Neutral Citation Number: [2025] EWCA Civ 1654 Case No: CA-2025-000879

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
Mr Justice Chamberlain
[2025] EWHC 694 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 December 2025

Before:

LORD JUSTICE BEAN
(Vice-President of the Court of Appeal (Civil Division))
LORD JUSTICE PETER JACKSON
and
LORD JUSTICE STUART-SMITH

- -

Between:

SECRETARY OF STATE FOR THE HOME DEPARTMENT
Claimant/Appellant

- and -

FIRST-TIER TRIBUNAL (ASYLUM SUPPORT)
Defendant/Respondent

- and -

(1) MAH
(2) LKL
(3) GK
Interested Parties

- and -

ASYLUM SUPPORT APPEALS PROJECT
Intervenor

- -

Michael Biggs (instructed by **Government Legal Dept**) for the **Appellant**
Irena Sabic KC and Alex Grigg (instructed by **Duncan Lewis Solicitors**)
for the **Interested Parties**

Hearing date: 18 November 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 18 December 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Lord Justice Stuart-Smith:

1. This appeal concerns the scope of the jurisdiction of the First Tier Tribunal (Asylum Support) ["the AST"] when a party appeals to it pursuant to section 103(1) or section 103(2) of the Immigration and Asylum Act 1999 ["the IAA 1999"] claiming that they should be entitled to asylum support pursuant to section 95 of that act. It takes the form of an appeal against the order of Chamberlain J made on 21 March 2025 by which he dismissed the Claimant Secretary of State's claim for judicial review of a prior decision of Principal Judge Storey made in the AST on 14 June 2024. I shall generally refer to Chamberlain J as "the Judge".

2. The AST's order involved linked appeals by the three interested parties (MAH, LKL and GK) challenging the decisions of the Secretary of State (a) in the cases of MAH and GK to stop providing asylum support; and (b) in the case of LKL refusing asylum support. The appeals had in common that the decision to withdraw or to refuse asylum support followed and was based upon a decision by the Secretary of State that the appellants' claims for asylum were withdrawn. In briefest outline, the AST decided that it was entitled to look behind the headline decision (i.e. the decision to stop providing or to refuse to provide asylum support as the case might be) to the reasons underpinning that headline decision. Having looked behind the headline decision, the AST remitted each of the cases to the Secretary of State with a requirement to reconsider.

3. The Secretary of State brought the present proceedings for judicial review, asserting that in each case the AST has acted in excess of its jurisdiction. It is the Secretary of State's case that the AST is not entitled to consider the lawfulness or the merits of a decision by the Secretary of State to treat an appellant's claim for asylum as withdrawn where that forms the basis and reason for the headline decision to refuse or withdraw asylum support.

4. The Judge dismissed the Secretary of State's claim for judicial review for the reasons he set out in his judgment: [2025] EWHC 694 (Admin). The Secretary of State appeals with the leave of Lewis LJ. I would dismiss the Secretary of State's appeal to this Court, essentially for the reasons given by the Judge. As will be apparent, I consider that Chamberlain J's judgment deserves to be read in full.

The factual background to this appeal

5. Having heard evidence, the AST made detailed findings about each of the three cases with which we are concerned. Those findings were summarised by the Judge at [6]-[20]:

> "MAH
>
> 6. MAH is a national of Sudan. He claimed asylum on 18 September 2021. He was granted asylum support on 26 October 2021 subject to conditions. One of these was that he attend any interviews unless there was a good reason why he could not. On 2 November 2022 he instructed the Migrant Law Partnership ("MLP") to act for him. On 13 and 21 September 2023 he sent enquiries to his solicitor and an interpreter at MLP seeking an update on his asylum claim, but did not receive a response.

7. On 2 October 2023 the Home Office posted and emailed to MLP a letter inviting MAH to attend an asylum interview. The letter was not sent to MAH directly. MAH did not receive it from MLP.

8. On 16 October 2023 the Home Office wrote to MAH at his hotel and emailed MLP requesting an explanation for his non-attendance. MAH collected a copy of the letter from the hotel reception on 18 October 2023, but did not understand it. It was explained to him by a friend that he had failed to attend his asylum interview. He then attempted to contact MLP by telephone, email and WhatsApp, but did not receive a response.

9. On 23 October 2023 the Home Office wrote to MLP in these terms:

> "You were asked to attend an interview in connection with your claim for asylum in the United Kingdom on 16 October 2023 at 08.30. However, you did not attend. As a result a letter was sent to you on 16 October 2023 advising you that your claim for asylum would be withdrawn under paragraph 333C of the Immigration Rules unless an acceptable reason (including documentary evidence) for failing to attend your asylum interview was provided within five days.
>
> "You failed to respond to this letter. As a result, your claim for asylum has been withdrawn under paragraph 333C of the Immigration Rules, and consideration of your asylum claim will be discontinued."

10. On 19 December 2023 the Home Office wrote to MAH at the hotel accommodation that was being provided for him pursuant to section 95 of the IAA 1999. It said this:

> "Following confirmation that your application for asylum has been withdrawn, I am writing to advise that you no longer qualify for support under section 95 of the Immigration and Asylum Act 1999. The support that you have been provided with is to be discontinued from 3 January 2024, when you will no longer be able to use your ASPEN card [the Asylum Support Enablement Card used for weekly subsistence payments].
>
> "Your eligibility for accommodation … will cease on 3 January 2024, when you will be expected to leave. You should make immediate arrangements to vacate the premises.
>
> "The accommodation provider has been notified of this decision and will contact you separately.

> "You should note that there is no right to appeal against this decision under section 103 of the Immigration and Asylum Act 1999 to the First-Tier tribunal (Asylum Support). If you believe that your support should continue because your claim for asylum is still under consideration or you have an appeal against refusal of asylum that is still pending, please contact Migrant Help UK."

