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**ILPA**

**IMMIGRATION LAW PRACTITIONERS' ASSOCIATION**  
PRESIDENT: IAN MACDONALD QC

ILPA training

**Asylum, housing & subsistence :  
current problems & new measures  
under the Nationality, Immigration &  
Asylum Act 2002**

London, Tuesday 6 May 2003, 4.00 - 7.15 pm

Speakers: Sue Willman, Sue Lukes

Course code: DT 659

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## **overview**

### **Key Dates**

Until April 3<sup>rd</sup> 2000

Asylum seekers who applied for asylum on entry were entitled to help from the local authority if they are in "priority need". They are in priority need if their household includes a child (or would normally include), a pregnant women or a person who is "vulnerable" due to age, disability, illness or "some other special reason". The help is restricted to temporary accommodation while the asylum claim is pursued. The temporary accommodation offered to asylum seekers was often outside the area to which they had applied for help. For those who applied for help as homeless after 6<sup>th</sup> December 1999 (when the "interim arrangements" came into force), local authorities in London and Kent have the right to refer their case (and their need for temporary accommodation) to local authorities in areas where there are fewer asylum seekers. However, this referral must be done by agreement and the "receiving" authority does not have to agree.

There was also transitional protection for people in receipt of Housing Benefit on 5<sup>th</sup> February 1996, until they received a negative decision from the Home Office. There is transitional protection for existing claimants and their households. This covers:

- Asylum seekers who applied on entry before 3<sup>rd</sup> April 2000 who have yet to receive a decision
- Anyone still covered by the transitional protection from the previous set of changes that came into effect on 5<sup>th</sup> February 1996.

This protection will end with a negative decision on the asylum application and may survive a break in claim for money benefits.

Generally, asylum seekers are not entitled to go on to the housing register to get permanent accommodation from the local authority. Generally, also, all those on Income Support and IBJSA (asylum seekers or not) are entitled to get help if homeless.

### **Interim arrangements**

Other asylum seekers will be entitled to support under the interim arrangements or the National Asylum Support Scheme (NASS).

The interim arrangements cover:

- All those receiving support under the Children Act or National Assistance Act on December 6<sup>th</sup> 1999, (who transferred automatically on to the new arrangements) until they get a final decision on their case
- All in country applicants between December 6<sup>th</sup> 1999 and the relevant date for their area
- All those appealing against a negative decision between December 6<sup>th</sup> 1999 and the relevant date for their area.

NASS covers

- All on entry asylum applicants since April 3<sup>rd</sup> 2000
- Others as they are phased into the scheme.

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Asylum applicants are phased into NASS according to when and where they applied for asylum or got a negative decision and became "disbenefited".

3/4/00 all on entry applications plus all Scottish cases

17/4/00 all Kent cases

24/7/00 all London in country

31/7/00 Yorkshire, Humberside, North East and Wales in-country

14/8/00 North West, East Midlands, Eastern, South West and South Central in country

29/8/00 West Midlands and Sussex in country

25/9/00 All disbenefited cases in England and Wales.

### European nationalities

Some people, whether or not they are asylum seekers or refugees, may have rights because of their nationality. This is because the UK has signed various treaties which offer nationals of other countries reciprocal rights.

While it is extremely unlikely that any asylum seekers or refugees would be nationals of states within the European Union, it is possible that someone in their family is. Where a national of an EU state is a worker in the UK, they are entitled to the full range of benefits and housing provision, along with their husband, wife, cohabitee, child/ren, grandchild/ren, great grandchild/ren, parent/s, grandparent/s and great grandparent/s if they live in the same household.

For more detail on the rules concerning EU nationals and workers, please refer elsewhere.

### List of countries in different European treaties

<b>EC/U</b>	<b>EEA</b>	<b>ECSMA</b>	<b>CEC ratified</b>	<b>CEC signatories</b>
	<i>all EU plus</i>	<i>Most EEA plus</i>	<i>all ECSMA plus</i>	<i>all CEC plus</i>
Austria	Iceland	Turkey	Cyprus	Estonia
Belgium	Liechtenstein	Malta	Czech Republic	Lithuania
Denmark	Norway		Hungary	Macedonia
Finland			Latvia	Romania
France			Poland	Slovenia
Germany			Slovakia	Switzerland
Greece				Ukraine
Ireland				
Italy				
Luxembourg				
Netherlands				
Portugal				
Spain				
Sweden				
UK				

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EC/U: European Community/European Union

EEA: European Economic Area

ECSMA: European Convention on Social and Medical Assistance

CECSC: Council of Europe Social Charter

### **Specific entitlement for certain groups**

People who are nationals of countries which have ratified the Council of Europe Social Charter or the European Convention on Social and Medical Assistance are entitled to housing benefit, income support and IBJSA, homelessness help, and to go on the housing register if they pass the Habitual Residence Test and are legally present whether or not they are asylum seekers. In addition, nationals of countries that have signed the Council of Europe Social Charter but not yet ratified it were entitled to homelessness help and to go on the housing register if they pass the Habitual Residence Test, before 3<sup>rd</sup> April 2000, and can still get these entitlements if they were entitled to homelessness help before 3<sup>rd</sup> April.

