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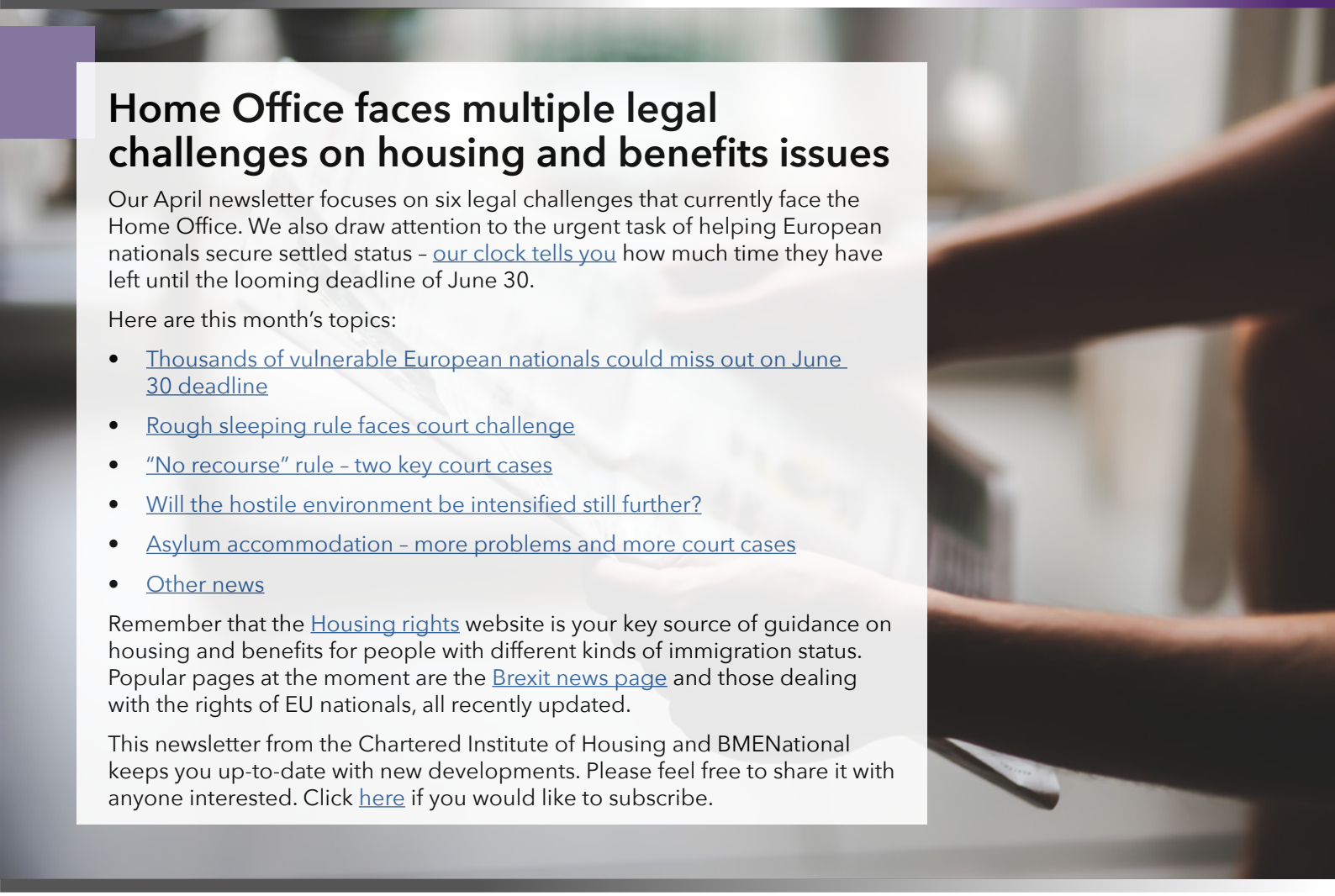
Your quarterly newsletter from the housing rights website

April 2021



Home Office faces multiple legal challenges on housing and benefits issues

Our April newsletter focuses on six legal challenges that currently face the Home Office. We also draw attention to the urgent task of helping European nationals secure settled status – our clock tells you how much time they have left until the looming deadline of June 30.

Here are this month's topics:

Remember that the Housing rights website is your key source of guidance on housing and benefits for people with different kinds of immigration status. Popular pages at the moment are the Brexit news page and those dealing with the rights of EU nationals, all recently updated.

This newsletter from the Chartered Institute of Housing and BMENational keeps you up-to-date with new developments. Please feel free to share it with anyone interested. Click here if you would like to subscribe.

Thousands of vulnerable European nationals could miss out on June 30 deadline

Time is running out! We are now just weeks away from the June 30 deadline to apply to the European Union Settlement Scheme. All European (EEA) citizens living in the UK must have applied by then, otherwise they risk losing their rights to welfare payments and housing, and possibly even their right to remain.

Over five million EEA nationals have applied to the EUSS but we can't be sure how many still need to apply. Settled, the NGO helping EU citizens to stay in the UK after Brexit, reports receiving hundreds of calls each week from people who are experiencing problems or who have just found out that they need to apply. Some have lived in the UK for decades and assumed this wouldn't be required of them.

The perils of the process were given sharp focus by the case of Dahaba Ali, who has lived in the UK for half her life yet her application to the EUSS was rejected. She works with The3Million which campaigns for the rights of EU citizens in the UK.

