

Rough sleeper removals judgment

Fact sheet for organisations and groups supporting homeless EEA nationals

On December 14th 2017 the High Court ruled unlawful the Home Office's policy of detaining and administratively removing EEA nationals who sleep rough. NELMA and PILU have made two factsheets to help homeless people and those supporting them understand the implications of the ruling.

What are the implications of the High Court decision?

The High Court decision has two main implications:

Firstly, the process by which the Home Office systematically checked whether EEA rough sleepers were exercising their treaty rights has been declared unlawful.

Secondly, the High Court clarified that rough sleeping does not constitute an abuse or misuse of EU Treaty Rights.

This means that any removal decision served on an EEA national for rough sleeping is unlawful. If the individual is detained, they should be released immediately and their property, including their identity documents, should be returned to them. If they are not detained, they should receive written confirmation that the removal decision has been withdrawn and their documents, if retained, should be returned to them.

What will happen to individuals who were served with removal decisions on the basis of rough sleeping?

Any individual who was served with a removal decision on the basis of sleeping rough should immediately apply to the Home Office to have the decision withdrawn. The individual can apply for the decision to be withdrawn by sending a letter to the Home Office.

All removal decisions made against people for rough sleeping under regulation 19(3)(c) of the 2006 EEA Regulations and under regulation 23(6)(c) of the 2016 EEA Regulations were made unlawfully.

Many decisions made against people for *non-exercise* of EU Treaty Rights (under regulation 19(3)(a) of the 2006 EEA Regulations and under Regulation 23(6)(a) of the 2016 EEA Regulations) will also be liable to be withdrawn by the Home Office. The decision is unlawful if the individual was stopped as part of an operation seeking to target EEA nationals for rough sleeping and then served a decision for ceasing to exercise treaty rights.

What about individuals whose identity documents were confiscated?

Individuals whose identity documents were confiscated by the Home Office should immediately apply to the Home Office for their return in a manner convenient to them. If the removal decision in their case was made unlawfully, then the confiscation of their identity documents was unlawful.

Affected individuals may wish to contact the embassy of their country to ask for support in requesting the return of their documents.

Can people who were affected by this policy claim compensation?

Anyone in respect of whom a removal decision was made under regulation 19(3)(c) of the 2006 EEA Regulations or under regulation 23(6)(c) of the 2016 EEA Regulations (i.e. on the grounds of abuse or misuse or EU Treaty Rights) and who was then detained may have a strong claim for compensation.

Any individual whose removal decision was made on the same basis and who had documents confiscated may also have a claim for compensation if they suffered loss from having their documents confiscated (for example, if they can show that they were unable to obtain work).

Anyone in respect of whom a removal decision was made under regulation 19(3)(a) of the 2006 EEA Regulations or 23(6)(a) of the 2016 EEA Regulations (i.e. on the grounds of non-exercise of EU Treaty Rights) may also have a claim for compensation if they were detained or had their documents confiscated. This will depend on the facts of the individual case.

What advice should we give to EU citizens who are sleeping rough?

EEA Nationals are not required to cooperate with Immigration Enforcement officers and cannot be compelled to do so. You should advise EU citizens who are sleeping rough to politely refuse to answer questions and to walk away if approached by Immigration Enforcement officers.

If you are with the individual when they are stopped, refer the Immigration Enforcement Officer to [General Instructions: Immigration Removals Enforcement and Detention, "Enforcement Interviews" Version v1.0](#) dated 12 July 2016.

You can remind the Immigration Officer:

- 1) that they need to identify themselves and confirm they have the power to conduct an Enforcement visit;
- 2) that they should inform the individual who has been stopped that he or she does not have to answer any questions and can leave at any time;
- 3) that refusal to answer questions or provide proof of their status does not, of itself, constitute a reasonable suspicion that the person is an immigration offender.

Any enforcement visits by immigration enforcement officers should be reported to **Anti-Raids Network** (email: antiraid@riseup.net, Twitter: @antiraid) or **NELMA** (phone: 07459 642 152) email: nelondonmigrantaction@gmail.com, Twitter: @nelmacampaigns) so that any future unlawful immigration enforcement policies can be monitored and immediately challenged.

Can immigration enforcement officers still go on joint shifts with homelessness outreach teams?

The High Court found that Immigration Enforcement Officers were acting unlawfully when they verified EEA nationals' right to remain in the UK on the basis that they were rough sleeping. Consequently, if homelessness outreach teams continue to conduct joint shifts with Immigration Enforcement Officers, they will also be acting unlawfully. Joint operations should cease following the High Court ruling.

Information about individual homeless people held by homelessness outreach teams should not be shared with immigration enforcement officers. Identifying a specific individual, sharing their background information on CHAIN or referring an individual to Immigration Enforcement officers is likely to put homelessness organisations in breach of the Data Protection Act.

Some homelessness organisations have contracts to assist the Home Office with identifying rough sleepers to be returned to their home country. If outreach teams continue to identify people who are rough sleeping or homeless for removal, they will be complicit in implementing an unlawful policy.

This could amount to the offences of conspiracy to kidnap or falsely imprison. In addition, any data sharing of individual's data with the Home Office could lead to significant civil sanctions against homelessness organisations.