**IMPORTANT NOTE:** the table above is based on the latest list of nationalities included in the July 2002 Code of Guidance. It is different from previous versions of this table (as included in previous training notes, for example). Please correct any previous versions.

### **European Convention on Social and Medical Assistance**

This Convention predates the EEA and includes Turkey and Malta as well as most EEA countries. It is essentially an arrangement whereby the UK agrees that nationals of other countries within the convention who are legally present in the UK may claim benefits etc on the same basis as UK nationals (which, of course, currently includes the Habitual Residence Test). Asylum seekers may be legally present, as are visitors, students etc., as well as people with indefinite leave to remain. However, in many cases, those legally present will have conditions attached to their leave to remain that appear to rule out applications for benefits, housing etc. For example, it may be impossible to register as unemployed, or to claim HB/CTB because of being a student. However, if an ECSMA national is able to fulfil the eligibility conditions for benefits, then the Home Office has stated that it will not consider this to be recourse to public funds.<sup>1</sup>

ECSMA nationals are included back into eligibility for benefits (and so also for housing) by regulations on S 115 of the Immigration and Asylum Act 1999. They are also included in homelessness provision and eligibility for the housing register by regulations for the relevant sections of the Housing Act 1996.

It is important to note that these treaties apply to all relevant nationals, including asylum seekers, although many asylum seekers will not be "legally present" because they applied for asylum on entry or have been deemed to be illegal entrants after an initial refusal of their application. For some time, based on case law, it was considered that those given temporary admission would be considered legally present. However, a homelessness case<sup>2</sup> established that they would not, although it is possible that there may be developments in this area, mainly via benefits cases.

### **Council of Europe Social Charter**

This agreement is more complicated in that there are countries which have both signed and ratified it and others which have yet to ratify it. Regulations under Housing Act 1996 enabled all nationals of any country that had signed the Charter to apply for help as homeless and to go on the housing register, as long as they could pass the Habitual Residence Test. The homelessness and allocations regulations that came into effect on April 3<sup>rd</sup> 2000 changed the entitlements again.

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<sup>1</sup> letter from Oliver Mallen, Immigration and Nationality Policy Directorate, to Duncan Lane, Director of Advice and Training at UKCOSA, 5<sup>th</sup> December 2000  
<sup>2</sup> Kaya v Haringey LBC 2001 1 May CA unreported

## ILPA TRAINING MAY 2003 ASYLUM SUPPORT

While nationals of signatory countries who were entitled to homelessness help before 3<sup>rd</sup> April 2000 retain their eligibility, after that date it is only nationals of countries that have ratified it that do. In all cases, they have to be legally present as well.

### ***NASS/ asylum procedures- induction centre/ screening/ s55 decisions/ emergency accommodation***

It is intended that NASS will become the only system of asylum support as those on the interim arrangements are handed over in phases and those transitionally protected get decisions on their asylum applications. The service is governed by the legislation, by the detailed regulations issued to take effect from April 3<sup>rd</sup> 2000 and the policy documents issued to NASS staff internally, although these latter can be obtained from NASS on request and are now also available via the Home Office IND website.

#### How NASS works

A new applicant for asylum may

- ⇒ have his/her own accommodation
- ⇒ be placed in detention
- ⇒ need emergency accommodation

If s/he is not in detention, an "assistant" will provide emergency support and/or accommodation as needed on arrival (or application) and advice on the application process and support needs. These assistants voluntary sector agencies<sup>3</sup>, who will also encourage the applicant to contact friends and family about the possibility of staying with them, and explore all alternatives to claiming support from the system. The emergency accommodation is intended to be for a minimum period only, and grant funded.

#### Emergency Accommodation (EA)

This is provided by the assistance agencies while NASS deal with the application for accommodation, and is usually contracted with private providers. One of the current major problems with the system is that people may live in EA for some time, and it was not intended for this. While in EA, asylum seekers receive support, unless there are on full board, but no provision is made for them to register with doctors, attend school, etc, and much of the accommodation is not of an acceptable standard for longer periods of occupation. There are about 700 people in EA in Manchester, Birmingham, Ipswich and Glasgow, and over a thousand in London. Some people may wait months in EA, and it is now not uncommon for them to still be in EA when their asylum

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<sup>3</sup> the assistance agencies are:

- Refugee Arrivals Project for all on entry applicants at airports in the south east and the "single disbenefited" in London
- Migrants Helpline for all on entry applicants at ports in the south east
- Refugee Action for all in country and on entry applications made in the north west, east midlands, south west and south central areas
- Scottish Refugee Council for all in country and on entry applications made in Scotland
- Welsh Refugee Council ditto for Wales
- Refugee Council for all in country and on entry applications made in all other areas.