Settled says:

'We are now in a sprint to the finish line on June 30th. We must ensure everyone that calls the UK 'home' can continue to live here freely, as is their legal right under the Brexit agreement, past that deadline date. At Settled we have 100s of volunteers helping 100s of cases at any

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given time. Without their help, this mission would be impossible. But there is hope.'

Their message is to help spread the word, as the National Housing Federation's Suzannah Young urged in the October housing rights newsletter. Take a look at the NHF's guidance to housing organisations on how to help EU nationals apply to the scheme. In March, Settled held a specific event on reaching people in the Roma community and is also hosting events in Polish, Hungarian and Russian.

The Joint Council for the Welfare of Immigrants (JCWI) is taking the Home Office to court over the harshness of the deadline which could affect thousands of vulnerable people whose home is in the UK. The first hearing in the case was on March 11, when lawyers argued that the Home Secretary is failing to meet her duties under the Equality Act. The court rejected the argument, which will now go to appeal.

The Observer points to the problems faced by children of EU nationals who are in local authority care, warning that they could become 'undocumented' adults. Only some 39% of such children have applied under the EUSS, and once they turn 18 they face either deportation or enormous costs to rectify their status, even if they have always lived in the UK. Sonia Sodha says a new Windrush is in the making.

Care workers and the EUSS

Settled is also working with care providers around the country to ensure their staff can continue their essential work after June 30. JCWI's recent report on care workers, covered by BBC London, showed that many still do not know about the EUSS deadline. JCWI surveyed 290 social care workers, mostly eastern Europeans, and found that as many as one in three had never heard of the scheme.

Adult social services directors, ADASS, ran a webinar with the Housing LIN on this topic which you can watch here. On Tuesday 20 April, JCWI will welcome Nadia Whittome MP, Professor Shereen Hussein and care worker Kinga Milankovics, along with JCWI's Caitlin Boswell, to discuss the risks that migrants working in the care sector face, what this means for the sector, and what needs to happen to ensure their rights are protected. Find out more and book here. For more information from ADASS, email: EUSS@adass.org.uk.

Policy guidance from MHCLG changes after input from Housing Rights

Working on the revisions to pages on the housing rights website on the rights of EEA nationals, our advisers Sue Lukes and Liz Davies (a barrister at Garden Court Chambers), spotted that guidance issued by MHCLG in November was inaccurate. Those affected are EEA nationals living in the UK who had not obtained settled or pre-settled status by December 31 last year.

During the so-called grace period (from January 1 to June 30 2021), MHCLG originally said the test of eligibility for housing or homelessness help would be whether the EEA citizen and their family member had exercised a qualifying right to reside (derived from EU free movement) immediately before the end of the transition period on December 31 2020. However, Liz Davies was able to show that this interpretation was too narrow, and that someone seeking help in this period only needs to demonstrate that they were 'living lawfully' in the UK before or on December 31 and that they were eligible (by being a worker, self-employed, family member of a worker or self-employed) when they made their application.

MHCLG agreed to amend their guidance, which is now set out here, including a new version of their letter to local authorities. A version of the flow chart, with the correct definition, is available from housing rights. MHCLG have also amended their guidance on allocations and on homelessness.

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Pre-settled status for European nationals doesn't necessarily give access to benefits – but it should!

Mike Norman of Harrow Law Centre explains two significant cases affecting EU nationals.

Appeals in both the Supreme Court and European Court of Justice (ECJ) mean that May could be a significant month for EEA citizens' rights. The Supreme Court will hear the Secretary of State's appeal in Fratila v SSWP on May 18-19, while a similar case from Northern Ireland will be heard by the ECJ on May 4.

Fratila concerns the effect of changes to the Immigration Rules in Appendix EU, on those with or entitled to limited leave to remain (pre-settled status) and their right to certain welfare benefits. Those with indefinite leave (settled status) are unaffected.

Currently, the amending benefit regulations have the effect that pre-settled status is a gateway to claiming specified benefits, but does not give entitlement by itself (references within each regulation to 'limited leave to enter or remain' act to exclude this from being solely relied on). Such applicants are still required to show ongoing 'treaty activity' or eligibility under the Citizens Right Directive.

Ms Fratila and Mr Tanase, Romanians, both with pre-settled status, were denied universal credit because they were not engaging in treaty activity. They sought judicial review of the regulations, arguing that they were being dealt with unfavourably compared to UK nationals, which breaches treaty rules against discrimination on the basis of nationality (article 18, TFEU).

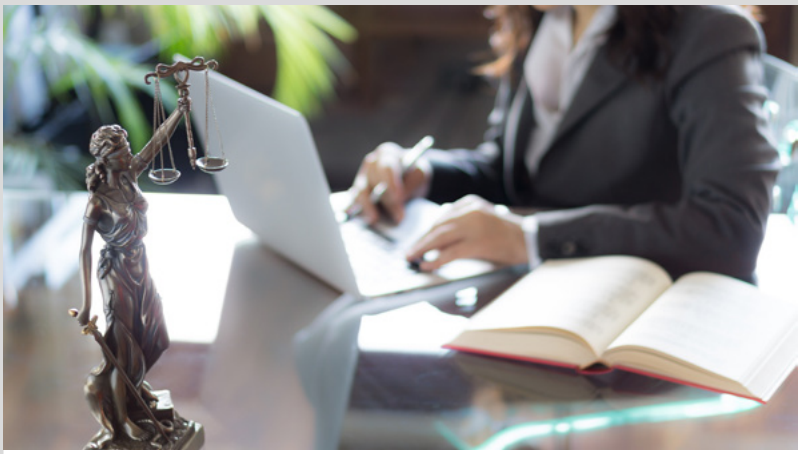
They lost at the Administrative Court, but the Court of Appeal agreed with them, holding by majority that there was direct discrimination. A right to residence must mean that holders of that right are treated on an equivalent basis to citizens. This means that if pre-settled status holders are required to do something 'additional' that UK citizens would not have to do, they are clearly not being equivalently treated. The Secretary of State could not therefore rely on a defence of 'justification'.

