

Local Authority Duties



Justin Bates

Local authorities and asylum seekers

Part 7, Housing Act 1996

- Historically, asylum seekers were eligible for homelessness assistance under what is now Pt.7, 1996 Act (or Pt.2, Housing (Wales) Act 2014)
 - e.g. *R v Hillingdon LBC ex p Streeting (No 2)* [1980] 1 WLR 1425; *R v Westminster City Council ex p Castelli, Same ex p Tristram-Garcia* (1996) 28 HLR 616
- But, since 1993, the focus has been on keeping asylum seekers out of the local authority homelessness regime (Asylum and Immigration Appeals Act 1993)
- Can see that now in s.185, Housing Act 1996 and the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (and Welsh equivalent)
 - Class E only applies to asylum seekers whose claims were registered before 3 April 2000 and no new “asylum seeker” class was created

But the oddity of Part 6, HA 1996

- Although the allocation of housing to an ineligible person (e.g. an asylum seeker) is *ultra vires*, that does not affect the private law validity of the tenancy: *Akinbolu v Hackney LBC* (1996) 29 HLR 259
 - So an asylum seeker *could* be granted a secure tenancy by mistake?
 - *Ibrahim v Haringay LBC* [2021] EWHC 731 (QB)

The Covid context

On 26 March 2020, as part of the response to the Coronavirus pandemic, the government wrote to local authorities in England and urged them – under what came to be known as the “Everyone In” Scheme - to procure accommodation for people sleeping rough both for their own protection and more widely because of the risk of infection generally

How were they to do that given the exclusion of most foreign nationals (including asylum seekers) from Part 7, Housing Act 1996?

R (Ncube) v Brighton & Hove City Council [2021] EWHC 578 (Admin)

- C is a failed asylum seeker who was sleeping rough in Brighton
- September 2020, he approaches the authority for assistance under “Everyone In”
- Authority decline to help, pointing to the exclusion in s.185, HA 1996
- JR claim issued. He contends that he can be helped under
 - s.138, Local Government Act 1972
 - s.2B, NHS Act 2006
 - s.1, Localism Act 2011

Ncube

A local authority may incur such expenditure as they consider necessary which is calculated to avert, alleviate or eradicate the effects or potential effects of any emergency or disaster: s.138, Local Government Act 1972.

- engaged by covid and a power to house in this case so long as not used for the purposes of avoiding s.185, HA 1996

A local authority must take such steps as it considers appropriate for improving the health of people in its area; which may include providing assistance to help individuals to minimise the risks to health arising from their accommodation or environment: s.2B, National Health Service Act 2006.

- engaged by covid and a power to house in this case so long as not used for the purposes of avoiding s.185, HA 1996

A local authority may do anything which an individual may do (s.1, Localism Act 2011), save that the authority may not use that power to do anything which is prohibited by virtue of an earlier legislative provision: s.1 and 2, Localism Act 2011

- not available because s.185, HA 1996 is a pre-existing prohibition. Left open whether it might be different if LA 2011 was the only way to avoid a breach of the HRA 1998

Protect and vaccinate

In December 2021 and in light of the spread of the Omicron variant, the Minister for Rough Sleeping wrote to local authorities in England to urge them to “make offers of safe and appropriate accommodation to people who are sleeping rough” and, in particular, to assist such people in obtaining coronavirus vaccinations. The letter explains that support can be provided regardless of immigration status and draws attention to s.2B, National Health Service Act 2006, s.138, Local Government Act 1972 and s.1, Localism Act 2011 (if necessary to avoid a breach of their human rights)

- so goes a bit further than *Ncube*

These powers are *not* limited to Covid...

Thank you for listening

© Copyright Landmark Chambers 2022

Disclaimer: The contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

Cornwall Buildings
45 Newhall Street
Birmingham, B3 3QR
+44 (0)121 752 0800

Contact

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

Follow us

🐦 @Landmark_LC
📘 Landmark Chambers
📺 Landmark Chambers