## ILPA TRAINING MAY 2003 ASYLUM SUPPORT

decision arrives. This causes further problems because they do not get the documentation supplied to those in formal NASS accommodation and so may have problems claiming benefits.

Since January 8<sup>th</sup> 2003, EA can only be provided to:

- on entry applicants
- in country applicants who have a letter from NASS saying they are entitled to EA (because they applied soon enough for asylum)
- in country applicants with children who apply for help out of hours (permission has to be sought from the NASS regional manager)
- in country applicants who have a letter from a regional immigration service confirming that they have applied for asylum but not yet been assessed by NASS
- in country applicants who apply for help out of hours, have dependent children, say they have applied for asylum and have an IS96<sup>4</sup>

This has been the result of considerable legal activity at the beginning of 2003. During the passage of the Bill through the House of Lords in October and November, the government introduced new clauses that would allow NASS to refuse support to people who had applied for asylum in country some time after arrival with no good reason for the delay in applying. These were then implemented as policy by NASS on January 8<sup>th</sup> 2003.

### **The new "Collins judgement" on s55 of the Nationality Immigration and Asylum Act**

This is the case that tested the legality of refusing support to asylum seekers who applied "late" for asylum. The judgement was then appealed with both sides claiming victory. The initial ruling was on the application of five asylum seekers refused support, called Q, D, J, M, F and B in the case, and was delivered on 19<sup>th</sup> February in QBD by Mr Justice Collins.

J had arrived in the UK from Iran on January 7<sup>th</sup>, in a lorry and been dropped off in London. There he had met another Iranian who had taken him to Newcastle and put him up overnight, and the next day went to a solicitor who sent him on to apply for asylum.

F arrived from Angola, with his passage arranged by an agent who did not allow him to see his passport and told him not to claim asylum until he arrived in Newcastle, where he applied. He had to sleep rough for one night after his application for support was refused and was then put up by a stranger, arranged by a local organisation, for several days.

M was from Rwanda, and her uncle paid an agent to get her away from a refugee camp where she had been raped several times. She arrived on 7<sup>th</sup> January and went to Refugee Legal Centre the next day, but it was too late to get her to the Home Office to claim asylum. She was accommodated for one night, then applied on 9<sup>th</sup> January but got no decision until the next day. She spent the night in the police station on a chair under instructions not to fall asleep.

D was a young Angolan man traumatised by witnessing the killing and rape of family members who had been brought by an agent directly from the airport to the Home Office to claim asylum on 8<sup>th</sup> January. He was accommodated that night, and got a refusal of support the next day, when he slept rough outside the Home Office for one night.

B was an Ethiopian who arrived on 10<sup>th</sup> January with documentation showing her as 16. She was left in the airport, asked to claim asylum but was referred to social services, who helped her claim asylum two days later, but subsequently decided she was over 18 and so not their responsibility.

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<sup>4</sup> More details of how this operates are to be found in section 10 of the NASS policy bulletin 75

## ILPA TRAINING MAY 2003 ASYLUM SUPPORT

Q was an Iraqi Kurd who arrived in a lorry in London at about 5 a.m. on 8<sup>th</sup> January and walked for three hours to get to Croydon to apply for asylum. He slept rough the next night.

In his ruling, Collins said:

"I am satisfied that there will normally be a real risk that to leave someone destitute will violate Articles 3 and 8.1. I am not persuaded that charity offers a real chance of providing support. It would be surprising if the standards of the ECHR were below those believed 200 years ago to be applicable as the law of humanity, although I recognise that in those days the possibility of any charitable assistance would have been extremely remote. Furthermore, the effect on mental health if there is no anticipated source of support is likely to constitute an interference with private life within the scope of Article 8.....Parliament can surely not have intended that genuine refugees should be faced with the bleak alternatives of returning to persecution (itself a breach of the Refugee Convention) or of destitution. It is obvious that those least likely to leave the United Kingdom will be those who are genuinely fleeing persecution"

He also found that the absence of any appeal breached Article 6 of the ECHR.

As a result, NASS suspended all refusals of support for "late" applications, though it has now begun refusing some again.

### **Court of Appeal on the application of s55**

The Court of Appeal upheld the Collins judgement on these six cases. However, they also agreed with the Home Office submission that now that NASS have substantially revised the guidance and practices that led to the refusal of support to these people, the operation of s55 probably did not, in itself, breach human rights. We are likely to see several more cases that will define the limits of s55 in the future. It is common ground that it can legitimately exclude from support cases where the applicant has managed well within the UK for some time before applying for asylum (and where there has been no change of circumstances that would explain why s/he has to apply for asylum now) since this was clearly the type of case discussed in Parliament when the section was passed. However, cases where people may delay for several days or even weeks, because of difficulties in getting good advice, problems with disclosing what has happened to them, lack of understanding of the asylum process, or even threats, for example, by agents, will need to be looked at with some care.