The regulations were quashed, subject to a stay on implementation pending the appeal.

Shortly after the Court of Appeal's decision, a Northern Irish first-tier tribunal was faced with a similar issue on equivalent provisions, also involving an EU citizen considered to be ineligible for universal credit (Case C-709/20, Department for Communities Northern Ireland, see here for some helpful suggestions for those affected). In December, it referred the point straight to the ECJ. The race is now on to decide the cases, and both are worth watching!

From a housing perspective, Fratila already directly affects those claiming housing costs via universal credit or housing benefit, both specified in the challenged regulations. However, its indirect significance goes further. The benefits regulations under challenge almost mirror the amended English and Welsh homelessness and allocation eligibility regulations, which can all be seen here on the housing rights website. While the housing regulations are not under challenge in these court cases, the same discrimination arguments apply, and the outcome thus far suggests they too would be susceptible to challenge.

If the appellant wins, cases arising since December 31, or until any fresh regulations are laid, could also be included.



Elsewhere on Fratila…

The EU Rights and Brexit Hub called the case 'a stunning blow to the UK government's plans to prevent pre-settled status for EU nationals from conferring equal treatment with UK nationals when claiming benefits.' The EU rights and Brexit Hub is funded by the Economic and Social Research Council (a public body). The project offers a unique, specialist, free second-tier advice and advocacy service on EU welfare rights.

Assisting homeless EU nationals

The solicitors Bindmans responded to concerns about advising homeless EU nationals who did not make an application under the EUSS before the end of the transition period (December 31). With Here for Good and the Public Interest Law Centre (PILC) they developed a short briefing (pdf) with useful information and advice.

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Toolkit on EUSS outreach to Roma communities

The Roma Support Group has a toolkit (pdf) for local authorities and community organisations on good practice in providing EUSS support to Roma. It identifies the barriers that Roma face and provides solutions that can be taken to solve them. The approach focuses on bringing government, local authorities and community organisations together to support everyone in the Roma community to secure their immigration status. The toolkit also collates a range of resources on EUSS guidance and materials in community languages and gives contact details for Roma community organisations.

The RSG's Aluna has made a video in collaboration with the European Union and the3million. She discusses her experience of living in the UK, applying to the EUSS and addresses the barriers to applying that many Roma are still facing.

What will happen to late applications?

On April 6 the Home Office updated its guidance on the EUSS for caseworkers, and the main guidance document now has (on pages 27-30) details on 'reasonable grounds for failing to meet the deadline' and how such cases will be dealt with. Importantly, it stresses that 'you must take a flexible and pragmatic approach to considering, in light of the circumstances of each case.' However, it does not give extra guidance on applicants' rights pending decisions. *Free Movement* analyses the new guidance.

Free Movement also answers some of the questions that often arise when people apply under the EUSS.

Rough sleeping rule faces court challenge

Previous newsletters have documented the largely successful 'Everyone In' programmes to get people off the streets during the pandemic. Even so, the *Independent* reports that 396 EU citizens in England were subject to 'voluntary reconnection' (that is, returned to their home countries) between March and October 2020.

Attention now turns to the new rule threatening those forced to sleep rough, and the ongoing campaign to bring an end to 'no recourse' (NRPF).

The new 'rough sleeping' rule is being challenged – watch this space

With practically no parliamentary scrutiny, on December 1 changes to the Immigration Rules came into force which make rough sleeping a ground for refusal or cancellation of non-UK nationals' permission to stay in the UK.

Benjamin Morgan, coordinator of the EEA homeless rights project at the Public Interest Law Centre (PILC), explains how the new rule is being challenged.

A number of groups of non-UK nationals could be affected by the new rough sleeping rule. These include victims of trafficking and modern slavery; people on ancestry visas; non-UK nationals making applications to remain in the UK on the basis of their human rights outside the Immigration Rules; international students; people on domestic worker visas; EEA citizens resident in the UK who fail to resolve their status before the EU Settlement Scheme deadline; and new arrivals from the EEA after 31 December 2020. And, of course, any one individual might fall into more than one of these categories.

Some categories of non-UK national are exempt from the rough sleeping rule. These include people with indefinite leave to remain, most refugees and asylum seekers, and EEA nationals and their family members eligible to apply to the EU Settlement Scheme.

Home Office press statements suggest that the primary targets of the new rule will be EU citizens who sleep rough in the UK after Brexit. Government rough sleeping statistics indicate that around a quarter of those sleeping rough in England are non-UK nationals, with the percentage much higher in London.

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The government has indicated that the rule will be applied 'sparingly' in cases where rough sleepers 'refuse support offers' and perpetrate 'anti-social behaviour'. However, no formal guidance for Home Office decision-makers has been issued about the rough sleeping rule, nor has the government indicated when guidance will be published. The Home Office says that it will not rely on the rule to refuse or cancel leave to remain on the basis of rough sleeping until such guidance has been published.

In December 2020, acting under instruction from RAMFEL (Refugee and Migrant Forum of Essex and London), PILC wrote to the government giving notice of a proposed judicial review challenge to the rough sleeping rule.

