



Supporting asylum seekers and other migrants: role of Local Authorities and social workers

Tim Baldwin

Garden Court Chambers

8 October 2024



GARDEN COURT CHAMBERS



@gardencourtlaw

Who provides the housing and support, role of LA?

1. Accommodation and support mostly provided by the home office on application
2. Migrant Help
3. Who are the key preferred outsourced providers: Clearsprings, Serco
4. Types:
 1. Hotel – “initial”, sometime more permanent
 2. Accommodation in the community procured by outsourced providers – “dispersal”
 3. Immigrations
5. Bail accommodation under para.9, Schedule 10 Immigration Act 2016
6. Suitability/Adequacy (Prevent harm to health of occupiers): Deployment of s 79 EPA 1990, Housing Act 2004 hazards and licencing, best interest of children, disability, discrimination issues – layout of accommodation, location of accommodation – medical treatment . Planning constraints
7. Role of Local Authorities and social care under different legislation.
8. Homelessness and the grant of status: Local Authority provision of accommodation. Other special forms of accommodation.



Other forms of care and support

- S 117 Mental Health Act 1983, s 3, 37 & 41. Transfers in prison or immigration detention to detention in psychiatric hospital, Support not excluded
- Care Act 2014 – where is boundary with Home Office, assessment of need and provisions, accommodation pending assessment s 9 and 19(3) Care Act 2014: Final provision of care subject to Schedule 3 of NIAA 2002. Human Rights assessments. [Nationality, Immigration and Asylum Act 2002 \(legislation.gov.uk\)](#)
- Care Act assessments and Immigration bail.
- Part 3 of NIAA 2002 – Failed asylum seekers
- Human rights assessments



1. S 94 Immigration and Asylum Act 1999 definition of adult asylum seeker for the provision of accommodation and support
2. Accommodation under s.98 Immigration and Asylum Act 1999
3. Accommodation under s95/96 Immigration and Asylum Act 1999
4. Accommodation use of s 99/100 Immigration and Asylum Act 1999
5. Accommodation under s4(2) Immigration and Asylum Act 1999
6. Bail accommodation under para.9, Schedule 10 Immigration Act 2016
7. Unaccompanied child s 17, 20 Children Act 1989: *R. (G) v. Barnet London Borough Council* [2004] 2 AC 208; *R (on the application of S, by his litigation friend, Francesco Jeff) v LB Croydon and EHRC* [2017] EWHC 265 (Admin) refers to section 1(1) of the Localism Act 2011. *R. (on the application of Birmingham City Council) v Croydon London Borough Council* [2021] EWHC 1990 (Admin).; *KA v Croydon LBC* [2017] EWHC 1723 (Admin) : Often linked to age disputes. See also *R (on the application of ECPAT UK) v Kent CC and SSHD and others* [2024] EWHC 1353 (Admin). Unaccompanied asylum seeking children and hotels
8. Asylum Support Tribunal – disputes over entitlement – no Upper Tribunal, Judicial Review



Asylum Seekers with care needs guidance

[Asylum-Seekers-With-Care-Needs-v2.0ext.pdf \(publishing.service.gov.uk\)](#)

It sets out how the framework of the Care Act 2014 should be interpreted by the Home Office and its external partners in the context of asylum support. It outlines how to identify a care need, initial actions to take and responsibility for assessing and providing for care needs.

- This identifies exclusions under s 21 Care Act 2014 (s 115 IAA 1999)
- Schedule 3 NIAA 2002

Referrals to local authority

- Non-urgent needs – newly arrived
- Urgent needs residential care • specific accommodation • day to day assistance with basic personal care
- Urgent needs where the person has already been accommodated by Home Office



Local authority actions

- doing the needs assessment and any carer's assessment, in the same way they would for a British citizen in the same circumstances
- providing residential care if that is assessed as appropriate. The decision must be made according to the same criteria they would normally use
- assessing what the person does need (both in terms of care services and any specific accommodation needs) if residential care is not assessed as appropriate
- making appropriate provision for any care services that have been assessed as necessary, in the event the person is, or is going to be, accommodated in their area (regardless of who is providing the accommodation)
- in the event the person is going to be accommodated outside of the assessment area assisting with maintaining continuity of care by providing a copy of the person's care and support plan to the receiving authority (the LA in whose area the new accommodation is situated)
- considering whether to exercise their power to meet urgent needs under s.19(3) of the Care Act 2014, including needs for accommodation, until their assessment is complete if they are unable to conduct a prompt assessment

Asylum support assessment – residential care not appropriate



Home Office's *Immigration Bail*, v.7, p.58 provides that:

