provided, missed support and future support payments will be provided in the form of Emergency Support Tokens (EST's) until the ARC can be updated and the asylum-seeker can resume collecting support in the usual way.

Where a reasonable excuse has been provided, this will be recorded on CID. Before agreeing to pay support under these circumstances, caseworkers should first check to ensure that a reasonable excuse has been recorded.

An asylum-seeker who fails to attend a reporting event and does not provide a reasonable excuse for doing so, will not receive his support. If he resumes reporting within 8 weeks, his support will be reinstated and will be paid from that date. Under these circumstances, the asylum-seeker may make an application for a backpayment of the support not paid during the time he was not reporting.

Any claim for a backpayment of support where the claimant has failed to report without a reasonable excuse, should not normally be paid. At the start of the RepARC pilot, all participants were notified of the implications of failing to attend reporting events without a reasonable excuse. Applicants failing to attend the first reporting event receive a warning letter, which clearly explains that support will be suspended should they fail to attend the following event. The claimant therefore has a second opportunity to comply with reporting conditions, before support is suspended.

As a general rule therefore, backpayments will not be paid, unless the claimant can demonstrate that he will suffer substantial hardship if a backpayment of support were not paid. The demonstration of substantial hardship will differ from person to person depending on the individual circumstances of each asylum-seeker and his dependants, but an example of a circumstance in which the UK Border Agency would consider that substantial hardship would be caused by a non-payment of a backpayment would be if the claimant was able to demonstrate that there had been a marked deterioration in the living conditions of himself and/or his dependants during the non-reporting period which could be remedied by urgent provision of assistance by way of a backpayment.”

For the purpose of the RepARC pilot, acceptable reasonable excuses permitted by IS for failing to report are as follows:-

- Equipment failure
- Medical or illness
- Home Office Interview
- Appeal Hearing

Other Exceptional Reasons (these are likely to include events which are beyond the asylum seekers control and/or where under the circumstances, it would have been unreasonable to expect the asylum seeker to have reported. As a guide, a sudden bereavement of a close family member or attendance at a family funeral would be considered to be a reasonable excuse, however visiting family or friends would not). In some circumstances, it may be appropriate to ask for proof. Caseworkers should exercise discretion when doing so.

4 **Overpayment.**

In the case where the change of circumstance means that a reduced rate of support is applicable, any *overpayment* should be calculated from the date on which the change occurred, and should be recovered in accordance with Policy Bulletin 67.

5 **Asylum Support Adjudicators**

- 5.1 Where the Asylum Support Adjudicators substitute their decision for one made by the Home Secretary, they can direct that the UK Border Agency support be backdated. Cases where the Tribunal Service – Asylum Support direction on a backpayment falls outside this guidance should be referred to the Senior Caseworkers.

6 Method of Payment

- 6.1 Occasionally, some applicants will be entitled to a large backpayment, and to avoid potentially exposing them to undue risk by having to carry around large sums of cash, backpayments should be made by weekly instalments of sums no greater than £200 in *addition* to their usual support payment. In the majority of cases, the applicant will be reimbursed over one week. However, in some cases involving large families, it may be necessary for the payments to be spread over several weeks.
- 6.2 An exception to payment by instalment may be made if the claimant can prove a pressing need for a lump sum, eg to prevent the cut off of a utility.

7 Authorisation

- 7.1 Payment of larger sums must be authorised by more senior staff. Details of this will be given in notes to caseworkers.

Document Control

Change Record

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3.0	BF	21/11/08	Update branding only