PILC's grounds for the proposed challenge are:

- that the rough sleeping rule contravenes the Human Rights Act 1998 because it is defined so widely and the scope of its application depends on the will of the decision-maker; and because it is not proportionate to the aim of reducing rough sleeping
- that the rule unlawfully discriminates on the basis of nationality and also of sexual orientation and gender reassignment
- that the rule violates UK obligations in respect of victims of trafficking, including under the Palermo Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings.

PILC will provide updates as the case progresses.

"No recourse" rule – two key court cases

Five-year-old challenges NRPF in the high court

Adam Hundt, a partner at solicitors Deighton Pierce Glynn, explains how a black British boy is taking action against the Home Office's NRPF rule, arguing that it discriminates on grounds of race, by denying families like his access to benefits and putting children at risk of destitution.

The boy was born in the UK and is being supported by his Zimbabwean-born mother, who came to the UK in 2004 and has leave to remain. Before the pandemic she was a keyworker, supporting teenagers and young adults. However, she was forced to stop working last year after being unable to find childcare for her son when his school hours were cut during lockdown.

The challenge was heard on March 17-18; Deighton Pierce Glynn act for the family and the case is supported by The Unity Project, a charity which works with people affected by NRPF. Lawyers argued that the Home Office policy is unlawful because it denies children with migrant parents protection from homelessness, hunger, and destitution; and breaches the Equality Act 2010, by discriminating against black British children, treating them less favourably than their white counterparts.

In brief, the grounds of challenge were based on:

- Section 55 of the Borders Citizenship & Immigration Act 2009 (failure to treat the welfare of children as a primary consideration, following on from the PRCBC case)
- Discrimination (indirect under both the Equality Act and Article 14 ECHR, plus the Public Sector Equality Duty)
- Article 3 ECHR (unlawful delays in addressing destitution, and seeking an Article 3 compliant investigation into breaches of Article 3 brought about by this policy).

In court papers, the Home Secretary accepted that 80% of migrants subjected to NRPF are Asian or African, and also admitted that her department does not monitor the race of those affected by the policy.

We told the court that, by failing to monitor the impact of NRPF on people of colour, the Home Secretary is in breach of her equality duty and is failing to assess "the

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differential impacts of the policy on British children of foreign parents, on non-white British children and on single mothers and their children."

Our view is that NRPF creates an underclass of black British children, which is outrageous. The only reason the child in this case is being treated differently from his white friends is because his mum came to the UK from somewhere else. We are asking the court for the policy to be quashed and for a public inquiry into NRPF.

Since a case last year in which judges ruled the NRPF policy unlawful, the Home Office has made only minor changes to the rules. Through this case we hope to secure a more fundamental review. The judgment will not be known until mid-April at the earliest.

For more information contact: Fiona Bawdon: fiona@impactsocialjustice.org or Caz Hattam: caz@unity-project.org.uk. *The Guardian* has also reported the case.

Local authorities must accommodate rough sleepers in danger during the pandemic

Shelter's Jo Underwood explains a case which has wide implications during the pandemic or similar public health emergencies.

In September last year Mr Ncube, whose claim for asylum had been refused and had no recourse to public funds, approached Brighton and Hove Council for homelessness support, which they rejected because of his immigration status. His solicitors contested this on the basis that he was vulnerable and homeless during a pandemic and that accommodation should be provided under the 'Everyone In' scheme. They then issued judicial review proceedings arguing that the council had not considered other powers available to them during an emergency such as s.138 of the Local Government Act 1972.

The council defended the claim on the basis that:

- Mr Ncube already had accommodation by the time of the hearing
- section 185 of the Housing Act 1996 prohibited them from providing Mr Ncube with accommodation as he was not eligible for assistance under Part 7 of the Housing Act 1996 and doing so would circumvent this
- that the definition of a 'emergency' for the purposes of s.138 of the Local Government Act 1972 would not apply as Brighton was in tier 1 at the time.

The court confirmed that councils do have powers to accommodate people who are not eligible for homelessness assistance under s.138 of the Local Government Act 1972 and also s.2B of the NHS Act 2006 and that those powers are not restricted by s.185 of the Housing Act 1996 providing they are not being used to deliberately circumvent it.

The court found that the current pandemic did constitute an emergency, and there had been a danger to the lives of the inhabitants even when Brighton was in Tier 1. Brighton had rightly identified that rough sleepers were a particularly vulnerable group, and that accommodation should be provided both for their own safety and to manage infection control. Accordingly, accommodation provision could be used as part of a response to that emergency.

Section 138 contains a power rather than a duty, as does the similar public health power in s.2 of the National Health Service Act 2006. Although this does not mean that a council owes a duty to accommodate an individual, it does mean that councils can legitimately provide accommodation to improve public health and cannot say they are unable to accommodate people who are not eligible under Part 7. Given that the court explicitly confirmed that the pandemic is an emergency and a public health issue for the purposes of s.138 of the Local Government Act 1972 and s.2B of the NHS Act 2006 respectively, and given the current 'Everyone In' guidance, it is now difficult to see how a council could refuse to accommodate somebody during the pandemic purely on the basis that he or she is not eligible for homelessness assistance.

Shelter are very grateful for the advice, support and representation of Freshfields Bruckhaus Deringer LLP and Liz Davies, Connor Johnston and Adrian Berry of Garden Court Chambers, all of whom acted on a pro bono basis. Lawstop acted for the claimant and instructed Martin Westgate QC & Josh Hitchens. More details on the case, R(Ncube) v Brighton & Hove Council, here.