11. Despite this, on 27 December 2023, MAH lodged an appeal with the Tribunal under section 103(2) IAA 1999. The Secretary of State agreed to continue to provide support pending the Tribunal's decision.

LKL

12. LKL is a national of China from Hong Kong. He claimed asylum on 18 February 2022. He was provided with support under section 98 IAA 1999 for nearly two years, until 14 February 2024. He was absent from his hotel for periods in the run-up to and immediately after the birth of his son on 5 October 2023. The mother, his fiancée, lived elsewhere. On 18 November 2023 he returned to his hotel to find that his belongings had been removed. There was a letter dated 1 October 2023 inviting him to an interview on 12 October 2023. A second letter dated 14 November 2023 informed him that his claim had been withdrawn under paragraph 333C of the Immigration Rules because he had failed to attend an interview.

13. On 22 November 2023 LKL emailed the Home Office to explain the reason why he had not attended and to request a review of the withdrawal decision. On 13 December 2023, the Home Office wrote to him to say that the withdrawal decision was maintained. He did not challenge this decision.

14. On 8 February 2024 he applied for support under section 95 IAA 1999 for himself, his fiancée and his son. This was refused on 14 February 2024 in the following terms:

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

15. LKL appealed under section 103(1) IAA 1999. The Secretary of State accepted that the Tribunal had jurisdiction to hear the appeal.

GK

16. GK is a national of India. She arrived in the UK in 2015 and claimed asylum on 7 December 2019. On 31 January 2020 asylum support was granted for her and her two minor children, subject to conditions. One of these was that she attend any interview unless there was a good reason why she could not. In November 2022, she instructed solicitors, who informed the Home Office that they were acting.

17. On 17 October 2023 the Home Office wrote to GK (not copied to her solicitor) to invite her to an interview on 1 November 2023. The letter was returned to sender, marked "addressee gone away". On 1 November 2023 the Home Office contacted her by telephone to ask why she had not attended. She told the caller that she did not know about the interview and still lived at the same address.

18. On 1 November 2023 the Home Office wrote to GK (not copied to her solicitor) asking for an explanation of why she had not attended the interview. This letter was also returned to sender, marked "addressee gone away". On 15 November 2023 the home Office wrote to GK to say that her asylum claim had been withdrawn under paragraph 333C of the Immigration Rules ("IRs") because of her failure to attend the interview without reasonable explanation. This letter too was returned to sender, marked "addressee gone away".

19. On 22 February 2024 the Home Office wrote to GK (not copied to her solicitor) in these terms:

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

> 20. Notwithstanding what was said in the letter, GK appealed to the Tribunal under section 103(2) IAA 1999. The Secretary of State agreed to continue to provide support for her and her minor children pending the Tribunal's decision."

The AST's decision

6. The parties agreed the issues for determination by the AST to be:

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

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

   iii) Issue 3: does the AST have jurisdiction to consider the lawfulness, and/or the merits, of a decision by the SSHD to treat an appellant's claim for asylum as withdrawn?

   iv) Issue 4: what is the correct disposal of the appeals in the light of the answers to issues (1)-(3)?

7. In relation to issue 1, the Secretary of State conceded that there is a right of appeal to it under section 103(1) where an applicant applies for support under section 95 and the SSHD decides that the applicant does not qualify for support because they are no longer an asylum-seeker as their asylum claim has been withdrawn.

8. In relation to issue 2, the Secretary of State submitted that the decisions under appeal were not appealable decisions pursuant to section 103(2) and/or 103(2A) because the effect of the withdrawal of the asylum claims is that the entitlement to section 95 support necessarily ended under the statutory scheme given the definition of "asylum-seeker" in section 94. Furthermore, the Secretary of State submitted (relying on the authority of *Dogan* [2003] EWCA Civ 1673) that if support ends because of the operation of a condition under section 95(9) there is no right of appeal under section 103(2).

9. In relation to issue 3, the Secretary of State submitted that subsections 103(1)-(2A) are clear as to what decisions are appealable and that they do not include a decision that an asylum claim has been withdrawn. It was submitted that the AST could not substitute its own decision as to whether the asylum claim has been withdrawn. Since an administrative decision (such as that the asylum claim is withdrawn) will be valid and effective unless and until it is successfully challenged before a court of competent jurisdiction, the AST cannot have regard to or consider whether the withdrawal of the asylum claim was lawful.

10. On the basis of the submissions made in relation to issues 1-3 the Secretary of State submitted that:

i) MAH had no right of appeal against the decision that his asylum claim was withdrawn and the Secretary of State's decision of 19 December 2023 notifying him that he no longer qualified for support pursuant to section 95 did not carry a right of appeal pursuant to section 103(2);

ii) The decision of 14 February 2024 refusing LKL's application for section 95 support carried a right of appeal pursuant to section 103(1) but the AST did not have jurisdiction to consider the legality or the merits of the decision taken on 14 November 2023 to treat his asylum claim as withdrawn;

iii) The decision of 22 February 2024 that GK no longer qualified for section 95 support did not carry a right of appeal pursuant to section 103(2) because the AST did not have jurisdiction to consider the legality or the merits of the decision taken on 15 November 2025 that her asylum claim would be treated as withdrawn.

11. In brief outline, the AST's decision on Issues 1-3 was:

i) On issue 1: the AST has jurisdiction to consider the existence or otherwise of the factual circumstances permitting the grant of support under section 95 and to arguments of law relating to those issues, following the decision of HHJ Gilbart QC sitting as a deputy judge of the High Court in *R (SSHD) v CASA and Malaj* [2006] EWHC 3059 (Admin);

ii) On issue 2: while accepting that there is no right of appeal against a decision to treat a person's asylum claim as withdrawn, there is a right of appeal pursuant to section 103(2) against a decision terminating support because the asylum claim has been treated as withdrawn;

iii) On issue 3: relying on *R (DN (Rwanda)) v SSHD* [2020] UKSC 7, [2020] 2 AC 698 at [12] and [17-18], when considering an appeal pursuant to section 103(2) the AST is entitled to look behind the decision to withdraw support to see how and in what circumstances the decision to discontinue asylum support was reached.

