

Housing Team Legal Bulletin

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Case law update

Asylum support; Section 55; Accommodation; Human Rights

R (Adam, Limbuela and Tesema) v Secretary of State for the Home Department [2005] UKHL 66

Readers may recall the significant problems brought about by the enactment of section 55 of the Nationality, Immigration and Asylum Act 2002. The Home Secretary ('SSHD') is required to deny NASS support to asylum seekers if they have not made a claim for asylum as soon as reasonably practicable after their arrival in the UK. Section 55(5) of the Act gives the SSHD power to nonetheless provide support to an asylum seeker if to do so is necessary to avoid a breach of that person's ECHR rights. This is the first case to reach the House of Lords on the extent of the state's obligations under section 55(5).

In the claimants' cases the SSHD had refused to exercise his s55(5) power. The claimants successfully sought a judicial review of that decision, claiming that their right not to be subjected to inhuman or degrading treatment (Article 3) had been breached by the withdrawal of support. As a result of the fact that they had no accommodation or financial support the claimants were all either street homeless or on the verge of becoming so.

The SSHD appealed to the Court of Appeal, who upheld the decisions of the Administrative Court. The SSHD's further appeal to the House of Lords was dismissed.

It was held that the operation of s55 – removing financial and other support from asylum seekers – could amount to positive action constituting 'treatment' of asylum seekers by the SSHD sufficient to engage Article 3. Their Lordships held the Article 3 threshold can be said to have been crossed once the asylum seeker has had to resort to begging or prostitution to survive.

Lord Bingham stated that whilst no general duty to house the homeless could be spelled out of Article 3 "the threshold may be crossed if a late applicant with no means and no alternative means of support, unable to support himself is, by the deliberate action of the state, denied shelter, food, or the most basic necessities of life".

Section 55(5) requires the SSHD to act to *avoid* a breach of a person's ECHR rights. Their Lordships held that the obligation is therefore to prevent a breach taking place, rather than to wait until there is a breach and then address it.

Possession proceedings; ASBOs; suspended orders; section 85.

Manchester City Council v Higgins [2005] EWCA Civ 1423

The Court of Appeal has again confirmed its willingness to interfere in trial judges' exercise of discretion in possession claims by substituting an outright possession order for a suspended one.

The defendant was a tenant who faced a claim for possession based on allegations of anti social behaviour, mainly caused by her 12 year old son, J. J had caused serious nuisance and committed a range of criminal offences in the vicinity of Ds house; D was by her own admission unable to properly control him. J was subject to an anti social behaviour order – which he had breached shortly after it had been imposed. By the date of the trial, J had been made the subject of a twelve month detention and training order. At trial, the Recorder found D to be an inadequate witness who had failed to show any remorse to the victims of J's behaviour; she had failed to properly understand the extent and seriousness of her son's behaviour and had given the court little hope that she could control J in the future. He found it reasonable to make a possession order, but agreed to suspend the order on the basis that there was an ASBO in place, that J was now in custody and would be receiving guidance and support whilst there and he did not wish to give up hope on J's behaviour improving, given his age.

The claimants appealed (with the permission of the Recorder) to the Court of Appeal, who substituted an outright order for possession. Ward LJ held that the Recorder had no proper basis to exercise his discretion (under section 85 Housing Act 1985) to suspend the order. The ASBO was patently not working – as the Recorder had himself held. There was insufficient material before the Recorder to allow him to conclude that J's behaviour would improve in the future – the hope that he had expressed was no more than 'wishful thinking'. The fact that there was an ASBO in place until J's 16th birthday was no reason to expect him to comply with it – given that he had breached it shortly after its inception.

([John Hobson](#) appeared for Higgins instructed by Shelter)

Homelessness; Human Rights; Declarations of Incompatibility

Westminster City Council v Morris [2005] EWCA 1184

This case concerned the operation of section 185(4) Housing Act 1996 – and whether a person can establish 'priority need' under s189 of that Act in circumstances where a dependent child was subject to immigration control, but the adult applicant was not.

The trial judge (Keith J) had made a declaration that section 185(4) did prevent an applicant establishing a priority need in those circumstances – and found the provision to be incompatible with Articles 8 and 14 ECHR.

The Court of Appeal upheld the decision. Sedley LJ found that the rule created by s185(4) was neither a proportionate nor reasonable response to the problem of foreign nationals coming to the UK or overstaying their leave to be here.