Elsewhere, *Nearly Legal* commented on the Ncube case that it confirms 'that in an emergency, "Everyone In" really does mean everyone.' It adds that the judgment clarifies the unanswered question being asked from the early days of 'Everyone In' as to what powers were being relied on, amongst the general confusion that the national lockdown brought about.

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New research shows the harm caused by NRPF

A report from the JCWI on migrants with NRPF during the pandemic, shows that:

- One in five respondents who were working before the pandemic lost their job since it started: 74% of those had NRPF.
- Almost half of respondents who worked in hard-hit sectors of cleaning and hospitality lost their jobs; all had NRPF.
- Migrants with NRPF were 52% more likely to say that it was not possible to safely self-isolate in their home.

JCWI say that it's beyond doubt that NRPF is causing people to suffer. The policy deliberately cuts holes in the public safety net – it is was 'unthinkable that the government would leave these rules in place in a public health and financial crisis.'

JCWI also provides a myth-busting guide to the government's arguments for keeping NRPF.

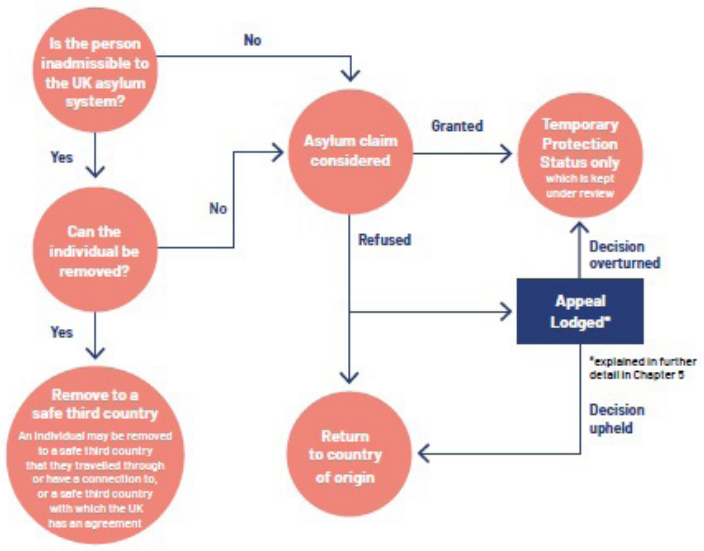
Will the hostile environment be intensified still further?

As the newsletter has pointed out, six months ago in response to the Windrush scandal the Home Secretary promised 'a fairer, more compassionate Home Office that puts people first and sees the "face behind the case".' Priti Patel's major opportunity to do that came with the launch on March 21 of the government's New Plan for Immigration, open for consultation until May 6. Indeed the plan promises that the government 'is resolutely committed to transformative change across the entire Home Office.'

The plan's aims are to increase the fairness and efficacy of the asylum system, deter illegal entry into the UK and to 'remove more easily from the UK those with no right to be here.' Treatment of asylum seekers will depend on whether they arrived 'legally.' The government will do its best to send back boat people and lorry stowaways to the safe countries through which they travelled, even though the legal basis and the administrative arrangements for this are far from clear.

Does the plan do what the Home Secretary promised? Curiously, the plan mentions neither the 'hostile' nor the 'compliant' environment, and it mentions 'no recourse' only to extend the NRPF rule to more cases. It makes no mention of the Home Secretary's equality duties nor the steps being taken to comply with these after the ruling by the Equalities and Human Rights Commission reported in the January newsletter. A previous immigration minister, Caroline Nokes, had already warned in The Times that 'some of the lessons from the Windrush scandal have already been forgotten.'

Nokes went on to point out that '…getting to grips with the growing backlog of asylum decisions should be a priority. It will require investment.' It is not clear from the plan if this will happen: there are sections about streamlining procedures (see flow chart) but also about limiting the scope for challenges to official decisions, apparently blaming applicants for the delays. One proposal is to 'introduce new asylum reception centres to provide basic accommodation and process claims.' Given the issues about the poor condition of the accommodation currently used (see next section), much turns on what the word 'basic' means.



Also of concern are the implications of some of the proposals for the integration of newcomers to the UK. These essentially divide people between the (currently small) numbers who arrive through formal 'resettlement' schemes, and the majority who only apply for asylum after they arrive. The plan implies that all those needing asylum should enter legally; but as explained by Helen O'Nions in *The Conversation*, this ignores the extreme difficulty that most asylum seekers find in travelling to a safe country by normal routes: 'it's not possible to apply for asylum until you arrive at the borders of the state you're entering.' Alan Manning explains in *Free Movement* that two of the three routes to applying for asylum in the UK (or most other countries) involve a degree of 'illegality'.

Those who manage to avoid being sent back and receive asylum will only get a right to remain for 30 months; they will be regularly assessed for possible deportation. They will have fewer benefits than

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claimants who arrive by legal routes (i.e. they will be subject to NRPF) and will have 'restricted' family-unification rights. The majority will therefore exist in uncertainty about their future even if they get permission to stay, severely affecting their ability to get long-term accommodation and to build their lives in the UK.

Migrants are scared to get the coronavirus vaccine because of the hostile environment

On February 8 the government announced an 'amnesty' to allow all migrants, including those who are undocumented, to get vaccinated against COVID-19. This brought a response from 140 charities and pressure groups, arguing that a simple 'amnesty' was not enough.

All migrants should in theory have access to primary health care, the problem is that in practice they face many barriers. James Skinner, a campaigner with Docs Not Cops, said 'you can't give amnesty to a group of people who already have access to the thing you're offering amnesty for.' Instead, he argues, the government's announcement reflects 'a clear recognition… that the hostile environment is fundamentally incompatible with any kind of public health response.'

