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Judicial Review of Asylum Support

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Today's presentation

Chair: Ben Chataway

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1. Introduction
2. Polly Glynn
3. Simon Cox
4. Questions/discussion

How failures to provide adequate asylum support can be effectively challenged by judicial review

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When is judicial review appropriate ?

- Any decision that cannot be appealed.
- So – NOT decisions to refuse support / terminate support which can go to the Asylum Support Appeals Tribunal
- Useful for issues of delays / inadequate accommodation / failures to provide accommodation / delay in providing financial support.

Things that happen all the time that we should be challenging by judicial review

1. Delay cases
2. Adequacy of accommodation
3. Delays in providing financial support

Delay cases

Delays in the provision of section 98 / section 95 accommodation after a decision is made / Delays in section 4 accommodation post decision / Delays in making a decision on section 98 / 95 / section 4 application / Schedule 10 – failures to accept application / process application

What you need to consider when thinking of challenging

1. How long should you wait – what level of delay is unlawful.
2. Any immigration implications of the challenge
3. How long should the reply in the PAP be
4. Problems with phantom pickups + how to deal

Adequacy of accommodation

Failure to take into account needs to be accommodation provided with reference to disabilities / in the area that is identified as appropriate / be SAFE / be not in hostel with no social distancing or soap or hand sanitizer / not with a violent flat share.

What you need to consider when thinking of challenging

1. Evidence of needs – if disability / ill health/ other circumstances

2. The Guidance

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/597382/Allocation-Of-Accommodation-v5_0.pdf

3. Has the Home Office made a decision

4. How would a judge view this

5. Any immigration implications of the challenge

6. How long should the reply in the PAP be

Delay in financial support

Failure to increase support to include new child / maternity grants /
Failure to provide an ASPEN card – particularly an issue with new
section 4 applications and also where an ASPEN card is lost

What you need to consider when thinking of challenging

1. How long should you wait – what delay is unlawful
2. Evidence you will need
3. Any immigration implications of the challenge
4. How long should the reply in the PAP be

Judicial review procedure – a very brief guide

1. Prepare a formal Pre Action Protocol letter (a PAP)
2. Give a timescale to reply – usually 14 days but can be much shorter if urgent
3. Apply for legal aid
4. Issue an application in court asking for permission & interim relief (this can be an order that accommodation & support is provided)
5. Court can grant interim relief that same day
6. The Defendant then have 21 days to file an AXS
7. The court then considers permission and if the case is arguable the case gives directions and it proceeds to full hearing

How can we use this for asylum support ?

- In the majority of cases no need to go to a judicial review – a PAP is enough.
- In around 15% of cases a PAP doesn't work, and proceedings need to be issued.
- It is highly unusual then for the case to progress beyond an order being made for interim relief. After the applicant is provided with interim relief then the cases almost always settle.

2 ways that DPG using JR –

1. PAP project

- Project to train and support front line organizations to prepare formal pre action protocol letters (called PAPs)
- Precedent letters are prepared by front line organisations , and then individually checked by DPG solicitors
- Scheme is run with British Red Cross and ASAP. It is funded by the Big Lotter & Barings Foundation.
- Email pglynn@dpglaw.co.uk if you are interested in enrolling.

2. Systemic challenge

re: section 4 delays and the adequacy of accommodation

- Historic & ongoing problem with delay in section 4 & failures to provide accessible accommodation to people with disabilities.
- Many pre action letters re: delay in section 4 were issued .
Many individual judicial reviews of section 4 delay cases were taken resulting in interim relief orders (& costs)
- Each time case was granted interim relief and settled.

Systemic challenge – background to delay cases

- Refugee Action in Birmingham were seeing significant delays for all clients.
- Pre action letter written by Refugee Action through PAP project on behalf of 20 individuals
- Evidence obtained from a number of NGOs re: systemic issue.
- Case issued and interim relief granted
- Permission to continue claim on the basis of a systemic challenge was given by the court

Systemic challenge – background to failure to provide adequate accommodation to applicant with disabilities

- The Defendant took 8 months to relocate the Claimant to appropriate accommodation and support, involving 3 different relocations and four different properties, after accepting a duty to accommodate him. Securing this outcome involved two sets of judicial review proceedings and three applications for urgent interim relief.
- Evidence obtained from a number of NGOs re: systemic issue.
- Case issued and interim relief granted
- Permission to continue claim on the basis of a systemic challenge was given by the court

Cases joined and heard in High Court in July 2020

1. DELAY CASE

Alex Goodman of Landmark and Katherine Barnes of 39 Essex Street instructed. Argued that failure in each of the four claims to provide accommodation and support upon granting each of the S.4(2) applications

- (i) frustrated the purposes of the legislative and policy scheme to alleviate destitution and to anticipate and obviate human rights breaches that flow from destitution; and/or
- (ii) was Wednesbury unreasonable and unfair and/or
- (iii) was in breach of Articles 3 and 8 ECHR and ultra vires section 6 of the Human Rights Act 1998 and cognate common law protections and/or
- (iv) was contrary to s.29 and s.19 of the EA (in the case of ELN).