### **How does S55 now work in practice?**

All on entry asylum applicants are offered emergency accommodation if they need it. In country applicants are interviewed by NASS staff who determine whether they have applied as soon as reasonably practical and whether they fall within any of the exemptions (households with children under 18 or whose human rights would be breached by the refusal of accommodation or support). If they are unable to make a decision that day, the applicant is referred to emergency accommodation until the decision is reached.

Arrangements for out of hours help are detailed above under "emergency accommodation".

### **Withdrawal of NASS support**

Section 57 of the new act was also implemented on January 8<sup>th</sup> 2003. It allows the Home Secretary to withhold access to NASS support for all those in-country asylum applicants who:

- are unable to provide a clear and coherent account of how they came to the UK;
- are unable to provide coherent and accurate information about their circumstances, such as how they have been living in the UK so far;

## ILPA TRAINING MAY 2003 ASYLUM SUPPORT

- do not cooperate with the authorities with further enquiries.

This section allows of no exceptions for families with children (although all British legislation and practice is subject to human rights legislation). It has yet to be tested in the courts.

### Applying to NASS

Applicants can also go to assistants at any stage in the application process and ask for advice and help, for example, if their accommodation and/or support arrangements fall through. However, they will also need to be assessed by NASS as to whether they applied for asylum "in time", before getting into Emergency Accommodation unless they are one of the special arrangements detailed above under "emergency accommodation".

After the advice and information from the assistant, if there is a need for accommodation and/or support, an application is made to the NASS. The decision will be made at first by an Initial Assessment Officer, who will determine eligibility for support and then by a Substantive Assessment Officer who will decide the appropriate level and type of package for each applicant, taking any special needs into account. The officer will decide if the applicant is eligible for support only, or for support and accommodation. If the applicant is not eligible for accommodation, the emergency accommodation then ends.

If the applicant is refused accommodation or support, s/he may appeal, unless the refusal is because of a late application for asylum. Initially, the Directorate reviews its decision internally, and then, if it has not reversed the decision, the appeal is determined by an independent adjudicator (see below).

Once an applicant is accepted for accommodation, s/he is allocated to a region via the NASS Clearing House. The Regional Office of the NASS allocates the case to a Provider or negotiates with a provider if there is no current suitable vacancy. Providers are contracted by the Directorate to provide accommodation and support or support only (Sodexo provide vouchers, which can be exchanged for cash at Post Offices). They are expected to form local consortia to do so. The allocation officer tells the applicant about the provider and makes travel arrangements. The Provider then takes on the applicant and provides the support to the agreed and contracted level.

The applicant will have a contract with the NASS (covering "respective rights and obligations") and the NASS will have a contract with the Provider including standards, obligations, service levels and guidance. The provider will inform the Home Office of any changes or movements, and the Directorate will notify the Provider when the asylum claim is finally determined, at which point the Provider gives the appropriate notice and ensures the asylum seeker leaves the accommodation. The Act envisages excluding asylum seekers from assured and secure tenancy regimes and also from protection against eviction<sup>5</sup>, making them dependent on the contractual terms between the NASS and the Provider (which, of course, they cannot enforce).

There are periodic reviews of cases supported to ensure that the package as agreed is being delivered and to assess any changes of circumstance. If the need is assessed as for subsistence only, the Clearing House will allocate a Provider in the appropriate area.

### ***Favourable asylum decisions: moving on to mainstream housing and benefits/ tax credits***

The rights of refugees and people with ELR/HP/DL are simple: they have the right to claim all benefit and housing entitlements on the same basis as UK nationals, but do not have to pass the

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<sup>5</sup> This is done by amending the Protection from Eviction Act 1977, adding tenancies granted under s74 of the Immigration and Asylum Act as proposed to those excluded from protection under the Act (Sch 12 para 38 of current Bill)

## ILPA TRAINING MAY 2003 ASYLUM SUPPORT

Habitual Residence Test for any of them. For refugees, there are some additional rights outside the scope of these notes (on student fees and awards, for example) and the important fact that, once granted refugee status, they are able to claim a backdated payment of some benefits (IS/IBJSA/HB/CTB) payable from the date of asylum application, with deductions made for the money equivalent of any support provided.

There are some important considerations when asylum seekers get refugee status or ELR/HP/DL, and some useful pieces of case law referring to refugees or relevant to them, because of their likely specific needs.

Two cases relate to the areas where refugees may be offered accommodation, or the types of accommodation. In *R v Brent LBC ex p Omar* 1991 23 HLR 446, a refugee was offered accommodation on an estate so unpleasant it reminded her of the prison where she had been held and tortures, and she refused to go and live there, saying she would rather kill herself. The court found the offer unreasonable. In *R v Haringey LBC ex p Karaman* 1997 29 HLR 366 the applicant was scared of living near a particular community and it was held, again, that an offer in that area would present an unacceptable risk to the household's mental health. In *R v Newham LBC ex p Sacupima* 2001 33 HLR 1 and 18, Newham offered the family concerned temporary accommodation outside the borough which was held to be unsuitable for their needs, which had not been considered.