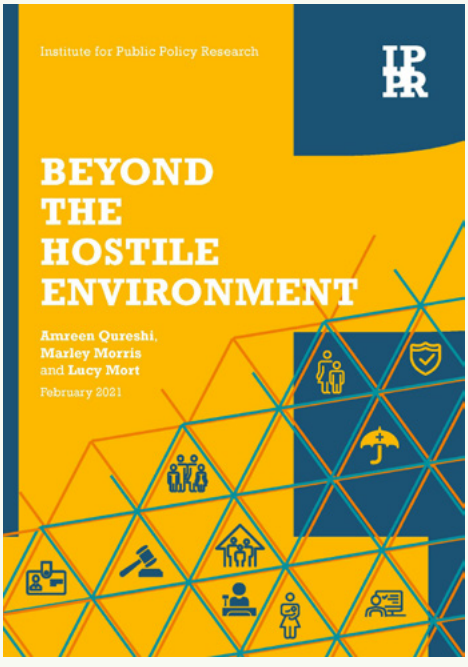
After the vaccine announcement, Coventry Asylum and Refugee Action Group – a community group run by asylum seekers and refugees – tweeted: 'Our data suggests that an overwhelming majority will not present to vaccination centres.' The Joint Council for the Welfare of Immigrants (JCWI) pointed to its own survey showing that 82% of undocumented migrants would be fearful of seeking healthcare in case of having their status checked or being charged for treatment.

MPs also warn that hundreds of thousands of migrants are 'much less likely' to get vaccine due to hostile environment fears. *The Independent* reports that Tory peer Lord Sheikh and Labour MP Sarah Owen – who head up the All-Party Parliamentary Groups (APPGs) on hate crime – have written to the vaccines minister expressing 'deep concern' that large numbers of undocumented people who are 'highly vulnerable and disproportionately impacted by COVID-19' were also some of the most hesitant to reach out to receive it.

Beyond the hostile environment

The IPPR has been taking a close look at the policy options for the future of the 'hostile environment'. In its interim report, Access denied, IPPR found that it had contributed to forcing individuals into destitution, fostered racism and discrimination, and was a driving factor in the emergence of the Windrush scandal. For example, requirements for landlords to check the immigration status of their tenants had introduced new forms of discrimination into the private rental sector. IPPR found little evidence to show that this approach to enforcement is encouraging individuals to voluntarily leave the UK and in addition it had damaged the reputation of the Home Office and created policy paralysis within the department.

In Beyond the Hostile Environment, IPPR assesses six different policy options for addressing the adverse impacts of the hostile environment. One of these calls for the abolition of right to rent and similar rules; another examines the option of identity cards for everyone, which would help to tackle discrimination by requiring the same identity checks for all.



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Asylum accommodation – more problems and more court cases

Press stories appear almost daily about the poor quality of asylum seeker accommodation – especially about the reuse of army camps. *The Guardian* reported that 29 asylum seekers died in supported accommodation in 2020, five times as many as those who died trying to cross the English Channel on small boats. Former Home Office minister Caroline Nokes told *Politico* in December that asylum seekers *"will be housed in camps … with no mains electricity, nor mains water."* *The Independent* has recently said that asylum seekers are being moved to areas 'at risk of far-right attacks' because Home Office contractors ignore warnings from local councils as they move people across country to overcrowded areas.

A series of recent stories in *The Guardian* has focussed on the asylum accommodation at Napier barracks:

- At the end of January, asylum seekers at the barracks said they had been left without electricity, heating or drinking water.
- Following an official inspection report in February (see below), a podcast described conditions inside the barracks.
- Clearsprings Ready Homes, the firm running Napier barracks, stands to earn £1 billion from its ten-year government contract, despite complaints over living conditions.
- Numbers of COVID-19 cases at the barracks were much higher than previously thought.
- Nevertheless, in April, it was reported that asylum seekers newly transferred to the barracks have been told they will stay there for months.

The Bureau of Investigative Journalism claimed in March that the Home Office was aware of the health risks that came with housing asylum seekers at former military barracks before it put them to use. Life inside the Napier Barracks is described in an article in *Open Democracy*.

Challenge to the use of Napier Barracks as asylum support accommodation

A new court challenge is explained by Olivia Halse with input from colleagues at Matthew Gold & Co solicitors and at Doughty Street Chambers.

In September 2020, the Home Secretary approved the use of the Napier military barracks to house around 400 single male asylum seekers. The decision disregarded Public Health England's warning that the barracks would not be suitable during the pandemic, especially given the government's own efforts to curb COVID-19 transmission by introducing the 'rule of six' banning large gatherings.

Asylum seekers unfortunate enough to be transferred to Napier found themselves sharing a dormitory with up to 13 other men. Bathrooms with too few toilets and showers with no privacy screens were shared by up to 28 men. The living spaces were dirty, unsanitary and overcrowded. There was a shared dining hall, large enough to accommodate only 80 men in a socially distanced fashion, and one recreation room for all 400 residents. No meaningful effort was made to ensure social distancing.

Moreover, the barracks were surrounded by a tall perimeter fence topped with barbed wire and a locked gate guarded by uniformed security guards. Residents reported being subject to a 10pm curfew, time limits on how long they could leave the barracks and at times not being allowed out at all.

For many of the men who were survivors of torture, arbitrary detention, slavery and trafficking the prison-like feel and conditions brought back painful memories and caused or exacerbated mental health conditions.