12. These findings of principle opened the door to the AST's consideration of the three cases before it. In each case the AST made significant findings of fact that led it to remit the case to the Secretary of State with a requirement to reconsider:

i) In MAH's case, quite apart from finding as a fact that MLP did not pass on the invitation to interview letter, the Secretary of State had failed to comply with his own policy because it was accepted that the invitation to interview letter was not sent by the Home Office directly to MAH. The Secretary of State's decision to withdraw MAH's asylum claim was therefore based upon erroneous facts (namely that he had been invited to attend an interview which he had failed to attend) that were founded on the Secretary of State's failure to follow his own policy;

ii) In LKL's case, the AST found no evidence that he had been served with a decision refusing his original claim for section 95 support to which he was entitled. More fundamentally, the AST was satisfied that in LKL's case the duty under section 55 of the Borders, Citizenship and Immigration Act 2009 and the requirements of the Withdrawal Policy to safeguard and promote the welfare of LKL's child were not given any consideration by the caseworker. The Secretary of State's Withdrawal

Policy requires caseworkers to be mindful of the duty under section 55 of the 2009 Act to carry out their functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK and to ensure that the process of withdrawing an asylum claim operates alongside existing child safety procedures and considerations. Accordingly, the AST remitted the case to the Secretary of State and required that he reconsider the matter;

iii) In GK's case the Secretary of State accepted that her solicitor was not copied into correspondence and was not sent copies of two invitation to interview letters. It was accepted that GK did not receive the letters. A matter of further concern was that no consideration was given to the fact that she is a lone parent of two young children when deciding to treat her asylum claim as withdrawn and directing her to vacate her accommodation with immediate effect. As in LKL's case, this was contrary to the Secretary of State's Withdrawal Policy.

The judicial review before the Judge

13. The Secretary of State's submissions before the Judge broadly mirrored the case that had been advanced before the AST. The Judge received evidence from Mr Copson of the Asylum Support Appeal Project ["the ASAP"], which he summarised at [28]-[36], as a result of which I need only refer to a few of the key points that he made:

i) The appellate jurisdiction exercised by Adjudicators and then the AST was designed with the following features in mind: (i) users are by definition likely to be destitute or to become destitute imminently; (ii) many are vulnerable (for example they have mental or physical health issues, have experienced severe violence or are vulnerable to trafficking); (iii) most do not speak English fluently and are unfamiliar with the English legal system; and (iv) due to the Home Office dispersal policy, they are dispersed throughout the UK.

ii) The AST's overriding objective includes avoiding unnecessary formality, seeking flexibility and ensuring that the parties are able to participate fully in the proceedings;

iii) There has been an increase in the number of appeals involving decisions by the Secretary of State to treat an asylum claim as withdrawn, from 12% of all decisions in 2022 to 18% in 2023;

iv) Judicial review is an inadequate remedy because of a shortage of solicitors having a public law contract, particularly in some regions:

> "Many would-be appellants face great difficulties dealing with the SSHD's requirements in terms of attending interviews, dealing with important correspondence without interpretation or support and with challenging procedural failings (for example, regarding correspondence not having been received). They are even often unaware that their claim is being withdrawn, and the first they hear of this will be in the letter discontinuing support. In this context, it would be unrealistic to expect an asylum seeker faced with a withdrawal notice to be able to seek judicial review of the withdrawal and/or asylum support decisions."

v) It is very difficult to see how judicial review would provide an adequate remedy in breach of condition cases, since most such cases involve either a dispute of fact (e.g. whether the asylum-seeker has breached conditions) or a value judgment (e.g. whether there is a reasonable excuse).

14. In response, the Secretary of State submitted that an asylum seeker whose claim is treated as withdrawn can apply for reconsideration and, if the decision is maintained, for judicial review; and a decision to treat a claim as withdrawn does not leave the former asylum seeker wholly without support: the Secretary of State can provide support under the power conferred by Schedule 10 of the Immigration Act 2015 and must do so where such support is required to avoid a breach of ECHR rights.

The legal framework

15. The Judge set out the legal framework at [39]-[62] of his judgment, including the following:

> "The Immigration and Asylum Act 1999
>
> 39. Part VI of the IAA 1999 deals with support for asylum seekers. Section 94 contains definitions for the purposes of Part VI. "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". "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".
>
> 40. Section 94(3) provides:
>
> > "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."
>
> …
>
> 42. Section 95 (headed "Persons for whom support may be provided") provides in material part as follows:
>
> > "(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.

…

(9) Support may be provided subject to conditions.

…

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

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

(12) Schedule 8 gives the Secretary of State power to make regulations supplementing this section…"

…

44. Section 103 IAA 1999 provides as follows:

"(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."

45. In its original version, s. 103(7) provided as follows:

"The Secretary of State may by regulations provide for decisions as to where support provided under section 95 is to be provided to be appealable to an adjudicator under this Part."

But no regulations were ever made under this provision."