For childfree refugees who would otherwise be considered non-priority, it is important to note those cases involving definitions of vulnerability that may be of use. The only case making reference to language is *R v Bath cc ex p Sangermano* 1984 17 HLR 94, where the applicant's substantial learning disability made it impossible for her to communicate, and so the court found her vulnerable. However, advisers should always follow a holistic approach in looking at vulnerability, as emphasised in *R v K&C RLBC ex p Kihara* 1996 29 HLR 147 CA: a combination of factors can result in an applicant being vulnerable. The latest case to refine that definition of vulnerability is *R v Camden LBC ex p Pereira* 1999: the applicant was homeless and less able to fend for himself than an ordinary homeless person so that "injury or detriment" to him would result when "a less vulnerable man would be able to cope without harmful effects". The introduction of new categories for whom vulnerability should be considered (people coming out of the armed forces or prisons) by the Homelessness Act 2002 may enable advisers to argue that those coming out of NASS accommodation face similar problems and difficulties and so these should also be taken into account. The Code of Guidance published by the ODPM, to which local authorities have to "have regard" also recommends that "former asylum seekers" be considered as potentially vulnerable because they may:

"have experienced persecution in their country of origin or severe hardship in their efforts to reach the UK and may be vulnerable as a result. In assessing applications from this client group, housing authorities should give careful consideration to the possibility that they may be vulnerable as a result of an other special reason." (para 8.33)

Advisers may also find it useful to refer to the changes to the categories who may be deemed vulnerable. They are:

People 21 or over who are vulnerable as a result of having been looked after or accommodated by the local authority (including those who were unaccompanied minors)

People fleeing violence or threats of violence

People who have spent time in the armed forces or having been in prison or on remand

Authorities are instructed to consider whether these people may be in priority need as vulnerable if they apply as homeless, i.e. where this person is the applicant, rather than a member of the applicant's household.

**"Mixed families"**

The difference between refugee status and Exceptional Leave to Remain (Humanitarian Protection/Discretionary Leave) is important in housing terms if family members arrive before their status is determined. Refugees have the right to live in the country of refuge with their family, and so when family members arrive they are considered to be refugees immediately, even if they do not yet have the relevant Home Office documentation, or have arrived on some other basis<sup>6</sup>. For people with ELR/HP/DL, however, this right to live with family members is not automatic or underwritten by international obligations, and so if family members arrive they will normally have to claim asylum in their own right, during which time, in housing terms, they are asylum seekers, and so often not eligible for housing services. If, however, the person with ELR/HP/DL is in priority need in his/her own right (because s/he has other children here, is pregnant or vulnerable) then s/he can be housed as homeless with the whole family.

Please see the section above on difficulties faced by people in Emergency Accommodation who get refugee status or ELR/HP/DL.

Refugees and people with ELR/HP/DL are entitled to homelessness help from local authorities if they are in priority need, with no habitual residence test, and also able to go on to the housing register.

Like asylum seekers, they can also go on the waiting lists for housing associations and trusts, but unlike asylum seekers, registered social landlords are actively encouraged to make provision for refugees wanting to settle.

For those supported by NASS in areas of low housing demand, it may be possible for them to get housed immediately in the area where they are, simply filling in an application form for the housing register and applying as homeless in order to allow the allocation to take place lawfully (via Part VI of the Housing Act 1996). However, this is less likely in areas of higher demand, where homeless people may spend months or years in temporary accommodation.

**Changing areas of settlement**

For those supported by NASS in areas where they do not want to settle long term it may be more difficult. If they are made an offer of accommodation, or even advised that they will be made such an offer within the 28 days after their status is confirmed, or if they leave the NASS accommodation before they have to, they risk being deemed "intentionally homeless" if they move and apply to a different housing authority for help.

Even for those who receive no such advice or offers and leave once notice has been given, there are issues to be resolved about whether they have a "local connection" with the area in which they have been living. A local connection is acquired by:

- Residence: 6 months out of the last 12 or 3 years out of the last 5
- Work: permanent or long term, but not necessarily full time
- Family connection: parent/child/sibling or equivalent who has lived in the area for at least 5 years (if the applicant wants to claim this)
- Other special reason allowed by the local authority with whom the connection is claimed

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<sup>6</sup> See R(Jimaali) v Haringey LBC 11<sup>th</sup> September 2002 Administrative Court

## ILPA TRAINING MAY 2003 ASYLUM SUPPORT

### Unpicking the local connection rules

If the applicant applies to local authority A, then that authority has to check if there is a local connection based on residence (6 months out of the last 12, 3 years out of the last 5), work (anything) or family connection (close family member resident 5 years in area, and applicant wants to live near them). If there is, then authority A has to provide interim housing and put on the register.