In mid-January the inevitable happened: COVID-19 spread like wildfire among barracks residents and staff. Efforts to contain the spread were wholly inadequate and were abandoned within days. Residents who had tested negative for COVID-19 were left sharing dormitories with those who had tested positive. The barracks were sealed off and no resident was permitted to leave. It was only belatedly that residents with underlying health conditions or vulnerable due to age were identified and moved away, together with those who had tested negative. But by this point, more than half of the barracks residents who had received a conclusive test had caught COVID-19.

After a two-day visit by government inspectors in February, their interim report identified poor conditions within the barracks and their unsuitability as long-term accommodation.

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Judicial review proceedings were issued by numerous residents challenging the lawfulness of the use of Napier barracks. In mid-February, permission was granted for five of the claims to proceed to an expedited hearing. There are four grounds for the proceedings:

- Accommodation at Napier barracks does not comply with s.96 of the Immigration and Asylum Act and Directive 2013/9/EC which sets out the 'minimum standards' for the reception of asylum seekers and/or fails to comply with the Home Office's own contract requirements for asylum support accommodation.
- The process for selecting those to be accommodated at the barracks is unlawful as it does not comply with the 'Tameside duty' of procedural fairness, and/or fails to have proper regard to the public sector equality duties.
- The conditions breached the claimants' rights under Articles 2, 3 and/or 8 of the European Convention on Human Rights.
- The claimants were falsely imprisoned in the barracks and deprived of their liberty, contrary to Article 5 of the same convention.

The final hearing is listed for 14-15 April 2021.

Inspector's photograph of accommodation at Napier barracks

Censure of lawyers over asylum camp case shows difficulty of systemic litigation

Free Movement discusses the implications of a decision by the High Court to take a leading firm of solicitors to task for its handling of an urgent application for judicial review of conditions at the converted Penally barracks, where conditions were also found to be unsuitable on inspection, like those at Napier.

More problems with accommodation contracts during the pandemic

The newsletter has regularly highlighted problems with asylum accommodation - and new evidence of people being placed in squalid conditions came from *The Independent* in March.

It said that 'Operation Oak', which began in February, is moving the 9,500 asylum seekers housed in hotels during the pandemic into longer-term accommodation, with about 2,500 moved by the time of the news report. But charities are saying that the process is 'shambolic', warning that firms contracted by the Home Office to manage asylum housing are moving people from 'one horrendous situation into another', and that people were sometimes being moved multiple times within weeks without being tested for Covid, creating a public health risk.

More problems with accommodation contracts during the pandemic

The newsletter has regularly highlighted problems with asylum accommodation - and new evidence of people being placed in squalid conditions came from *The Independent* in March.

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Home Secretary challenged on 'adequacy' of asylum accommodation for pregnant women

Debbie Heath of Instalaw Solicitors is working with David Gardner of No5 Barristers and David Locke QC of Landmark Chambers in an ongoing challenge against the Secretary of State. Here she explains the action being taken.

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The case involves a pregnant woman (DK) who was given accommodation under s.4 of the 1999 Act. The room was in a hostel: it was infested with cockroaches, was unhygienic, unclean, lacked privacy, had a single bathroom shared by nine families, and provided meals which did not take account of the nutritional needs of pregnant mothers. After pre-action correspondence the Secretary of State maintained that the accommodation was adequate and a claim was issued at court.

DK's case represents that of a number of women who are challenging the Secretary of State for failure to provide adequate accommodation to asylum seekers who are pregnant or are new mothers under either s.95 or s.4 of the Immigration Act 1999.

Permission for judicial review was granted by Mr Justice Martin Spencer on 21 December 2020 [R (DK) v Secretary of State for the Home Department (CO/4585/2020)]. The claim is being brought on five grounds, that:

- the accommodation which was provided was not adequate within the terms of the 1999 Act and thus was unlawful
- the system by which the Secretary of State arranges accommodation, as set out in Healthcare Needs and Pregnancy Dispersal Guidance (v3.0) or otherwise, presents an unacceptable risk of unfairness and thus is unlawful
- the accommodation provided breaches article 3 of the European Convention on Human Rights 1950
- the system by which the Secretary of State arranges accommodation represents discrimination pursuant to articles 3, 8 and 14 of the European Convention on Human Rights 1950 because pregnant asylum seekers are not treated sufficiently differently from other asylum seekers in the accommodation system
- the Secretary of State has failed to consider the welfare of children as required under s.55 of the Borders Citizenship and Immigration Act 2009.

The wider systemic claim focuses on two elements of accommodation provision for pregnant asylum seekers. First, the inadequacy of temporary initial accommodation, which is often in a hotel or hostel as opposed to permanent dispersal accommodation for pregnant asylum seekers. Second, the substandard and inadequate nature of the accommodation provided to pregnant asylum seekers and the impacts on the mental and physical health of both mother and baby.

DK has now been moved to adequate accommodation. However, the wider systematic challenge will proceed to a final hearing where, among other things, we will be seeking a declaration that the Secretary of State's policy with regards to pregnant women and new mothers and/or the system of allocation and provision of accommodation for pregnant women and new mothers is unlawful.

Since the case of DK, we have been instructed by a number of other women who have sought to bring claims on identical or similar grounds. Many of those women have now been moved to adequate accommodation after we issued their claims at court.

There may well be large numbers of similar cases which if brought before the Court would lend weight to the point that the failures of the Secretary of State amount to a systemic issue. Please contact me at debbie.heath@instalaw.co.uk for further information or if you have a similar issue/claim.

ASAP asylum support factsheets

The Asylum Support Appeals Project has a number of new factsheets on its website. These include an updated factsheet on COVID-19 and section 4 support, and many others.