“if an asylum seeker being released from immigration detention on bail does not appear to have adequate accommodation or the means of obtaining it and is not a SIAC or Harm case it will usually be appropriate to arrange accommodation under section 98 of the 1999 Act”



S. 95 - eligibility – overview

- Under IAA 1999 s95(1) the Secretary of State may provide, or arrange for the provision of support and/or accommodation for:
 - **asylum-seekers** or dependants of asylum-seekers;
 - who appear to the Secretary of State to be **destitute or likely to become destitute within a ‘prescribed period’**.
- The prescribed period is 14-days for new applicants. For those who are already receiving support, the prescribed period is 56-days (Asylum Support Regulations 2000 SI no 704 reg 7(a)).



- An ‘asylum-seeker’ is ‘...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’ (IAA 1999 s94(1)).
- A ‘claim for asylum’ means a claim that it would be contrary to the UK’s obligations under the Refugee Convention or under European Convention on Human Rights Article 3, for the applicant to be removed from, or required to leave, the UK (IAA 1999 s94(1)).



- Under IAA 1999 s95(3) an applicant is destitute if he or she:
 - does not have **adequate** accommodation or any **means of obtaining it** (whether or not his or her other essential living needs are met); or
 - has **adequate** accommodation or the means of obtaining it, but cannot meet his or her other essential living needs.
- In assessing destitution SoS must take into account income, assets and support which applicant has, or might reasonably be expected to have, in next 14-days (AS Regs 2000 reg 6(4)).
- See further (generally) *Assessing destitution*, November 2019.



-
- In detained cases, court has focused on whether there is a real prospect of applicant being granted bail within the next 14-days, relying on evidence of grant of bail in principle (e.g. *SM v Secretary of State for the Home Department AS/18/12/38967*, 8 January 2019, FTT (Asylum Support)).
 - No specific guidance on timeframes - by analogy with the HO's policy in s.4(2) cases, decisions on applications for s.95 support should generally be made within 5 working days. Reasonable efforts should be made to decide an application within 2 working days e.g. where a person is street homeless, disabled, victim of torture, victim of trafficking etc. A fact-sensitive assessment is required.



-
- (a) by providing accommodation appearing to the Secretary of State to be adequate for the needs of the supported person and his dependants (if any);

 - (b) by providing what appear to the Secretary of State to be essential living needs of the supported person and his dependants (if any);

 - (c) to enable the supported person (if he is the asylum-seeker) to meet what appear to the Secretary of State to be expenses (other than legal expenses or other expenses of a prescribed description) incurred in connection with his claim for asylum;

 - (d) to enable the asylum-seeker and his dependants to attend bail proceedings in connection with his detention under any provision of the Immigration Acts; or

 - (e) to enable the asylum-seeker and his dependants to attend bail proceedings in connection with the detention of a dependant of his under any such provision.
- (2) If the Secretary of State considers that the circumstances of a particular case are exceptional, he may provide support under section 95 in such other ways as he

considers necessary to enable the supported person and his dependants (if any) to be supported.

- One of the key concepts underpinning the asylum support regime, intended to alleviate ‘pressure’ on London and South East. SoS must have regard to ‘the desirability, in general, of providing accommodation in areas in which there is a ready supply of accommodation’ (IAA 1999 s97(1)(b)).
- Support may be refused/discontinued where applicant fails to travel (AS Regs 2000 reg 19). No choice is the overriding principle.
- Two key policies: (i) *Allocation of Accommodation Policy*, 27 May 2021 (Use of Barracks) ; and (ii) *Healthcare Needs and Pregnancy Dispersal Policy*, January 2016.
- Also [Asylum Support Policy Bulletin \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) 1.1.3 speaks of significant property defect [Asylum policy bulletins - GOV.UK \(www.gov.uk\)](https://www.gov.uk).
- “Any request to move a person from accommodation that either organisation *considers is unsafe or unsuitable* should be handled on an *urgent* basis” page 14 *Allocation of Accommodation Policy*



- Requests to accommodate in a certain area because applicant receiving treatment will generally be refused as treatment for most conditions available UK wide. But need to avoid unreasonable disruption to treatment should be considered carefully. *Allocation policy* p8.
- Applicants seeking to avoid dispersal will need medical evidence setting out nature and extent of health conditions; nature of treatment & whether it can be readily transferred; effect of interruption of treatment; effect on support networks. *Healthcare policy* p18.



