



Destitution, Immigration Status and the Law

by
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Day One of
a two day training course for immigration advisers at

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Course objectives

By the end of day one of the course, participants will

- ✓ Understand the range of immigration statuses possible for asylum seekers and the possible significance of:
 - ❖ Citizenship rights
 - ❖ The stage of the asylum claim
 - ❖ Fresh representations
 - ❖ The method of arrival
 - ❖ Removal directions

- ✓ Be able to identify to whom asylum seekers and former asylum seekers should turn for subsistence support;

- ✓ Know when social services may owe a duty to destitute people, which legislation to rely on, and the possible barriers to assistance;

- ✓ Understand
 - ❖ “The hokey-cokey approach”
 - ❖ “The hierarchy explanation”
 - ❖ “The SEP syndrome”

Disclaimer

This course is designed for the general objectives set out above. It is not intended to be a complete and authoritative statement of the law. Legal advice should be sought to confirm the application of these course materials to any specific legal situation.

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Cases referred to:

The following are the cases referred to in the text, in the order they first appear:

- R(A) –v- Lambeth LBC, R(G) –v- Barnet LBC and R(W) –v- Lambeth LBC [2003] UKHL 57
- R(J) –v- Enfield LBC [2002] EWHC 432 Admin
- R –v- Westminster City Council *et al ex parte M et al* [1997] 1 CCLR 85
- O –v- Wandsworth LBC [2000] 1 WLR 2539
- R(Khan) –v- Oxfordshire County Council [2004] EWCA 309
- R(Mani) –v- Lambeth LBC [2003] EWCA Civ 836; (2003) 6 CCLR 376
- Secretary of State for the Home Department –v- Limbuela and others [2004] EWCA Civ 540 21st May 2004
- R(K) –v- Lambeth LBC [2003] EWCA Civ 1150
- R(M) –v- Islington LBC [2003] EWHC 1388 Admin; [2004] 2 FLR 903 (High Court) and [2004] EWCA Civ 235 (Court of Appeal)
- R(A) –v- NASS and Waltham Forest LBC [2003] EWCA Civ 1473
- R(O) –v- Haringey LBC and Secretary of State for the Home Department [2004] EWCA Civ 535



Introduction

The law of destitution

It is useful to begin by highlighting what this course is, and what it is not.

The focus of this course is on obtaining packages of support for people who are destitute. Packages of support means both

- Accommodation, or funding of accommodation; and
- Subsistence – meeting the need for food, clothing, toiletries etc in cash or in kind

By destitute, I mean in particular that a person is unable to access accommodation and/or subsistence either through the welfare state in the usual way or through their own resources.

The course material has been modified from a course that was designed to look at the law of destitution generally. **This course focuses on destitution of people who are, or were, asylum seekers.** However, as it is possible that the law relating to destitution generally may be relevant, I have placed some of the more general information in footnotes. On occasions, I highlight specific issues applying to asylum seekers or former asylum seekers in boxes.

This course will run over two days. Day one is focussed on theory, and day two on practice. It will be seen that there is not necessarily a clear divide between theory and practice. However, the course is structured around assumptions that if you do not understand the legal theory:

- You will not identify the correct source of assistance; and/or
- You will not be able to make out the correct arguments for assistance.

Thereafter, if you understand the theory but not the practice:

- You will know who should be responsible, but not how to obtain assistance; and/or



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- You will be unable to deal with, or even recognise, obstacles that are put in your way.

By way of a sneak preview, therefore, day two will include the following:

- A revision session;
- A practical session on how to access NASS and social services support;
- A session examining the destitution test – “how destitute do you have to be?”;
- A session looking at common problems encountered when seeking to access assistance;
- A session on the legal remedies and choosing between them.

A structured approach to obtaining support

The tests to be applied to establish whether anyone owes a duty to support people subject to immigration control are now very complex. I suggest a step-by-step approach, and the sections of this course follow this numbering:

Step 1, Section 1. Establish the person's immigration status.

Step 2, Section 2. Establish why the person is destitute and in particular whether they are subject to immigration control within the meaning of the Immigration and Asylum Act 1999. If they are not, try claiming ordinary social security benefits.

Step 3, Section 3. Check if they are eligible for NASS support as asylum seekers. This means considering both conventional NASS and section 4 “hard cases” support. If they are eligible, still consider social services support (stages 4-5) additionally or alternatively to NASS support.

Step 4, Section 4. Establish whether they fit within any of the groups eligible to seek social services assistance. Note that you may seek social services support for anyone – both people subject to immigration control and people who are not, but are refused social security for other reasons. Asylum seekers may also seek social services support.



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Step 5, Section 5. If they do fit within any of the groups eligible to seek social services support, then check whether the new rules exclude them.

Step 6, Section 6. If NASS support and social services support are both a possibility, check out the caselaw on which is appropriate.

Step 7, Section 7. If you are having difficulties obtaining support that ought to be available, consider an appropriate remedy.