2. CASE FOR CLIENT WITH DISABILITIES

Case joined with another case taken by Sasha Rozansky @ DPG, instructing Zoe Leventhal @ Matrix and Ben Awumna @ 36 Group. Their claim argued breaches of the Equality Act – at simplest that the delays experienced by applicants with disabilities were more as a result of their disabilities.

Outcome

- Hearing took 4 days, and the judgement is expected in late summer / autumn.

Stats on section 4

- In the meantime the SSHD referred to statistics in the National Audit Office report here : <https://www.nao.org.uk/wp-content/uploads/2020/07/Asylum-accommodation-and-support.pdf> page 32 is the table which sets out the timescales within which the SSHD says accommodation is provided.
- These stats say that in only 2% of cases in the North West, Wales and the South – including London- are delays of over 14 days experienced in the provision of accommodation for the period January to March 2020.
- Underlines importance of our monitoring delays as a sector

What we can do going forward

We should all continue to collate information about delays and problems

Continue to challenge via PAPs and JRs individual cases where possible.

Identify particularly egregious examples of problems for use in litigation but also think of publicity in the right cases. (eg here <https://www.bbc.co.uk/news/uk-england-leeds-53369483>)

Continue to share information as a sector to identify and deal with the issues.



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Asylum support: challenging s.95 accommodation

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Accommodation: what does s 95 say

95 - Persons for whom support may be provided

- (1) The Secretary of State may provide, or arrange for the provision of, support for— asylum-seekers, who appear to the Secretary of State to be destitute*
- (3) For the purposes of this section, a person is destitute if (a) he does not have **adequate accommodation***

What is “adequate”: s. 95

(5) In determining, for the purposes of this section, whether a person’s accommodation is adequate, the Secretary of State—(b) may not have regard to such matters as may be prescribed for the purposes of this paragraph or to any of the matters mentioned in subsection (6).

(6) Those matters are—

(b) the fact that he shares the accommodation, or any part of the accommodation, with one or more other persons;

(c) the fact that the accommodation is temporary;

(d) the location of the accommodation.

What about individual preference & needs?

Asylum Support Regulations 2000, reg. 13

(1) regard may not be had when exercising the power under section 95 of the Act to provide accommodation for a person [to]

(2) (a) his personal preference as to the nature of the accommodation to be provided; and

(b) his personal preference as to the nature and standard of fixtures and fittings;

but this shall not be taken to prevent the person's individual circumstances, as they relate to his accommodation needs, being taken into account.

Asylum Seekers (Reception Conditions) Regulations 2005

5.—(1) If an asylum seeker or his family member applies for support under section 95 of the 1999 Act and the Secretary of State thinks that the asylum seeker or his family member is eligible for support under that section he must offer the provision of support to the asylum seeker or his family member.

Imposes a duty to provide support

EU Reception Directive 2003/9 - recitals

(5) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1 and 18 of the said Charter.

(6) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination.

EU Reception Directive 2003/9 - basics

Chapter II – General Provisions on Reception Conditions

“Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence. . . . shall ensure that the standard of living is met in the specific situation of persons who have special needs, in accordance with Article 17”, art 13.2

“Persons working in accommodation centres shall be adequately trained”: art 14.5

“Member States shall provide necessary medical or other assistance to applicants who have special needs”: art 16.2

EU Reception Directive 2003/9 – special needs

Chapter IV – Provisions for persons with special needs

“(1) Member States shall take into account the specific situation of vulnerable people such as . . . disabled people . . in the national legislation implementing the provisions of Chapter II relating to material reception conditions and healthcare. (2) Paragraph 1 shall apply only to persons found to have special needs after an individual evaluation of their situation: art 17.

EU Reception Directive 2003/9 - appeals

Chapter V - Appeals

1. Member States shall ensure that negative decisions relating to the granting of benefits under this Directive or decisions taken under Article 7 which individually affect asylum seekers may be the subject of an appeal within the procedures laid down in the national law. At least in the last instance the possibility of an appeal or a review before a judicial body shall be granted.