-
- See e.g. *R (Blackwood) v SSHD* [2003] EWHC 97 (Admin) (on detriment of dispersal to mental health and effect of Article 8) and *R (Wanjugu)* [2003] EWHC 3116 (Admin) (on availability of treatment in dispersal area).
 - HO often seek advice from Now Medical. See e.g. *Shala v Birmingham CC* [2007] EWCA Civ 624 & *Guiste v Lambeth LBC* [2019] EWCA Civ 1758 on limitations of such advice. Qualifications, specialism, presence/absence of examination, length of time spent assessing/treating applicant etc. relevant to weight to be given to medical evidence/advice.



- **HIV** (*Healthcare policy* pp31-32) – long term relationships between Doctor and patient a crucial aspect of successful management. May be disrupted by dispersal. Also, treatment for associated conditions may be protracted and require input from a variety of specialists which may not be widely available.
- **TB** (*Healthcare policy* pp34-35) – applicants should not be dispersed while conditions is contagious and thereafter only where treating clinician advises.
- **Mental health** (*Healthcare policy* pp35-36) – ‘Where an applicant is engaged in psychological and psychiatric services, the dispersal process...



...wherever possible, must not adversely affect the mental health of an individual and the care he receives... Caseworkers should not assume that because an applicant is not currently engaged in psychological and psychiatric services that he is not experiencing mental health problems. Caseworkers should also be aware that some applicants may be used to a more holistic approach to mental health issues, which may rely more heavily on the support of family and other networks rather than counselling and medication.'



- **Helen Bamber and Freedom from Torture clients** (*Allocation policy* pp12-13) - dispersal should be deferred pending assessment; if applicant being treated then accommodation should be provided as close as possible to treatment centre; if applicant commences treatment then consideration should be given to relocation.
- **Pregnancy** (Healthcare policy pp38-42) – cases to be considered ‘sympathetically’ on merits ‘no single solution likely to be in interests of all pregnant women’. Complicating factors like FGM relevant.



- **Family ties** (*Allocation policy* pp8-9): impact of dispersal on family ties should be considered on a case by case basis with regard to Article 8. See e.g. *R (MG (Iran)) v Secretary of State for the Home Department* (dispersal of applicant to accommodation 130 miles from his young son, coupled with a refusal to pay travel expenses, contrary to European Convention on Human Rights Article 8 and Borders, Citizenship and Immigration Act 2009 s55).



S 4 Immigration and Asylum Act 1999

Section 4 of the IAA 1999 provides:

“(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.”

....”



Regulations

The Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005 provide that:

“3.— Eligibility for and provision of accommodation to a failed asylum-seeker

(1) Subject to regulations 4 and 6, the criteria to be used in determining the matters referred to in paragraphs (a) and (b) of section 4(5) of the 1999 Act in respect of a person falling within section 4(2) or (3) of that Act are—

(a) that he appears to the Secretary of State to be destitute, and

(b) that one or more of the conditions set out in paragraph (2) are satisfied in relation to him.

(2) Those conditions are that—

[...]

(e) the provision of accommodation is necessary for the purpose of avoiding a breach of a person's Convention rights, within the meaning of the Human Rights Act 1998.

There Defendant has published a policy on the provision asylum support to failed asylum-seekers under s.4(2) IA 1999: ‘Asylum support, section 4(2): policy and process’ (v.1, 16.02.2018, ‘the s. 4 Policy’).



Policy

“Regulation 3(2)(e) of the 2005 regulations allows a person to be provided with support where that is necessary to avoid a breach of their Convention rights, within the meaning of the Human Rights Act 1998. Article 3 of the European Convention on Human Rights (ECHR) is the prohibition on torture or inhuman or degrading treatment or punishment. The first step in determining whether accommodation and or support may need to be provided for human rights reasons is to note that in ordinary circumstances a decision that would result in a person sleeping rough or being without food, shelter or funds, is likely to be considered inhuman or degrading treatment contrary to Article 3 of the ECHR (see: *R (Limbuela) v Secretary of State* [2005] UKHL 66). The decision maker will therefore need to assess whether the consequences of a decision to deny a person accommodation would result in a person suffering such treatment. To make that assessment it may be necessary to consider if the person can obtain accommodation and support from charitable or community sources or through the lawful endeavours of their families or friends. ***Where the decision maker concludes that there is no support from any of these sources then there will be a positive obligation on the Secretary of State to accommodate the individual in order to avoid a breach of Article 3 of the ECHR.*** However, if the person is able to return to their country of origin and thus avoid the consequences of being left without shelter or funds, the situation outlined above is changed.