16. At [46]-[54] the Judge set out provisions of Council Directive 2003/9/EC of 27 January 2003 ("the Reception Directive") and the Asylum Seekers (Reception Conditions) Regulations 2005. He then set out extracts from the Asylum Support Regulations 2000 including the following:

> "55. Regulation 19(1) of the 2000 Regulations makes the provision authorised by para. 7 of Sch. 8 to the IAA 1999. It provides:
>
> "(1) When deciding—
>
> (a) whether to provide, or to continue to provide, asylum support for any person or persons, or
>
> (b) the level or kind of support to be provided for any person or persons,
>
> the Secretary of State may take into account the extent to which any relevant condition has been complied with."
>
> 56. Originally, "relevant condition" was defined in reg. 19(2) as "a condition subject to which asylum support for that person or any of those persons is being, or has previously been, provided". That definition, however, was changed in 2005, when the Secretary of State transposed the Reception Directive. Regulation 19(2) now defines "relevant condition" as "one which makes the provision of asylum support subject to actual residence by the supported person or a dependant of his for whom support is being provided in a specific place or location".
>
> 57. Regulation 20 makes the provision authorised by para. 8 of Sch. 8 IAA 1999. It was also amended in 2005 in light of the Reception Directive. It now provides:
>
> "(1) Asylum support for a supported person and any dependant of his or for one or more dependants of a supported person may be suspended or discontinued if—
>
> …
>
> (e) the supported person has not complied within a reasonable period, which shall be no less than five working days beginning with the day on which the request was received by him, with requests for information made by the Secretary of State and which relate to the supported person's or his dependant's eligibility for or receipt of asylum support including requests made under regulation 15 [requests for information relating to changes of circumstances];

> (f) the supported person fails, without reasonable excuse, to attend an interview requested by the Secretary of State relating to the supported person's or his dependant's eligibility for or receipt of asylum support;
>
> (g) the supported person or, if he is an asylum seeker, his dependant, has not complied within a reasonable period, which shall be no less than ten working days beginning with the day on which the request was received by him, with a request for information made by the Secretary of State relating to his claim for asylum;
>
> …
>
> (3) Any decision to discontinue support in the circumstances referred to in paragraph (1) above shall be taken individually, objectively and impartially and reasons shall be given. Decisions will be based on the particular situation of the person concerned and particular regard shall be had to whether he is a vulnerable person as described by Article 17 of [the Reception Directive].
>
> (4) No person's asylum support shall be discontinued before a decision is made under paragraph (1)."

17. From [58] the Judge turned to the Immigration Rules and relevant guidance, including the following:

> "61. Paragraph 333C of the IRs provides:
>
> "If an application for asylum is withdrawn either explicitly or implicitly, it will not be considered.
>
> (a) An application will be treated as explicitly withdrawn if the applicant signs the relevant form provided by or on behalf of the Secretary of State, or otherwise explicitly declares a desire to withdraw their asylum claim.
>
> (b) An application may be treated as implicitly withdrawn if the applicant:
>
> …
>
> (v) fails to attend a personal interview required under paragraph 339NA, unless the applicant demonstrates within a reasonable time that that failure was due to circumstances beyond their control.
>
> (c) The applicant's asylum record will be updated to reflect that the application for asylum has been withdrawn."

> 62. Paragraph 339NA provides, subject to specified exceptions, that asylum applicants are to be "given the opportunity of a personal interview"."

18. The Judge then considered relevant case law before summarising the parties' submissions.

19. The Secretary of State's first main submission was that that the AST had no jurisdiction to entertain the appeals in MAH's and GK's cases because: (a) the effect of the decisions to treat the asylum claims in those cases as implicitly withdrawn was that the appellants ceased to be "asylum-seekers" within the definition in s. 94(1); and (b) in any event, the grant of s. 95 support was conditional on their attending their asylum interview and they failed to do so. The consequence was that the Secretary of State did not stop providing support "before that support would otherwise have come to an end" for the purposes of s. 103(2).

20. Second, the Secretary of State submitted that the AST, when hearing an appeal under ss. 103(1)-(2A), lacks jurisdiction to consider whether a prior decision treating an asylum claim as withdrawn is lawful or correct. The principle of regularity means that such prior decisions must be treated as valid unless and until set aside by a court of competent jurisdiction (which in this case would have to be the Administrative Court).

21. In response, MAH submitted on Ground 1 that the decisions in MAH's and GK's cases had the effect of stopping support before it would otherwise have come to an end. There was no sound basis upon which to assume that the Secretary of State was right to conclude that the claim should be treated as withdrawn. The Secretary of State's interpretation would render section 103 appeals virtually meaningless, with the only issue acknowledged to be open to the AST being whether the applicant was destitute. On Ground 2 it was submitted that there was no reason why the AST could not decide whether the asylum claim was correctly treated as withdrawn if such a decision was necessary in determining whether the withdrawal of support was lawful. The Secretary of State's interpretation would lead to the wasteful necessity for parallel proceedings in the AST to challenge the support decision and in the Administrative Court to challenge the decision to treat the asylum claim as withdrawn.

Chamberlain J's decision

22. The Judge first addressed the question whether the AST had jurisdiction to decide whether someone is an "asylum-seeker" within the meaning of section 94(1). He concluded that it did: see [82]-[84]. In doing so he relied upon the decision of HHJ Gilbart QC in *Malaj* and the observation (strictly obiter) of Laws LJ in *Dogan* at [6]. At [83] he 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. Eligibility depends on satisfying the definition of "asylum seeker" or "dependant" and on being actually or imminently destitute. There is no obvious reason why Parliament should have conferred jurisdiction on the Tribunal to decide disputes about the latter but not the former."

23. The Judge next addressed the question whether someone who had made and then withdrawn a claim still an "asylum-seeker" within the meaning of section 94(1). Rejecting the completely literal interpretation that where a person's asylum claim was withdrawn it would never be "determined", the Judge concluded at [90] that:

> "the definition of "asylum seeker" in s. 94(1) must therefore be read as impliedly containing an additional element not stated on the face of that provision. The individual must not only have made a claim which has been recorded. He must also not have withdrawn his claim, whether expressly or by conduct treated by the IRs as inconsistent with an intention to continue to advance it."