If there is no local connection with Authority A, then a check is made as to whether there is any local connection with another local authority, where the applicant can be housed with no risk of domestic violence. If there is, a referral is then made to that authority (B) who have to provide interim housing and put on the register. If there is no local connection with anywhere else, then authority A has to house.

The residence connection must be of the applicant's "own choice" (S199 Housing Act 1996), and residence because of army service or detention in the area is specifically excluded (s 199(3)).

There is a power for the Secretary of State to order other circumstances in which residence is not to be treated as "of a person's own choice" but there are currently no regulations on this

The Act defines simply the types of residence, the local authority agreement defines how long counts as residence. The agreement goes on to define that residence in out of season holiday lets, time spent in hospitals, mother and baby homes, refuges or rehabilitation centres also do not count (para 2.5 of the agreement)

Most cases so far have followed this line. However, one case (Abdulrahman Mohamed V The London Borough of Hammersmith & Fulham House of Lords November 2001 [2001] UKHL 57) involved residence being established by staying in accommodation provided to a homeless person. This can be read in various ways because the case was quite specific. The applicant had lived for some time in borough A, then three months in borough B. He then applied to borough B as homeless, but four months later the borough made their decision and said they would refer him back to borough A. He requested a review of the decision, saying he wanted to live in borough B. The review decision (which approved the original decision) was made two months later. By then the applicant had lived 6 months and more in borough B, although some of that time was in homeless persons accommodation. The House of Lords decided that the operative date was the date of the review, by which time he had lived there six months, and that homeless accommodation was not specifically defined by the law as something that could not be of choice. It was a matter of fact that he had lived there, and so he was resident.

### Al-Ameri v RB Kensington and Chelsea and Osmani v LB Harrow

This case involves two appeals against decisions in homelessness cases that turned on the definition of "local connection" by residence acquired as a result of stays in NASS accommodation. Both households had been sent to Glasgow by NASS on a "no choice" basis and then applied to two London boroughs after they had got their refugee status (Osmani) or ELR (Al Ameri). Glasgow City Council intervened in the case to support the two appellants' contention that NASS accommodation could not be counted towards a local connection because it was not occupied by choice. Simon Brown LJ found that "the severity of the sanctions attending an asylum seeker's failure to accept the NASS accommodation to which he is directed should not be underestimated....if in fact homeless, an asylum seeker is at serious risk of detention until his claim is determined". "If the provider of the accommodation cannot even pay regard to the applicant's preference as to its locality, it cannot, in my judgement, be right to characterise residence in that locality as being of the applicant's own choice. That is the bottom line". Although Buxton LJ disagreed, the other judge, Carnwath, agreed with Brown and the appeal was allowed. So refugees can now apply for accommodation as homeless in any area of the UK once they get their decision.

## ILPA TRAINING MAY 2003 ASYLUM SUPPORT

Obviously, any local connection not involving residence prescribed by NASS (previous residence, work or family) would count. Practically speaking, many people who get refugee status or ELR/HP/DL will not be in priority need anyway and will have to find their own accommodation like any other single homeless people. Many of those who are in priority need may well be looking for work anyway, since that is one of the main reasons that the South East is a popular area for refugees. If they apply as homeless after they have found a job they will have a connection with the area where they work. This will also be important in deciding where they may be placed temporarily if they apply as homeless. Many local authorities in London and the south east have very little temporary accommodation available within their own areas, and may look to the south and east coast and the midlands to find it for many homeless families. In making decisions about the temporary accommodation they provide they must take the applicant's needs into account, and if they are working or in need of close support from family members this is likely to be a factor in enabling them to get the scarce local temporary housing.

### Accommodation for single people

Non-priority single people have no specific legal rights to accommodation. Refugees coming out of the NASS support system may be able to argue that they are vulnerable (less able to get or keep accommodation on the open market) in some cases. There may be local provision for single homeless people: hostels, move-on accommodation, deposit schemes and housing associations with specific projects or Supporting People schemes. The new Code of Guidance specifically advises local authorities to consider whether ex- asylum seekers may be vulnerable because of their experiences and circumstances.

### Discrimination

Since refugees and people with ELR/HP/DL have the same housing rights as UK nationals they should have equal access to special schemes, quotas etc. Attempts to ring fence such schemes for "local" people or on the basis of immigration status are almost certainly unlawful and constitutes indirect discrimination under the Race Relations Act 1976. The local Race Equality Council or the Commission for Racial Equality nationally may be able to take such cases up. The same, of course, applies to direct discrimination, but this is rarer in the social housing sector and difficult to prove in the private. There is a Code of Practice on discrimination in the rented sector to which providers should be referred.