Policy Part 2

This is because:

- There is no duty under the European Convention on Human Rights to support foreign nationals who are freely able to return home (see: *R(Kimani) v Lambeth LBC* [2003] EWCA Civ 1150)
- If there are no legal or practical obstacles to return home, the denial of support by a local authority does not constitute a breach of Human Rights (see: *R (W) v Croydon LBC* [2007] EWCA Civ 266)

A practical obstacle to departure would usually only exist if the person is unable to leave the UK because they lack a necessary travel document but are taking reasonable steps to obtain one, or they are unfit to travel for a medical reason. However, it will be unnecessary to consider whether a person in these circumstances needs to be supported under regulation 3(2)(e) as they can be considered under regulations 3(2)(a) or (b). Whether there are legal obstacles to return should be considered on a case by case basis on the information available, but examples of where it should usually be accepted that they exist are where:

- they have submitted a late appeal against the rejection of their asylum or Article 3 ECHR claim and the First-tier Tribunal is considering whether to allow the appeal to proceed out of time
- they have submitted further submissions against the refusal of their asylum or Article 3 ECHR claim remain and these remain outstanding.

If the decision maker is unsure as to whether it would be appropriate to provide, or continue to provide, support in any given case for human rights reasons, a senior caseworker should be consulted as part of the decision-making process. If there are no legal or practical obstacles preventing the person leaving the United Kingdom, it will usually be difficult for them to establish that the Secretary of State is required to provide support in order to avoid breaching their ECHR rights.” (emphasis added)”



Further on policy: Further submissions

“Further submissions

The existence of further submissions, combined with the fact that the person does not have access to accommodation and the means to live (or will shortly be in this position) may mean that support will need to be provided to prevent a breach of their ECHR rights.

Wherever possible, the further submissions should be considered at the same time as consideration is given to the support application.”

The s. 4 Policy also provides that decisions on eligibility for support should generally be made within five working days, save for certain particularly urgent cases where the decision should be made within two working days:



Expedition

“However, a decision on the application should not be unnecessarily delayed to await the further submissions decision. Generally, decisions should be made within 5 working days, but careful consideration should be given to any additional factors that call for the case to be given higher priority and the decision made more quickly.

Where the following circumstances apply, reasonable efforts should be made to decide the application within 2 working days (the list is not exhaustive):

- people who are street homeless
- families with minors
- disabled people
- elderly people
- pregnant women
- persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence
- potential victims of trafficking.”

So followings elements of delay

- Making the decision
- Can be delay in provision
- Delay in moving from initial (hotel/hostel) to dispersal accommodation
- Delay in providing suitable or appropriate accommodation: Best Interest of Children s 55/ Disability



Provision by others

99 Provision of support by local authorities.

(1) A local authority or Northern Ireland authority may provide support for persons in accordance with arrangements made by the Secretary of State under section 4, 95 or 98.

(2) Support may be provided by an authority in accordance with arrangements made with the authority or with another person.

(3) Support may be provided by an authority in accordance with arrangements made under section 95 only in one or more of the ways mentioned in section 96(1) and (2).

(4) An authority may incur reasonable expenditure in connection with the preparation of proposals for entering into arrangements under section 4, 95 or 98.

(5) The powers conferred on an authority by this section include power to—

(a) provide services outside their area;

(b) provide services jointly with one or more other bodies;

(c) form a company for the purpose of providing services;

(d) tender for contracts (whether alone or with any other person).

Support under section 4 of the Immigration and Asylum Act 1999 may be provided by arrangements between the Defendant and a Local Authority or any other person. Defendant relies on preferred provider e.g. Serco but can further outsource



Local Authority have a direct role in provision of Care Act accommodation

R (SB & Anor) v London Borough of Newham [2023] EWHC 2107 (Admin)

- This case reaffirmed the principle under the Care Act 2014 where SSHD asylum support intended where no other support needs prevail. An assessment of an asylum seeker must include a need for accommodation relating to care and support.

R (on the application of TMX) v Croydon LBC [2024] EWHC 129 (Admin)

- When assessing whether an asylum seeker's needs under the Care Act 2014 included accommodation-related need, a local authority should ignore any current or potential provision of accommodation by the Secretary of State for the Home Department under s 95 IAA 1999. Actions of a local authority in not providing suitable accommodation irrespective of its duty and the knowledge of the asylum seeker's suffering amounted to a breach of art 3& 8 ECHR.



Overview: Para. 9, Sch.10, IA 2016: Eligibility

Para. 9 Sch.10 imposes three restrictions on the grant of bail accommodation:

- (1) The person must ‘be on immigration bail subject to a condition requiring him to reside at an address specified in the condition’ (para. 9(1)(a);
- (2) ‘the person would not be able to support him or herself at the address unless’ the power to accommodate were exercised (para. 9(1)(b)
- (3) The power to accommodate may only be exercised ‘if the Secretary of State thinks that there are exceptional circumstances which justify the exercise of the power (para. 9(3).