24. Third, at [91]-[101] the Judge addressed the question whether there is a general rule barring collateral challenges to prior decisions. The question arises because of the Secretary of State's submission that the decision being appealed against under section 103(1) or (2) is solely the decision to refuse or to withdraw section 95 support and not a "prior decision" such as the decision that the applicant's claim for asylum had been or should be treated as withdrawn. The Judge accepted the general proposition but went on to consider its scope, relying first upon dicta including what was said by Lord Irvine of Lairg LC in *Boddington v British Transport Police* [1992] AC 143, 160C-D:

> "…in every case it will be necessary to examine the particular statutory context to determine whether a court hearing a criminal or civil case has jurisdiction to rule on a defence based upon arguments of invalidity of subordinate legislation or an administrative act under it. There are situations in which Parliament may legislate to preclude such challenges being made, in the interest, for example, of promoting certainty about the legitimacy of administrative acts on which the public may have to rely."

25. In his analysis of the scope of the general rule, the Judge rejected the reliance placed by the Secretary of State upon the decision to treat the applicants' asylum claims as withdrawn being a "prior decision", holding that it should make no difference whether, as a matter of procedural convenience, the decision to treat the asylum claim as withdrawn preceded the decision to refuse or withdraw section 95 support or was contemporaneous with and expressed as part of that decision. He recorded the important concession by the Secretary of State that, "if the Secretary of State concluded mistakenly that the claim had been expressly withdrawn or determined, the [AST] would have jurisdiction to inquire into the correctness of this conclusion." The Secretary of State's supporting submission that a decision by the AST that a claim had not been impliedly withdrawn would bind the Secretary of State and be effectively unchallengeable was rejected because decisions of the AST can be and are (as the present proceedings show) challenged by the Secretary of State in judicial review proceedings. Finally, the Judge expressed the view that it did not matter that, if the AST has jurisdiction over the "prior decisions" to treat asylum claims as withdrawn, it would determine the correctness of the decisions itself after hearing written and oral evidence, rather than applying the judicial review standard. In his view, that was simply a consequence of the AST having jurisdiction. In testing his view by reference to the condition of eligibility that the

applicant "appears to the Secretary of State" to be destitute or likely to become so, the Judge said at [101]:

> "But it is common ground that this question" [i.e. destitution] "does fall within the scope of the Tribunal's appellate jurisdiction. That being so, it is also common ground that it falls to be determined by the Tribunal for itself. If questions as to whether a claim has been validly treated as withdrawn are within the scope of the Tribunal's appellate jurisdiction, it must follow that they too are for the Tribunal to determine for itself."

26. The Judge then turned to the critical question, namely whether the AST can inquire into the validity of decisions to treat asylum claims as withdrawn. He identified three reasons why the AST was correct to conclude that, at least in an appeal under section 103(1), it had jurisdiction to consider whether an asylum claim has been validly treated as withdrawn under paragraph 333C of the Immigration Rules.

> "103. First, the starting point is that, on established authority, the Tribunal does have jurisdiction, at least in a s. 103(1) appeal, to consider whether an applicant is an "asylum seeker" for the purposes of s. 94(1). On the Secretary of State's analysis, which I accept, a person whose claim has been withdrawn, or validly treated as such, is not "an asylum seeker" for those purposes. So, as in *Foster*, one would expect the Tribunal to have jurisdiction to determine whether the asylum claim has been validly treated as withdrawn, unless an analysis of the statutory scheme supplies some special reason why this would not be appropriate.
>
> 104. Second, the statutory scheme does supply a special reason why the Tribunal should not inquire into decisions having to do with the merits of an asylum claim. Where such decisions are subject to appeal, the appeal is allocated to a different tribunal. The Tribunal was not set up to deal with the merits of asylum claims. But a decision that a claim has been withdrawn, or should be treated as withdrawn, has nothing to do with the merits of the asylum claim.
>
> 105. Third, the question whether an asylum claim has been validly treated as withdrawn under para. 333C of the IRs is likely to turn on questions of fact of a kind similar to those which the Tribunal undoubtedly has jurisdiction to resolve. Regulation 20(1) sets out the circumstances in which the Secretary of State may discontinue asylum support for a "supported person" (who necessarily satisfies the definition of "asylum seeker" in s. 94(1)). These include the cases where: (d) the Secretary of State has reasonable grounds to believe that the supported person or any dependant of his has abandoned the authorised address without first informing the Secretary of State or without permission; and (f) the supported person fails, without reasonable excuse, to attend an asylum support interview. The question whether a claim has been validly treated as withdrawn is likely to involve the same kinds of factual

> issues, such as: whether notice of the interview was sent to the asylum seeker's authorised address; if so whether he or she was away from that address; if so whether he had good reason to be; if he did receive the notice, whether his excuse for not attending is a reasonable one."

27. Finally, the Judge addressed the question whether the position should be different in an appeal under section 103(2), and concluded that it should not:

> "107. … If, as I have concluded, s. 103(1) confers jurisdiction on the Tribunal to decide whether an asylum claim was validly treated as withdrawn, that is because Parliament regarded the Tribunal as a suitable body to undertake the type of inquiry required to resolve that question.
>
> 108. But the type of inquiry required is exactly the same whether the question arises in a non-qualification appeal or a stoppage appeal. There is no obvious reason why Parliament should have empowered the Tribunal to embark on this inquiry in a non-qualification appeal but not in a stoppage appeal. This means that the Secretary of State's case must fail unless [17]-[21] of Laws LJ's judgment in *Dogan* dictates a different result. In my judgment, it does not.
>
> 109. First, one key reason why the Tribunal had no jurisdiction under s. 103(2) to consider the reasonableness of the decision to make Mr Dogan's s. 95 support conditional on his moving to Liverpool was that it was not a decision to stop providing support under s. 95 at all, because such support had never been provided in the first place: see Silber J's judgment at first instance at [31]-[32], expressly endorsed in the Court of Appeal by Laws LJ at [23] and Buxton LJ at [25]. That reason does not apply to the appeals in MAH's and GK's cases. It is common ground that both MAH and GK were in receipt of support under s. 95, which the Secretary of State decided to stop.
>
> 110. Second, it was an important part of the reasoning in the Court of Appeal that the jurisdiction contended for would have amounted to an appeal against the decision to impose conditions as to the location at which support would be provided; that in s. 103(7) Parliament had conferred a separate power to make regulations providing for an appeal on this issue; and that the power had not been exercised: see Laws LJ at [4] and [20]-[21]. There is no equivalent argument available in the present context.
>
> 111. Third, [17]-[19] of Laws LJ's judgment express a distinct reason for holding that the Tribunal did not have jurisdiction in Mr Dogan's case. But these passages must be read against the background that it was common ground between the parties that the location condition had not been met. That provides the context for Laws LJ's comment at [18] that "it cannot be said that support