There is a more complex issue about discrimination that may arise in some areas where asylum seekers are offered accommodation. In many cases this will be low demand accommodation, because that is what is available. About 30%, for example, of local authority low demand accommodation is in the north west, which is one area which anticipates housing many asylum seekers. To facilitate easy settlement, social landlords may then offer permanent tenancies of accommodation in those areas to those asylum seekers who get ELR/HP/DL or refugee status. The effect of this, over a couple of years, will be to "embed" the refugee communities in areas of lowest demand, and so indirectly discriminate against them. This type of indirect discrimination has occurred before with rehousing policies and estate rebuilding schemes, and should be challenged early in the process, since it is difficult to put right later. Instances of long term rehousing policies which might lead to this form of institutional racism should be referred to the CRE. They should also be raised in the context of the new local authority duties to produce a Race Equality Scheme.

### Benefits and tax credits

Refugees and people with ELR/HP/DL are entitled to benefits and tax credits and are not subject to the Habitual Residence Test. Those who get refugee status are also entitled to a backdate of Income Support, IBJSA Housing Benefit and Council Tax benefit, to the date on which they applied for asylum or the date on which they would have been entitled to benefits, as long as they apply for it within 28 days of the asylum decision<sup>7</sup>.

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<sup>7</sup> the relevant benefit regulation is reg 21zb

***Unfavourable asylum decisions: hard cases and s 54/  
Schedule 3 exclusions for overstayers and those who have  
failed to co-operate with removal directions***

The asylum application is, meanwhile, being determined. When a final decision is made, if the applicant is given refugee status or ELR/HP/DL, s/he is allowed a period of grace to arrange alternative support or accommodation: 28 days (but only 7 in Emergency Accommodation). In some cases s/he may be allowed to stay on in the accommodation but outside the scheme, or an application as homeless can be made, benefit claimed etc. If the final decision goes against the applicant, but s/he has children, the household is then supported by NASS or under the Children Act 1989 by the relevant local authority until removed from the UK. If there are no children, the eviction procedure will be implemented and the applicant given 14 days to leave. However, there is a hardship fund which can support some people without children after their appeal is dismissed. This is run by NASS itself and will provide basic full board accommodation outside London for a small number of cases, defined as:

"A person is eligible for support (under section 48 of the Immigration and Asylum Act 1999) after 3 April 2000 if :

his claim for asylum (within the meaning of Part VI of the Act) has been refused;

he has been supported by the National Asylum Support Service or, after that date, by a local authority under Schedule 9 to the Act;

he is no longer an asylum-seeker (within the meaning of Part VI of the Act);

he appears to the Secretary of State to be destitute; and

he has no other avenue of support [e.g. friends, family, National Health Service and Community Care Act.

Each case will be considered on its merits, but support will not normally be made available to an eligible person unless:

it is not practicable for him to travel [to any other country], by reason of a physical impediment to travel eg illness or late pregnancy; or

the circumstances of his case are exceptional."<sup>9</sup>

Asylum seekers who are pursuing a judicial review of their asylum application can also get hard cases support. The hard cases section can be contacted on 0208 633 0212.

People whose asylum application is finally refused, or who fail to appeal within the deadlines set, are expected to leave the UK voluntarily or be removed or deported. Households with dependent children are able to continue getting NASS accommodation and support (or support under the interim arrangements) until they leave the country or the youngest child turns 18, because they are "defined" as asylum seekers until then. People with community care needs may continue to access local authority help. However, they may be affected by s54 and Schedule 3 of the Nationality, Immigration and Asylum Act 2002. In such cases, they may be able to continue receiving social services support if their human rights would be breached by withdrawal (but subject to the "pretty"

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8. which allows the Secretary of State to provide or arrange for the provision of facilities for the accommodation of persons on temporary admission or immigration bail or released from detention 8  
9 from a letter from the Asylum Support Division at the Home Office

standard), or may be able to get accommodation and support if they have children and co-operate with any removal directions.

### ***The future***

**Induction centres** where new applicants would be briefed on the asylum application process, their obligations and rights and the support options available. They would then be assessed for support, appointments for interviews etc. booked and travel arrangements made. Health checks may also be available. New applicants would stay in these centres for seven days, or be required to attend them on set days if they had accommodation available. These are now being piloted in the south of England, although two proposed sites have been abandoned in the face of local protests.

**Accommodation centres** are proposed for a minority of asylum applicants. These would be large units (750 people) situated away from urban centres, with health and education on site, providing full board accommodation. Four were proposed as a pilot, with potential sites identified, two are now likely to go ahead, plus one smaller one in a naval camp near Portsmouth. Applicants will be selected for them and will lose their entitlement to any support if they do not go to them. An alternative model, smaller and in more urban areas, may also be piloted. An independent monitor will be appointed to determine whether the location of centres is suitable, but only after they have been established. However, it is unlikely that these centres will be set up within the next year, because of difficulties with planning procedures.

**Reporting centres** have also been piloted in several areas. Asylum seekers in other accommodation would be required to report to them weekly.

**Removal centres** would be part of the detention options available. It is envisaged that decisions on asylum applications would be given personally to asylum seekers in the induction, accommodation or reporting centres. Where appropriate, a negative decision would involve immediate transfer to a removal centre.