Paragraph 9(1)(a) and (b): ‘specified address: a ‘specified address’ can be either an address that is already specified or one that is to be specified, see OH at para. 18-19

Paragraph 9(1)(c): ‘exceptional circumstances’: must be understood in light of the breadth of the bail power. The para. 1(2) Sch.10 IA 2016 power to release on bail applies to all those liable to detention, whether or not they have ever been detained. The para. 9(2) Sch. 10 IA power to grant bail accommodation applies to all persons granted bail.



Immigration Bail Interim Guidance, 30 Oct 2020

- Interim ‘Immigration Bail’ guidance was issued post-Humnyntskyi (p.3) in order to cure the unlawfulness identified in that case.
- Makes clear that ‘exceptional circumstances’ within the meaning of para.9, Sch.10 are not limited to the categories of SIAC, Harm and Article 3 ECHR :

‘you should proceed to consider whether there are any other exceptional circumstances in their case which might nonetheless warrant the grant of Schedule 10 accommodation.

This discretion should be used sparingly where there are specific factors that make it appropriate for the person to be provided with accommodation notwithstanding that they are not a SIAC case, a Harm case or an article 3 case as set out above... If the decision is taken not to grant accommodation, reasons should be provided to the individual as to why their circumstances have not been considered exceptional.’



Harm cases:

Defined in the Immigration Bail policy as:

- People granted bail assessed by HMPPS as being at a high or very high risk of causing serious harm to the public.
- FNOs at high risk of harmful offending against an individual (.e.g. domestic burglary, robbery, sexual assault and violence, assessed using the Offender Group Reconviction Scale (OGRS) with a minimum score of 70%

Where that person has nowhere suitable to live in accordance with their license or MAPPA arrangements for a limited period or otherwise at the discretion of the SSHD in the interests of public protection.



Article 3 cases:

The interim policy provides that it ‘may be’ appropriate to consider using the para. 9 Sch. 10 power where both:

- The person does not have adequate accommodation or the means of obtaining it.
- The provision of accommodation is necessary in order to avoid a breach of their human rights (usually rights under Article 3 ECHR – the policy makes reference to the test in *R (Limbuella) v Secretary of State for the Home Department* [2004] EWCA Civ 540.



Para. 9, Sch.10, IA 2016 - Article 3 cases

32

- Decision-makers will usually consider: (i) other statutory powers to provide accommodation, e.g. s.95, s.4(2), section 17 Children Act 1989, Care Act 2014; (ii) ‘support from charitable or community sources’; (iii) lawful endeavours of family/friends.
- If can access ss4(2) / 95 IAA 1999, Care Act 2014 or s17 Children Act 1989 (migrant families), unlikely to be able to access para 9.
- Exception? significant delays in accessing the alternative support.
- *‘exceptionally, however, accommodation may be arranged temporarily under [para. 9, Sch.10 whilst the case is referred to a local authority and pending a decision...as to whether the duty to provide accommodation under the Care Act 2014 (or equivalent) applies’.*



Para. 9, Sch.10, IA 2016 - Article 3 cases

See also Detention Services Order 08/2016 - Management of Adults at Risk in Immigration Detention, July 2019

‘In cases where the detainee requires support and/or accommodation from the Local Authority, the case owner and, where allocated, the non-detained casework team, must arrange a Local Authority needs assessment prior to release...The local DET team should assist the caseworker with signposting for local services wherever possible.’ (para. 34)



What happens when Asylum seeker granted status

When s 95 IAA 1999 support 4 things should happen

- An asylum decision letter
- Biometric Residence permit
- A “discontinuation” of support letter stating when the accommodation would end; and
- A notice to quit from the accommodation provider.

Separately although not required in statute provider should notify LA of imminent need for housing assistance or direct provision of support under Care Act 2014.



Asylum Support regulations 2002

Reg 2 prescribed period under s 94(3) IAA 1999 28 days and in other cases 21 days

Re 22 provides for the giving of a notice to quit. 22(3) NTQ in writing with a period of not less than 7 days

Threatened with homelessness (Homelessness code of guidance Ch 6 esp 6.4, 6.5- 6.9)

- Homeless (non-intentional)
- Eligible – status proof arising
- Priority need

Provision of interim accommodation pending determination –”reasons to believe”





GARDEN COURT CHAMBERS