> has been stopped before it would 'otherwise have come to an end". Nothing in that passage suggests that the Tribunal would have lacked jurisdiction if there had been a dispute about whether the condition had been met. In the cases of MAH and GK, by contrast, there is such a dispute. If the Tribunal resolved that dispute in their favour (as it went on to do), then support had undoubtedly been stopped "before it would otherwise have come to an end".
>
> 112. The point being made in *Dogan* was that, where support is made subject to a condition, it was always intended that support would come to an end when the condition was not complied with; and there was no right to appeal against the imposition of conditions. It follows that, in my judgment, s. 103(2) confers jurisdiction on the Tribunal to entertain an appeal whenever the Secretary of State has provided support under s. 95 and then stopped providing that support at a time which, if the appellant's case is accepted, is before it would otherwise have come to an end."

The present appeal

28. The Secretary of State appeals on two grounds:

    i) Ground 1: the Administrative Court was wrong to hold that the AST has jurisdiction in an appeal brought under section 103 of the Immigration and Asylum Act 1999 to consider the merits (or legality) of a decision by the Secretary of State for the Home Department to treat an appellant's claim for asylum as having been withdrawn.

    ii) Ground 2: the Administrative Court was wrong to hold that a right of appeal arises pursuant to section 103(2) of the Immigration and Asylum Act 1999 in respect of a decision discontinuing support provided pursuant to section 95 of that Act, which is made following a decision by the Secretary of State for the Home Department treating the putative appellant's asylum claim as having been withdrawn.

The submissions of the parties

Ground 1 – the SSHD's submissions

29. The foundation stone for the Secretary of State's submissions is to assert that the decision that is the subject of an appeal pursuant to section 103(1) or (2) is the decision that the applicant does not qualify for support (or that support should be withdrawn, as the case may be) and that what the Secretary of State describes as the "prior decision" that the applicant's asylum claim is to be treated as withdrawn is a separate decision which is not susceptible to review in any respect pursuant to section 103. The Secretary of State submits that this result is the necessary outcome of a proper interpretation of section 103 in its statutory context.

30. In relation to Ground 1, the Secretary of State submits that Section 103(3) supports this interpretation because the word "matter" in section 103(3)(a) can only be a reference to

the decision under appeal and cannot cover a separate decision even if that decision forms the basis or explanation for the decision under appeal. Treating the "prior decision" as being outside the scope of the appeal pursuant to section 103, the Secretary of State submits that, as a matter of interpretation, it cannot form any part of a review and, as a matter of general principle, it cannot be the subject of a collateral challenge via the section 103 appeal process.

31. The Secretary of State submits that the Judge's reasoning is flawed for a number of reasons. First, it is submitted that there is nothing in the wording of section 103 that suggests it confers jurisdiction on the AST to consider the validity of a decision by the SSHD to treat an asylum claim as being withdrawn. Second, it is submitted that neither the context nor the purpose of section 103 suggest a wider jurisdiction. The Secretary of State characterises the purpose of the section 103 as being to provide an efficient and swift mechanism for disputes about the merits of a decision under review and nothing wider than that. If Parliament had wished to give effect to a wider purpose, it would have said so expressly. Third, the fact that in a section 103(1) appeal the AST may consider whether a person is eligible for support even where the SSHD has, in the decision under appeal, decided that a person does not satisfy the requirements in section 94, does not indicate that the AST has jurisdiction "to consider the merits or lawfulness of a separate and prior administrative act or decision which entails that the person does not satisfy the requirements in section 94." Fourth, in the present case the AST substituted its own decision on the merits as to whether an asylum claim should have been deemed withdrawn for that of the Secretary of State, which is impossible to justify in principle

Ground 1 – MAH's submissions

32. The AST has, as is usual practice, remained neutral. Substantive submissions have been made on behalf of MAH.

33. MAH agrees that Ground 1 raises a point of construction as to the scope of section 103. He disputes the Secretary of State's interpretation, relying upon the reasons set out by the Judge at [80]-[106] of his decision. MAH submits that accepting that the AST does not have jurisdiction to hear or allow an appeal against the Secretary of State's decision to treat an asylum claim as withdrawn does not suggest or lead to a conclusion that errors in the withdrawal decision are irrelevant. To the contrary, the decision to withdraw is inextricably bound up with and integral to the decision to refuse or withdraw section 95 support and cannot be hived off as a "prior decision" in the way for which the Secretary of State contends. Founding on the decision in *DN (Rwanda) v SSHD* [2020] UKSC 7, [2020] 2 AC 698 at [12], [17]-][18], MAH submits that the AST cannot fulfil its proper function of deciding whether support has been properly withheld or withdrawn without considering the basis for the decision, which is the view taken by the Secretary of State that the asylum claim has been withdrawn.

