



Protecting (former) asylum seekers during the pandemic

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Asylum support during the pandemic

- Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005: narrow criteria in which failed asylum seekers can obtain financial support and accommodation under s. 4(2) IAA 1999, including:
 - Taking all reasonable steps to leave the UK;
 - Unable to leave the UK or no viable route of return;
 - Judicial review claim against refusal of asylum claim has been granted permission;
 - Where refusal would cause a breach of human rights.



Asylum support during the pandemic

- Home Office stopped discontinuation of s4(2) support to destitute failed asylum seekers on 27/3/20 (during lockdown 1). Resumed in September 2020 (and again in July 2021).
- In practice, few evictions between March 2020 and July 2021.
 - Refusals continued throughout the pandemic.



s4(2) discontinuations during the pandemic

- *QBB v (1) Secretary of State for the Home Department (ii) First Tier Tribunal (Social Entitlement Chamber (CO/38986/2020): challenge to **discontinuation** of s4(2) support during the pandemic to destitute individuals.*
 - Contrary to Arts 2, 3, and 8 ECHR due to health risk.
 - Irrational (due to failure to consider public health risks) and contrary to PSED.



s4(2) refusals and discontinuations during the pandemic

- Fordham J granted generic interim relief on 2 November 2020 on the basis that *“I cannot currently see a justification for continuing with evictions, in destitution cases [...] in circumstances of existing regional restrictions and imminent national lockdown”*.
- AST in *PA and MA* held it was unlawful to discontinue support in ‘Tier 3’ areas due to health risks.



s4(2) refusals during the pandemic

- *KMI & EW v SSHD*: challenge to **refusal** of s4(2) support during the pandemic (especially in lockdown / higher risk areas). Was this lawful in light of the risk to public health?
 - Generic interim relief refused: [mechanism for urgent applications to be put before Garnham J](#) given delays in listing before AST.
 - At case management hearing in April 2021 Swift J concluded that individuals should just make urgent applications.



s4(2) discontinuations during the pandemic

- Claims eventually consolidated into *AM and ors* [2021] EWHC 1690, heard on 10 – 11 June 2021, challenging **discontinuations** only.
 - Failed destitute asylum seekers not entitled to s. 4 support as a result of Covid alone, either on HR or health risk grounds.
 - Courts slow to impose positive obligations under ECHR.
 - “*multifactorial assessment would be required in each individual case*”, looking at *Limbuela*-style factors including risk of COVID-19 and barriers to return (inc. whether registered with VRS) (para 137).



Situation today

- Evictions restarted from **19 July 2021:**
 - 21 day notice period; support extended where self-isolation needed;
 - No generic arguments to prevent eviction in light of pandemic;
 - Usual individual arguments under the Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005;
 - Taking steps to leave the UK? Individual destitution? Individual risk of COVID-19 may still be relevant.



Availability of emergency local authority support

- For those who cannot access asylum (or other) support, local authority support may be available.
- *R (Ncube) v Brighton and Hove City Council* [2021] EWHC 578 (Admin) establishes that LAs have emergency powers under s138 Local Government Act 1972 and public health powers under s2B National Health Service Act to provide accommodation during the pandemic, to those with NRPF, providing powers not used to circumvent s185 Housing Act 1996.
 - NB: exceptional context of the pandemic and the ‘Everyone In’ scheme.



Thank you

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