ASAP points out that all destitute asylum-seekers are currently entitled to s.4 support even though the Home Office are not conceding this position and are continuing to refuse applications. Support will be awarded on appeal, based on regulation 3(2)(e) 'the provision of accommodation is necessary for the purposes of avoiding a breach of a person's Convention rights.' The Asylum Support Tribunal judges agree that a person's rights includes the rights of others not to be put at risk, given the pandemic/public health risks of having people homeless.

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More on asylum support

Refugee Action, Asylum Matters, the Immigration Law Practitioners Association, and Deighton Pierce Glynn Law have produced a guide that highlights the entitlements of those seeking asylum in temporary accommodation. It is aimed at organisations working with people housed in all types of 'temporary' or 'contingency' accommodation, including hotels and barracks.

A new guide from Right to Remain looks at the main stages of the asylum process that unaccompanied children seeking asylum in the UK go through. It explains the legal and support process, with innovative problem cards that flip over to reveal more information and actions people can take.

Barred from working and mainstream benefits, for many in the asylum system their only option for money and shelter is by requesting support from the Home Office. A year into the pandemic, the asylum support system has seen significant changes. Free Movement describes the ways in which the system has been affected by and responded to the crisis over the past 12 months.

Does the policy of deterring asylum seekers actually work? Solicitor Colin Yeo's book, Welcome to Britain, has a chapter on this question, reproduced here.

Other news

COVID-19 has reduced UK immigration across all main routes in 2020

The Migration Observatory reports that last year saw a significant fall in asylum applications and lower grants of visas for work, family or study. Work visas issued fell by 35% from 2019 to 2020, family-related visas fell by 28%, and study visas by 37% (including short-term study). Applications for asylum were down 21% compared to 2019, including both main applicants and dependents.

On the basis of the available statistics, close to one million migrants appear to have left the UK during the pandemic. However, as the Migration Observatory also reports, the evidence is unclear, with some data sources having been halted temporarily and others providing conflicting results. It will take time to establish what really happened and how permanent any changes are.

New project on homelessness, immigration and racism

Samir Jeraj asks for information to help a new project by the Museum of Homelessness.

The Museum of Homelessness is launching a project called Project Fortify, which will look at how racism and xenophobia are making people homeless and subjecting them to intimidation, violence and putting lives and wellbeing at risk.

The hostile environment has made it increasingly difficult for migrants, and many UK nationals who are people of colour, to access housing, welfare support and basic rights. During the Covid-19 pandemic, the government announced rough sleeping would again become grounds for deportation, interned people in former military barracks in appalling conditions and demonised the lawyers helping them.

The toxic rhetoric around migration stoked by the government and sections of the media has fed into violence the street. Last year, far right groups attacked hotels where they were told migrants were being sheltered. One of the persistent false statements being shared on social media was that veterans were being left on the street while asylum seekers were being housed in these hotels. We want to document what is happening, and how these messages are being shared and prompting action.

We are also looking at the deaths of people in Home Office accommodation or where the HO has a duty of care, racist incidents at hostels, dispersal policies, the use of former army barracks to accommodation. The Project would like to hear about both at the experiences of people and the policies and practices of institutions that have brought them about.

There is a huge amount of expertise and intelligence among the readers of this newsletter. If you would like to pass on a tip, or contacts, or have suggestions of what Project Fortify should be looking into, please contact Samir Jeraj on sa.jeraj@gmail.com. You can also contact us anonymously using signal or whatsapp on +447846051852.

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Latest on new arrivals from Hong Kong

The January newsletter reported on the government's decision to allow people from Hong Kong to come to the UK. So far about 27,000 eligible people and their family members have applied for visas since applications opened at the end of January. Councils in England are to receive £30 million of funding to support new arrivals, including support with housing costs for those who need it. Funding will also be provided to Scotland, Wales and Northern Ireland. Twelve 'welcome hubs' will be established through the Strategic Migration Partnerships working with local authorities, voluntary community and social enterprises. The 12 hubs will work with local authorities and VCSE groups to provide face-to-face support where needed.

The NRPF Network reports that those granted leave to remain on the British National (Overseas) visa route will be able to apply for a change of conditions to have the 'no recourse to public funds' condition lifted if they become destitute or are at imminent risk of destitution, following a change to the Immigration Rules (pdf).

Home Office fee for a child to register as a British citizen declared unlawful

The court of appeal has upheld the high court's ruling that the £1,012 fee for a child to register as a British citizen is unlawful because it is set without consideration of the best interests of children. For further information, including an FAQs document for people who may be affected by this decision, see the information from the Project for the Registration of Children as British Citizens which brought the case against the Home Office.

New courses from the Anti Trafficking and Labour Exploitation Unit

ATLEU has a new series of online training sessions for lawyers and support professionals working with survivors of trafficking and slavery. Support providers can receive an overview of modern slavery law and process and an immigration overview: common immigration issues and best practice. Legal advisers have access to a tailored programme of training and mentoring aimed at those working under public law or immigration legal aid contracts. The programme will run between May and October 2021. More information is available from training@atleu.org.uk.

Before you leave…

Remember to check the housing rights coronavirus page for the latest information on changes to housing rights and benefits during the pandemic.

Contributors

The newsletter is edited by John Perry from CIH with help from Sam Lister from CIH. We are grateful to all the contributors to this issue, named in each of the articles. Anyone interested in contributing to future issues can contact john.perry@cih.org.

Do you have any comments on this newsletter?

Send them to policyandpractice@cih.org

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