34. In support of the interpretation adopted by the AST and the Judge, MAH makes the following points, among others. The text of section 103 is not subject to any limits as to the grounds of appeal available to an appellant. This is important when both the decision that the asylum claim has been withdrawn and the decision to terminate support are fundamentally based on the same allegation viz. that MAH failed without good reason to attend his asylum interview. The purpose of a section 103 appeal is (or should be) to enable adjudication of all relevant matters of law or fact. Given the especial vulnerability of asylum seekers, the need for a swift and untrammelled jurisdiction to resolve all

relevant questions supports the AST's interpretation. The alternative interpretation entails that a vulnerable applicant would have to bring both judicial review proceedings (with all the difficulties that entails, as described by Mr Copson) and an appeal to the AST at the same time. Clear words should and would have been used if that really was the purpose behind the asylum support jurisdiction enacted by section 103. The remedy of judicial review would be available to the Secretary of State if she considers the decision of the AST to be wrong. None of the authorities relied on by the Secretary of State contra-indicate the interpretation adopted by the AST and the Judge.

Ground 2 - the Secretary of State's submissions

35. The Secretary of State submits that the words "before that support would otherwise have come to an end" in section 103(2) preclude a right of appeal "where the support recipient's asylum claim has been withdrawn/ deemed withdrawn". This is said to be because the recipient no longer has an asylum claim and therefore no longer qualifies for support from the date of withdrawal/deemed withdrawal as they are no longer an asylum seeker. Therefore, it is submitted, the entitlement comes to an end independently and "the relevant support "would otherwise have come to an end" irrespective of the administrative decision communicating to the support recipient the fact that their support must end." The Secretary of State submits that the Judge's interpretation is clearly incorrect for three reasons. First, the Judge's interpretation assumes that the recipient's case about why support should not have been withdrawn is well founded. Second, it is also submitted that the Judge's reasoning "entails that the AST only has jurisdiction to allow a section 103(2) appeal." Third, the Judge's interpretation is said to be inconsistent with this Court's decision in *Dogan*. The Secretary of State also relies on the principle of regularity to explain why "a decision to discontinue section 95 support based on an objective mistake as to whether there was in fact a prior decision deeming the asylum claim made by the recipient of the support withdrawn, is appealable pursuant to section 103(2)." (Emphasis in the Secretary of State's skeleton argument). In that case, it is submitted, the support would not otherwise have come to an end regardless of the decision under appeal.

Ground 2 – MAH's submissions

36. MAH submits that, for the reasons given by the Judge, the words "before that support would otherwise have come to an end" in section 103(2) cannot bear the weight that the Secretary of State seeks to place on them. It is submitted that there is no obvious reason why appeals under section 103(1) and (2) should differ so substantially in scope. The Secretary of State's interpretation begs the question whether the applicant's status as an asylum seeker has been properly brought to an end and, if correct, would substantially empty section 103(2) of meaningful content and practical effect: the only circumstances in which it could meaningfully apply would be where support is discontinued because it has been determined that the applicant is no longer at risk of destitution. Yet the Secretary of State is just as likely (if not more so) to be wrong about whether the applicant has withdrawn their application as she is to be about whether the applicant is no longer destitute; and there is no reason to be derived from the language of the section why one basis for a decision to withdraw support should be susceptible to an appeal under section 103(2) and the other should not. Lastly, MAH joins issue with the Secretary of State's interpretation of *Dogan*.

The intervenor's submissions

37. As well as providing Mr Copson's evidence, ASAP as intervenor made written submissions in support of the interpretation adopted by the AST and the Judge. It is a charity with 23 years of experience of providing free legal advice and representation to asylum seekers at the AST. Its express purpose and concern in intervening is expressly to uphold the jurisdiction of the AST, so that destitute asylum seekers can continue to have access to a quick accessible and effective remedy in the form of a specialist tribunal when their support is either refused or stopped. I take its submissions into account without setting them out in detail here.

Discussion and resolution

38. As I have already indicated, I consider that the appeal should be dismissed, essentially for the reasons given by the Judge, which I have set out extensively above. That being so, I add only relatively brief additional observations.

39. The Secretary of State's case seems to me to be riven with inconsistencies. It is accepted that the AST has jurisdiction to investigate a conclusion that the applicant is not destitute: see [25] above. In argument it was also accepted that it could investigate and review a decision that the applicant was a person who was under 18. It is, in my judgment, not arguable that the time when those "decisions" were made could be determinative of whether an appeal might lie pursuant to section 103. In other words, the Secretary of State could not render a decision immune from challenge under section 103 by forming her view on the question of destitution or age before making the decision to refuse or withdraw asylum support. That seems to me to be particularly obvious where the question of destitution or age is the foundation for and an integral part of the decision to refuse or withdraw support. Furthermore, no persuasive argument was advanced by the Secretary of State to justify what would be a fundamental difference in the operation of section 103(2) when compared with the operation of section 103(1). Such an argument would have had to be particularly compelling given the obvious similarities in the wording of the two subsections. I am unable to identify any such argument.

40. My next reservation about the Secretary of State's submission is that I am unable to find anything in the text of the statutory provisions with which we are directly concerned or their broader context that supports a submission that the purpose of the statutory provisions was *not* to provide a remedy to those who are deprived of support on the basis of a decision to treat their asylum claim as withdrawn that was at least arguably wrong in point of law or fact. To limit the scope of the AST's investigative jurisdiction to the question whether or not there had in fact been a "prior decision" that the asylum claim should be treated as withdrawn seems to me to leave little or nothing of value for it to decide. The logical consequence of the Secretary of State's submissions is that the AST has no jurisdiction to engage with the issue that forms the foundation and basis for the decision to withhold or withdraw support *even if* it is plain beyond argument to the contrary that the decision to treat the asylum claim as withdrawn was irrational or otherwise unlawful. The Court should not willingly accept that as part of the purpose of these statutory provisions in the absence of compelling indications that force it to do so. In my judgment, no such indications exist.

41. I therefore reject the Secretary of State's insistence that, on the facts of these appeals, the conclusion that the applicants' asylum applications should be treated as withdrawn is a "prior decision" that can be regarded as separate and distinct from the decision to withdraw support. Although an applicant with suitable knowledge, understanding and

resources might be able to challenge the conclusion that his application should be treated as withdrawn as a free-standing issue (if and when he knew about it), it does not follow that the decision to withdraw support can be seen in the pure isolation for which the Secretary of State contends. On the contrary, such a division seems wholly artificial and unreal: the decision against which the applicants appealed to the AST was a single reasoned decision that support should be refused or withdrawn because the applicant's asylum claim was withdrawn. The Secretary of State could provide no satisfactory point of distinction between the present cases (where the "prior decision" argument is pursued) and a case where the view that the applicant's asylum claim should be treated as withdrawn was taken at the same time as the consequential decision to refuse or withdraw support. If contemporaneous or composite decisions could properly be the subject of appeals under section 103, neither a minute nor a matter of hours, days or weeks should make the difference of jurisdiction for which the Secretary of State contends.

42. Next, in the context of the exercise in statutory construction with which we are concerned, it seems to me that the Secretary of State's main arguments are circular. I accept the Judge's conclusion at [90] of his judgment that in order to satisfy the section 94 definition of "asylum-seeker":

> "[t]he individual must not only have made a claim which has been recorded. He must also not have withdrawn his claim, whether expressly or by conduct treated by the IRs as inconsistent with an intention to continue to advance it."

It follows that, where he withdraws his asylum claim, an applicant for support is no longer an "asylum seeker". This, however, says nothing about whether a finding that the applicant is not entitled to asylum support because he is taken by the SSHD to have withdrawn his asylum claim is immune from challenge. I reject the Secretary of State's submission that the Judge's interpretation of section 103(2) assumes that the appellant's case as to why support should not have stopped under the statutory scheme is correct. In my judgment there is no assumption one way or another. The relevant question of interpretation is whether the AST can look behind the administrative decision and notification that support is being withdrawn. On the AST's and the Judge's interpretation, it can. If, when it does so, it finds the decision that the recipient's application is withdrawn to be unjustifiable, it may intervene as allowed by section 113(3). If it does not make that finding, it may (and will) not. The jurisdiction (i.e. the right of the appellant to bring an appeal and of the AST to consider it) is not dependent upon the outcome; nor does the AST "only [have] jurisdiction to allow a section 103(2) appeal" as submitted by the Secretary of State. Rather, the jurisdiction to entertain an appeal exists whether or not the appellant's case is well founded; but the AST will not intervene and the appeal will fail if it is not.

43. What then is the proper scope of the AST's jurisdiction? I agree with the Secretary of State that the route of appeal pursuant to section 103 is to be approached keeping in mind the dictum of Lord Kerr of Tonaghmore JSC at [20] of *Michalak v GMC and ors* [2017] UKSC 71, [2017] 1 WLR 4193:

> "In its conventional connotation, an "appeal" (if it is not qualified by any words of restriction) is a procedure which entails a review of an original decision in all its aspects. Thus, an appeal body or court may examine the basis on which the original decision was

> made, assess the merits of the conclusions of the body or court from which the appeal was taken and, if it disagrees with those conclusions, substitute its own. …"

I would hold that the foundational reasoning that underpins the decision to refuse or withhold support is one of the aspects of the decision; and there is no satisfactory distinction to be drawn between, on the one hand, foundational reasoning based on a view that the applicant's asylum claim should be treated as withdrawn or, on the other, foundational reasoning based on a view that the applicant is not destitute or is not aged 18.

44. The decision of this Court in *Dogan* is neither determinative nor even on point in the present appeals. I agree fully with the Judge's analysis of the differences between the facts and context of *Dogan* and the facts and context of the present appeals at [109]-[112] of his judgment. I would also endorse the decision of HHJ Gilbart QC in *Malaj* approving the decision of the then Chief Asylum Support Adjudicator that she had jurisdiction under section 103(1). HHJ Gilbart QC rejected as both artificial and undesirable the Secretary of State's submission that "where [she] had made factual findings which led to a finding that an applicant was not an asylum seeker or a dependent of one, then the only remedy for the applicant would be in judicial review, and no use could be made of the statutory appeals system.". I agree.

45. Nor do I think that the AST or the court are precluded by the principle of regularity from examining the merits of the decisions to treat the appellants' asylum applications as withdrawn. Adapting what was said by Lord Kerr at [17]- [18] of *R (DN (Rwanda) v Home Secretary* [2020] UKSC 7, [2020] AC 698, without the existence of the decision to treat the appellants' asylum claims as withdrawn, the occasion for (much less the validity of) refusing or withdrawing asylum support would simply not arise. To divorce the withdrawal of asylum support from the treatment of the appellants' asylum claims would be, in my view, artificial and unwarranted. The decision to refuse or withdraw support is therefore inevitably tainted by any public law error in the decision to treat the asylum claims as withdrawn.

46. For these reasons, and those articulated by the Judge, I would hold that the interpretation adopted by the AST and the Judge are supported by the plain wording of section 103 as a whole, with particular reference to the plain wording of sections 103(1) and (2). Accordingly, if my Lords agree, I would dismiss the appeal.

Lord Justice Peter Jackson:

47. I agree. There has been a system of adjudication in relation to asylum support since the IAA 1999 came into effect. From 2000 to 2008 the role was performed by Adjudicators, and since then by the AST. Throughout that period, and until her retirement in July 2024, Judge Sehba Haroon Storey (now CBE) was the Chief Asylum Support Adjudicator and then the Principal Judge of the AST. Her command of the legal and factual issues that arose in these cases is clearly seen in her impressive judgment (AS/24/02/46289 and others). Her analysis has been endorsed by the Administrative Court and now by this court; given her unparalleled experience of the asylum support jurisdiction, any other outcome would have been surprising.

Lord Justice Bean (Vice-President of the Court of Appeal (Civil Division)):

48. I agree that the appeal should be dismissed for the reasons given by Stuart-Smith LJ. I too wish to add my own tribute to Principal Judge Storey, whose unparallelled experience of this jurisdiction formed the background to her impressive and carefully reasoned judgment.