**"Support only" cases are under review**, and it is possible that those who find their own housing, or are accommodated by friends, relatives, spouses etc. would be told that they must either accept NASS accommodation or lose support. During the passage of the Act an assurance was given that this will not happen until the accommodation centres have been piloted.

### ***Resources and referral agencies***

#### **Resources including relevant legislation**

**Support for Asylum Seekers, a guide to legal and welfare rights**, Willman, Knafler and Pierce, published by LAG 2001: an excellent and comprehensive guide to the law in this area which includes a short section on applying for asylum.

**Immigration Controls, the Family and the Welfare State, a Handbook of Law, Theory, Politics and Practice for Local Authority, Voluntary Sector and Welfare State workers and Legal Advisers**, by Steve Cohen was published in 2001 (Jessica Kingsley Publishers, [www.jkp.com](http://www.jkp.com), cost £18.95, ISBN 1 85302 723 5).

Immigration and Asylum Act 1999 available at  
<http://www.legislation.hmso.gov.uk/acts/acts1999/19990033.htm>

Nationality Immigration and Asylum Act 2002 available at  
<http://www.hmso.gov.uk/acts/acts2002/20020041.htm>

## ILPA TRAINING MAY 2003 ASYLUM SUPPORT

**Refugee Council Information Service** a looseleaf format general information pack with an updating service. Sliding scale of charges which makes it a bargain for refugee community groups.

<http://www.housing.odpm.gov.uk> is the ODPM Housing Directorate home page, which includes latest letters to Chief Executives etc.

[www.lga.gov.UK/lga/asylum](http://www.lga.gov.UK/lga/asylum) includes guidance on interim arrangements

### **Another Country: Implementing Dispersal Audit Commission**

Homelessness and Allocations, Arden and Hunter LAG. The current edition is very out of date, but I understand a 6<sup>th</sup> edition is due

Housing Act 1996 parts VI and VII

Asylum and Immigration Act 1996

Statutory Instrument 2002 No. 3264 The Allocation of Housing (England) Regulations 2002

Statutory Instrument 2000 No. 702 The Homelessness (England) Regulations 2000

Persons subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 SI no 706

Homelessness Code of Guidance for Local Authorities published by the ODPM 2002

Allocations Code of Guidance for Local Authorities published by the ODPM 2002

The Rightsnet website ([www.rightsnet.org.uk](http://www.rightsnet.org.uk)) occasionally has information about housing eligibility and asylum support in its news section, and questions and answers in its discussion forum on "persons from abroad".

The Homelessness Act website run by Shelter : [www.homelessnessact.org.uk](http://www.homelessnessact.org.uk)

NASS online directory of offices etc <http://194.203.40.90/default.asp?Pageld=272>

Occasional updates via my web page: [www.sue.lukes.btinternet.co.uk](http://www.sue.lukes.btinternet.co.uk)

### **Organisations**

Support agencies funded by the Home Office

**Refugee Council** Head Office 3 Bondway, London SW8 1SJ T 020 7820 3000 F 020 7582 9929: contact them for details of local offices and services <http://www.refugeecouncil.org.uk>

**Refugee Action** Head Office The Old Fire Station 150 Waterloo Road London SE1 8SB T: 020 7654 7700 F: 020 7401 3699: contact them for details of local offices and services <http://www.refugee-action.org.uk>

**Migrant Helpline** 89 Folkestone Road, Dover, Kent CT17 9SD T: 01304 203 074 F: 01304 204 036

**Scottish Refugee Council** 5th Floor, 94 Hope Street, Glasgow G2 6QA T: 0141 248 9799 F: 0141 243 2499

## ILPA TRAINING MAY 2003 ASYLUM SUPPORT

**Welsh Refugee Council** Unit 8, Williams Court, Trade Street, Cardiff CF10 5DQ T: 02920 666 250 F: 02920 343 731

**North of England Refugee Service** 2 Jesmond Rd West Newcastle Upon Tyne NE2 4PQ Tel: 0191 245 7311 Fax: 0191 245 7320 [www.refugee.org.uk](http://www.refugee.org.uk)

### Refugee Community Organisations

Refugee Council publish a CD-ROM of refugee community organisations and agencies.

**Midland Refugee Council** 5th Floor Smithfield House, Digbeth, Birmingham, BS5 6BS T: 0121 242 2200 F: 0121 242 2201

### Other organisations

**Shelter** Shelterline 0808 800 4444 Head Office 020 7505 2000 [www.shelter.org.uk](http://www.shelter.org.uk)

**Praxis** Pott Street London E2 0EF Tel: 020 7749 7610 Fax: 020 7729 0134 [www.praxis.org.uk](http://www.praxis.org.uk)

**Hact** 78 Quaker St London E1 0207 247 7800 [www.hact.org.uk](http://www.hact.org.uk)

**Asylum Aid 28**, Commercial Street London E1 6LS T 020 7377 5123 F 020 7247 7789  
<http://www.asylumaid.org.uk>