At the end of this seven-stage process, some people will have been supported by social security, some by social services, some by NASS. But some, in particular some of the following, will be left totally destitute:

- Non asylum seekers, who do not fit within social services eligible groups – typically, those who are single, fit and of working age;
- Anyone who does fit within the social services eligible groups but is caught by the new section 54;
- Asylum seekers who are caught by the new section 55.



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1.4 Removal directions?

You also need to know whether removal directions have been issued. This is relevant to the point at which support is liable to be withdrawn, and applies to failed asylum seekers. Be aware of the following:

- Non-specific removal directions are irrelevant for these purposes. They say you are liable to be removed “at a date and time to be advised”.
- If there are removal directions, has there been a failure to co-operate? The big issue here is whether the failed asylum seeker themselves were aware of the existence of the removal directions, and if not, why not?
- If there are no removal directions, has there been a certification of a failure to co-operate voluntarily?
- Be aware that local authorities sometimes ask whether failed asylum seekers have “applied for” removal directions.

You should now have the main information about immigration status that is relevant to determining the support available to asylum seekers and failed asylum seekers.

Footnote

Presence by right

British Citizens have a right to live in this country. So who is a British Citizen, and who can become one?



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The hokey-cokey approach

will find it very helpful for a number of reasons to approach services assistance with a staged approach:

1 - First, establish whether the person ordinarily qualifies for assistance from social services. That means exploring whether social services owes them a duty under one of the three powers explored below. Apply the "**destitution alone**" test.

OUT - Second, establish whether the person is potentially excluded from assistance by section 116 as explored in section 4.3 below.

IN - If the person is potentially excluded by section 116, see whether they can be brought back in by applying the "**destitution plus**" test.

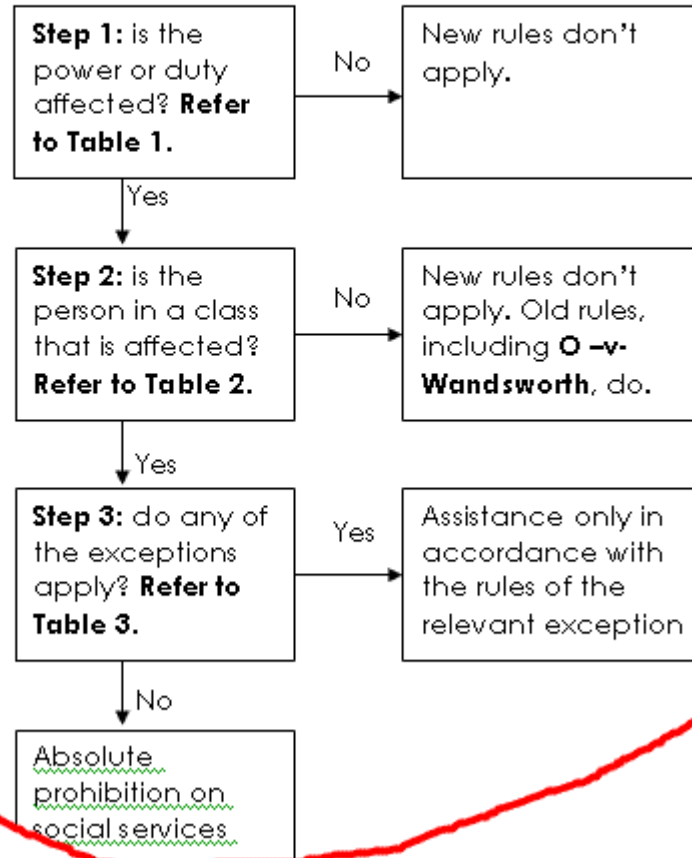
OUT - Next, establish whether the person is potentially excluded from assistance by Schedule 3 as explored in section 5 below. It is essential that you understand that it is possible in many cases to show that schedule 3 has no application and therefore you do not need to take the next step.

MAKE IT ALL ABOUT - If all else fails, focus on the person's needs to whom needs



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Section 54 and Schedule 3, Nationality Immigration and Asylum Act 2002, and Withholding and Withdrawal of Support (Travel Assistance and Temporary Accommodation) Regulations)





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The following chart deals with the interface between “conventional” NASS and social services:

Household composition	Who is responsible?
Child asylum seeker without parents	Social services
Adult asylum seeker without children	Social services if “in need of care and attention” (R(Mani) -v- Lambeth LBC applied) else NASS
Able-bodied asylum seeking family	NASS
Asylum seeking family including disabled child but non-disabled adult(s)	NASS (R(A) -v- NASS and Waltham Forest LBC applied), in collaboration with social services
Asylum seeking family including disabled adult but non-disabled child(ren)	Social services to support the adult, and NASS the children (R(O) -v- Haringey LBC in Court of Appeal applied)

A developing area of controversy is the interface between “hard cases” NASS support and social services support. There is often an assumption on the part of social services authorities that failed asylum seekers are the responsibility of “hard cases” support rather than social services. In fact, there are many circumstances in which this will not be correct: