

THE INTERFACE BETWEEN THE CARE ACT 2014 AND ASYLUM LAW: EXCLUSIONS AND INNOVATIONS

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Introduction

Since its implementation the Care Act 2014 claims to have transformed adult social care, superseding a patchwork of legislation on care and support dating back to the creation of the Welfare State in 1948. The Act provides a revised and reformed legal framework for current practice. This chapter provides a prior and post perspective in respect of the gaps that the Act attempts to close and provisions it promises to deliver. It has been claimed that the Act provides a consolidated legal framework for adult social care but it is debatable whether this can be expanded to asylum seekers as a category of vulnerable adults. The chapter, adopting a practitioners' perspective, considers the Act in the light of the support it provides to, and/or withholds from, asylum seekers. Once asylum seekers are granted refugee status they fall under mainstream provisions in respect of care and support offered to citizens. The Act does not distinguish between a citizen and a refugee. It is asylum seekers who have a precarious status in terms of rights and access to provision and from whom support can legally be withheld.

This chapter draws partly on empirical data gathered from conducting biographical interviews with asylum seekers. It consists of three sections. The first section argues that asylum seekers inherently ought to be considered vulnerable based on case studies and case law. The next section provides an overview of the challenges and uncertainties encountered by asylum seekers prior to the Act. Finally, the last section considers the case law since implementation of the Act and concludes that the restrictive measures put in place by the Act provide safeguards only by the process of trial and error.

The Care Act 2014 and Asylum Seekers

Asylum seekers who are the focus of this chapter are subject to restrictions under many different statutes. Their legal position is very complex, since they are simultaneously subject to numerous legal rules, including those relating to immigration, local authorities, the Department for Work and Pensions, the NHS and the police, as well as education, housing, adult social care, and children and young people's social care. From a practitioner's perspective, working with asylum seekers is a

particularly challenging task, since not all the rules and regulations in respect of asylum seekers are contained in one single piece of legislation. As a result social workers, healthcare providers and other frontline practitioners in direct contact with asylum seekers find themselves to be quasi lawyer, educator, police officer, housing officer and counsellor amongst others.

An asylum seeker is defined under the Immigration and Asylum Act 1999, section 94 (1) as, 'a person who is not under 18 and has made a claim for asylum which has been recorded by the Secretary of State but which has not been determined'. The same section also clarifies that a claim for asylum means 'a claim that it would be contrary to the United Kingdom's obligations under the Refugee Convention or under Article 3 of the Human Rights Convention, for the claimant to be removed from, or required to leave, the United Kingdom'. The Home Office provides support to asylum seekers and their dependants who would otherwise be destitute under the powers set out in section 95 of the Immigration and Asylum Act 1999. Support is usually provided in the form of furnished accommodation (rent and utilities free), plus a weekly cash allowance to enable the persons to meet other "essential living needs". Pursuant to the Immigration and Asylum Act 1999, The Asylum Support Regulation 2000 (Statutory Instrument, 2000 No. 704) created the national mechanism to deliver this support, formally known as National Asylum Support Service.

Contrary to the widely reported myth that asylum seekers are drawn to the UK because of its generous benefits system, the support provided is actually very limited. The Asylum Support (Amendment) Regulations 2018, (Statutory Instrument 2018 No. 30) revised regulation 10(2) of the Asylum Support Regulations 2000 (S.I. 2000/704) to provide that the weekly cash payment that may be made by the Secretary of State in respect of the essential living needs of persons to whom the Secretary of State has decided to provide asylum support is increased from £36.95 to £37.75. This is the first rise after 18 years.

The general rule is that asylum seekers awaiting a decision are supported by the Home Office. Failed asylum seekers may still be supported by the Home Office under section 4(2) of the Immigration and Asylum Act 1999 if they meet certain eligibility criteria. If asylum seekers are subject to immigration control and outside of the Home Office support then they may fall under the local authority's support mechanism (Farmer, 2017). In *R (Westminster City Council) v National Asylum Support Service* [2002], the House of Lords decided that the role of asylum support under Part 6 of the Immigration and Asylum Act 1999 was residual and that, when assessing whether or not a person subject to immigration control required care and attention for the purposes of section 21 of the

National Assistance Act 1948, it was necessary to disregard the potential availability of support under Part 6 of the 1999 Act. In *R (M) v Slough Borough Council* [2008], the House of Lords decided that a person needed 'care and attention', for the purposes of section 21, if he needed looking after, in the sense of needing something done for him that he could not, or could not be expected to do, for himself. The Care Act 2014, s.21, restates the stance of the previous law to exclude asylum seekers from any entitlement to care and support that has arisen solely from destitution.

Refugee law and the vulnerability of asylum seekers

Although the law and policy guidelines do not view adult asylum seekers generally as a vulnerable group per se, this chapter takes the stance that adult asylum seekers in general ought to be treated as such until and unless information suggests otherwise. The laws governing refugee status are humanitarian in theory but it can be argued that they are policy and politic driven in practice. This area of law has been governed by complex and ever evolving international law, EU and domestic legislation. The 1951 Refugee Convention in the aftermath of World War II is the most instrumental. International Refugee Law, the EU Asylum Law and Policy play a crucial role in managing, regulating and determining the veracity of asylum claims. In order to determine and be granted refugee status, asylum seekers need to present and then convince the Home Office, with the standard of proof being the reasonable degree of likelihood, that if returned they will be persecuted in their country of origin.

The UN High Commissioner for Refugees presents that

It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country, often in a language not his own. His application should therefore be examined within the framework of specially established procedures by qualified personnel having the necessary knowledge and experience, and an understanding of an applicant's particular difficulties and needs. (UNHCR Handbook, para 190)

The UNHCR highlights the many challenges faced by asylum seekers, in doing so recommending that decision makers are to consider these challenges and the vulnerabilities that all asylum seekers experience to varying degrees. It can be argued that the language of the paragraph suggests that

asylum seekers are normally in a particularly vulnerable situation. In fact they are inherently vulnerable since all asylum seekers do indeed experience some if not all of the challenges listed above.

The vulnerable situations in which asylum seekers find themselves are multifaceted. In an adversarial court setting, a judge and/or legal representative can help to safeguard individuals against leading and/or trick questions. Equally, the hypothesis formed in the mind of the opposing legal representative is revealed to witnesses and the defendant's legal representative. However, in the asylum process, the examiner simultaneously assumes the roles of adversary, inquisitor, and judge of the claim. Given the different levels of ability in the testimonial styles and presentational skills of asylum applicants, it is reasonable to expect that an interview as significant as a substantive asylum interview conducted by the Home Office would involve some level of prior familiarization and training for the asylum seeker (Ramezankhah, 2017). This lack of familiarity with the process and procedures can cause yet another layer of vulnerability to asylum seekers and exacerbate the challenges that they experience during the process of seeking asylum and determination of refugee status.

In *Kaja (Political asylum: standard of proof) (Zaire)* [1994] the judge held that

In assessing whether or not the appellant's account is a true account of historical facts, I see no reason why, on a common sense basis or in law, the burden of proof should be any lower than the normal civil standard of balance of probabilities. The appellant is simply required to tell the truth, and that should be no more difficult in an asylum appeal than in any other type of appeal. (Para 41)

This clearly highlights the ignorance of judiciary to the vulnerability experienced by asylum seekers in presenting their claim, which is fundamental to them gaining refugee status and the enjoyment of the rights and privileges thereafter. The viewpoint that the asylum seeker 'is simply required to tell the truth' rejects any hidden personal data such as learning difficulties, lacking basic education, substance misuse, depression, post-traumatic stress and potentially being a victim of torture and/or rape in addition to the 'particular vulnerable situation' and the 'serious difficulties' that the UNHCR Handbook recalls.

The case study presented below is part of a series of qualitative interviews and sheds light on the standpoint presented above in respect of vulnerabilities faced by asylum seekers. The data presented here were generated in the course of doctoral research conducted by one of the authors (Ramezankhah, 2013). The method of data generation is free association narrative interview with a psychosocial approach to data interpretation (Hollway and Jefferson, 2013).

At the time of Ali's interview he was an Iranian asylum seeker awaiting the Home Office decision on his application for refugee status in the UK. Reference to the revolution is the Iranian revolution of 1979 and the war refers to the Iran-Iraq War (1980-88). Ali recalls his childhood in Iran.

When one keeps revisiting the past memories, one keeps remembering it - all the time. Yes, I was seven when the revolution happened [pause], yes [long pause] for instance at the time of the war, those images that I had at night, suddenly the red alert [air-raid siren] was heard and we had to run down the stairs and then BANG BANG BANG, the noise of the anti-aircraft guns, all of these are in front of my eyes and continuously goes round and round in my head...

Ali, the child of the Iranian revolution, at the age of seven is habituated to resentment, defiance and retaliation, with enemies far and near, with the war inside and outside of him. In the related context of the World War II, research shows that psychoanalysts demonstrated 'a link between a real "war outside" and an emotional "war inside", they [psychoanalysts] contributed to an increase in state responsibility for citizens' mental health' (Shapiro, 2008). This was especially evident in respect of the children; the war caused them to be 'anxious, aggressive subjects'.

It is argued that all asylum seekers are inherently vulnerable unless and until proven otherwise. The list of vulnerabilities referred to in the UNHCR Handbook above can be expanded by others such as mental health and learning disability as well as depression and substance misuse. In the above excerpt Ali shows signs of persistent and chronic stress if not post-traumatic stress disorder, a vulnerability that may be unknown to him and hidden from the authorities.

In this excerpt, Ali is a teenager (16 year old) awaiting immediate execution of his sentence for having a girlfriend.

Ali: When you enter the room you see a bed and all around the room on the walls there are different kinds of whips (smile) in variety of sizes (smile) with many different ranges of width and thickness and made from different materials, you could choose the one you wanted.

(sarcastic hysterical laughter)

Ali: Yes, it's very interesting; he [the executer] would choose one (whip) and would look at it and wave it in the air to see whether he is happy with its likely performance on the body. He said to me, "Let me see if this whip has a nice touch." (hysterical Laughter)

FR: I am really sorry. (laughing ...)

Ali: (while laughing and trying to convince the interviewer) No, it is the truth. He asked me, "What did you do?" I said, "Brother, nothing, swear to God. I went to the house of this girl to get some notes for the exam." He said, "So you had gone to get class notes? Lie down."

The sentence of 50 lashes was executed ...

Then Ali said, "I felt that I lost my dignity, I lost my pride. It affected me by causing resentment in me."

It seems likely that we are all a product of a complex mix of social, economic, cultural and unconscious factors and there is widespread evidence that those involved in particularly violent and horrific crimes habitually have a history of emotional deprivation and abuse in childhood. In the majority of cases of violence against others and self-destructive behaviour, whose most extreme form is suicide, it is generally recognised that experience of physical or sexual abuse in childhood, often in combination with social deprivation, frequently plays a crucial role (Minsky, 1998 p. 153-154). Ali suffered from depression and substance misuse, vulnerabilities that he was unaware of, as he was of their importance, as were the authorities in charge of determining his application for asylum. The aim of highlighting his story is to display its importance in establishing the vulnerability of asylum seekers and how oblivious to its extent those making asylum decisions may be.

Such individual cases exist in a cultural context and there are potentially many other intersecting factors that may increase the vulnerability of an asylum seeker. As an example, according to Taherkhani *et al.* (2017) in their consideration of Iranian women and domestic violence, cultural norms and socio cultural factors including 'fear of negative consequences of help-seeking' may present as further barriers exacerbating vulnerability.

Challenges prior to the Care Act 2014

This section provides an overview of the challenges and uncertainties encountered by asylum seekers prior to the Act. It highlights a paucity of knowledge followed by presentation of innovative and strategic solutions to combat shortcomings of the support system. By means of a mother and child's case, the role of the local authority, advocacy and interagency collaboration in respect of asylum seekers are examined, questioning how effectively asylum seekers' need for care and support was met prior to the 2014 Act.

This was a CLOCK assisted case (The Community Legal Outreach Collaboration Keele (CLOCK), a legal/educational initiative)¹. The case highlights the multiple issues concerning a 34 year old (at the time of assistance) Syrian mother and her 4 year old daughter. Haya's husband was killed in Syria during the civil war. She had 5 children but initially only one child of 4 travelled with her to the UK. The summary of their route consisted of escaping Syria and fleeing to Turkey, then travelling from Turkey to Bulgaria. Whilst being granted refugee status in Bulgaria, the situation became unbearable. Finally, Haya and her youngest daughter left Bulgaria for the UK and sought asylum once again, contrary to the Dublin Regulation III (Regulation (EU) No.604/2013).

In October 2014, CLOCK received a referral in respect of Haya. In order to investigate further and provide a fresh consideration as a last resort and possible signposting, Haya's case was assigned to one of the authors of this chapter (Forough Ramezankhah). At the time she was fighting imminent deportation under the Dublin Regulation. In other words, since Haya was granted refugee status in Bulgaria, it would have not been permissible for her to submit a claim for asylum in the UK too. This is to prevent asylum shopping within the EU. An extract of Haya's witness statement reads as follows.

We left with the agent and we went to Turkey. We were in Turkey for around a month or so. The agent then took us to another country where we were fingerprinted. This was when I knew I was in Bulgaria. We were released after nine days and on our release the agent was outside and I do not know how he knew we were released, but I was glad as I thought I was safe and with the agent. The agent took us to a house and he spoke to me in a room

¹ The Community Legal Outreach Collaboration Keele (CLOCK) is an initiative launched on 24th October 2012 by the Law School at Keele University. By working with a number of partner organisations, CLOCK enables law students to provide vital help and support to disadvantaged communities through legal research, policy work and community legal education. CLOCK is part of the Litigant in Person Network (LIPN), a network committing to working in partnership to support each other to provide the best possible support to people seeking access to justice.

separate to the children. The agent said that he needed more money from me to get us to a safe country like Germany or Sweden, or the UK. It would cost me a further 5,000 Euros for each of us which is 30,000 Euros; money I did not have. I said I did not have that much money and I begged him to help me. (para 10)

Since Haya sought asylum in the UK with her young daughter, she was known to her local authority social services. It was established by her legal advisers that under the Dublin Regulation, the Home Office had made the correct and legal decision to return Haya and her young daughter back to Bulgaria. However, on a careful consideration of Haya's witness statement, it became apparent that she might have been a victim of trafficking.

He said that there was another way I could pay for the journey and that he could help me get a job that would pay for all of us within a year. I asked him what job this was, and he said that it involved going out on dates with different men and meeting their needs whatever they were. I was shocked as he basically wanted me to be a prostitute. I said that I could not do that. He said that it was not really an option and that he had already arranged for my new employers to meet me tomorrow. He said that they had already agreed the transaction and committed money to the agreement (that they had paid for my journey and I had to work it off). He then took me back to the room with the children and looked [sic] the door. Before locking the door, he said we should not try and escape as people were watching the house and in [the] event his friends were gangsters/Mafia would find me anyway. (para 10)

Firstly, it was established that despite the firm belief by the Home Office, Bulgaria may not be a safe country to return the mother and child to. At the time warnings were expressed by a number of non-governmental organisations that returns to Bulgaria should be halted until dignified treatment of asylum seekers and refugees could be ensured.

Despite some improvements in the material conditions in the camps, there are many new problems for refugees stemming from the speeding-up of the procedure to grant legal status and the increased number of granted legal statuses (only to Syrian citizens). The lack of coherent institutional frameworks for integration, together with the general economic conditions in Bulgaria, most often leave the holders of refugee and subsidiary statuses under the aegis of homelessness, unemployment, poverty, and social isolation. (Hristova *et al.* 2014, p.4)

Secondly, by examining Haya's witness statement, it was found that she may be a victim of trafficking. The author, having identified the National Referral Mechanism (NRM) for Potential Victims of Trafficking, referred the matter to the designated First Responders², and it is here that the main challenge presented. From the long list of nominated First Responders, the author made contact with the Home Office, Local Authority and finally the Salvation Army. The Home Office Caseworker had no knowledge of the NRM in general or more specifically in respect of asylum seekers who may have been victim of trafficking. The Local Authority also displayed a paucity of knowledge, although they are amongst the First Responders. Once the Salvation Army was contacted as the First Responder, upon a telephone interview with the potential victims (Haya and her daughter), they placed a halt on the Home Office deportation/return process to Bulgaria.

Since Haya was an asylum seeker and subject to immigration control, the First Responder, the Salvation Army, referred the case to the Home Office as one of the two Competent Authorities that makes the definitive decision based on a two-stage procedure. Stage one is the reasonable grounds and Stage two is the conclusive decision. The Salvation Army initiated stage one (Reasonable grounds). The NRM team has a target date of 5 working days from receipt of referral in which to decide whether there are reasonable grounds to believe the individual is a potential victim of human trafficking or modern slavery. Consequently, the mother and child were taken to a safe house. Subsequently, Stage two (Conclusive decision) is triggered, whereby during the 45 day reflection and recovery period the Competent Authority (Home Office, UKVI) gathers further information relating to the referral from the First Responder and other agencies. The Home Office found Haya and her daughter to be victims of trafficking and granted them Discretionary Leave to Remain in the UK.

From a practitioner's perspective, the Home Office caseworker's and Local Authority's lack of knowledge in respect of NRM and failure of these two First Responders to conduct a needs assessment showed a real risk in relation to care and support afforded to the mother and child. Practitioners from many different agencies, coming into contact with asylum seekers and having to conduct assessments and reach decisions, face a real challenge in that these frontline practitioners, who ought to provide support and care to asylum seekers, need a consolidated legal framework and

² To be referred to the NRM, potential victims of trafficking or modern slavery must first be referred to one of the UK's two competent authorities (CAs). This initial referral will generally be handled by an authorised agency such as a police force, the NCA, the UK Border Force, Home Office Immigration and Visas, Social Services or certain NGOs. The referring authority is known as the 'first responder'. For further information please see National Crime Agency site at <http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/specialist-capabilities/uk-human-trafficking-centre/national-referral-mechanism> (Accessed on 06/01/2019)

preferably one piece of legislation that has under its ambit all the relevant asylum and immigration laws. The two First Responders (UKBA at the time, now UKVI, and the Local Authority) that were approached initially were completely oblivious to the fact that an asylum seeking mother and her child can also be victim of trafficking and as a result in need of support of the local authority, at the very least in terms of their knowledge of the matter.

This paucity of knowledge in the case of Haya and her daughter displayed the lack of interagency collaboration at both strategic and operational levels. It also highlighted many shortcomings in the local authority's functions in terms of knowledge, advocacy and need assessment. The asylum seekers in this case were granted discretionary leave to remain mainly because the potentiality of trafficking was identified by one of the authors, a legal academic.

In respect of Haya and her young daughter's referral as potential victims of trafficking, additional considerations were required, even after a negative reasonable grounds or conclusive grounds decision, since children may still have safeguarding needs, especially if they are unaccompanied and seeking asylum. Consequently frontline practitioners should ensure that a negative NRM decision does not have an adverse impact on children's care and does not override the statutory duty placed on local authorities by the Children Act 1989.

It is notable that in the expanded definition of abuse and neglect in the Care Act 2014 Statutory Guidance (DHSC 2018a) a new category of modern slavery is included, incorporating human trafficking. This marks a policy change in that prior to the Act trafficking was clearly conceptualised as a criminal justice matter. The inclusion of modern slavery in the statutory guidance as a form of abuse means that it is now included in the remit of adult safeguarding in England (Kidd and Manthorpe, 2017), where it presents a new challenge to safeguarding practitioners due to the often organised rather than individual nature of the abuse.

SL v Westminster City Council [2013] is another case decided before the Care Act 2014. It concerns the scope of the obligation of local authorities under s.21(1)(a) of the National Assistance Act 1948 to provide accommodation to individuals who, by reason of age, illness, disability or any other circumstance, are in need of care and attention that is not otherwise available to them. According to s.21 (1A) of that Act, accommodation may not be provided to persons subject to immigration control if their need for care and attention has arisen solely because they are destitute or because of the physical effects, or anticipated physical effects, of destitution.

The need has to be for care and attention which is not available otherwise than through the provision of such accommodation. As any guidance given on this point in this judgment is strictly obiter, it would be unwise to elaborate, but the care and attention obviously has to be accommodation-related. This means that it has at least to be care and attention of a sort which is normally provided in the home (whether ordinary or specialised) or will be *effectively useless* if the claimant has no home. (Para 48, emphasis added)

The Supreme Court draws a distinction between the care and support to which accommodation is a 'critical part' and that to which accommodation is 'essential', in which the provision of care and attention will be 'effectively useless' in the absence of accommodation. The Supreme Court ruled that in SL's case the provision of accommodation was a critical part of his social rehabilitation but not an essential part and as a result its absence did not render the care and support effectively useless. Care and attention can be, and is provided, independently of SL's need for accommodation or its location.

The position after the Care Act 2014: Restrictions compensated by innovative and strategic management

Now several years into its implementation, it is debatable whether the Care Act has delivered what it promised in practice. The new legal framework says little about provision for asylum seekers. In the wording of the Act, there is no mention of the word refugee since no discrimination can be made against a refugee in respect of the provisions afforded to any citizen in respect of rights and privileges. Reference to asylum seekers *per se* is not made within the Act, or in the Statutory Guidance (DHSC, 2018a). Section 21 of the Act re-states the position applicable pre-Care Act, referring to the Immigration and Asylum Act 1999 and the Nationality, Immigration and Asylum Act 2002, and excluding from local authority care and support people who are subject to immigration control whose needs arise from destitution.

Local authorities do however hold key responsibilities in relation to asylum seekers. Support is available for asylum seekers with needs for care and support arising otherwise than through destitution as previously and the appearance of care and support needs should trigger a proportionate assessment. Where there are particular communication needs the process should be adapted accordingly. Paragraph 6.23 of the Statutory Guidance (DHSC, 2018a) states that 'local

authorities should consider whether the individual would have substantial difficulty in being involved in the assessment process and if so consider the need for independent advocacy.’ Consideration of whether a specialist or interpreter would be needed to support communication is also required. It would be valid criticism to note that the availability of this additional route to support is somewhat hidden, given there is no specific reference in the Statutory Guidance to the position of asylum seekers. In the UKVI leaflets providing advice and information to asylum seekers entering the country, this brief paragraph under the heading; Disability Care Needs’ appears in leaflet 4 ‘Your responsibilities and rights as an asylum applicant’,

If you have a disability or special care need, you can contact your local social services to request a Community Care Assessment. The local authority may decide to offer you accommodation and support.

Either leaflet 3, ‘Legal advice, additional help and assistance’, or leaflet ‘Asylum Support’ would be the more logical place for this information but they remain silent.

Below a reported case is considered to demonstrate that the Act has not made a significant progress in terms of care and support to asylum seekers. In fact, the care and support offered to asylum seekers through the Act seems to be more of a restriction than support. The Act provides the theory and much needed consolidated framework for care provision. However, practice under its provisions has taken its time to go through a process of trial and error while leaving much to the innovative and strategic management of professionals. Closing gaps in the provisions for vulnerable asylum seekers who are subject to immigration control has thus been left to a ‘hit and miss’ approach.

Section 18 of the Care Act covers the duty to meet needs for care and support. The leading case of *R(SG) (a protected party by her litigation friend the Official Solicitor) v London Borough of Haringey* [2015], the first case to be heard on the accommodation provisions of the Care Act 2014, is illustrative of this innovative and strategic approach. SG, an Afghan national, was an asylum seeker woman; she was accommodated by the Home Office in London Borough of Haringey while her asylum claim was pending. SG had physical health problems and significant mental health issues, described in the case at paragraph 7, as ‘a victim of torture, rape and emotional and physical abuse. She suffers from severe mental health problems, including complex PTSD, insomnia, depression and anxiety. She speaks no English and is illiterate. She is in need of services to meet her needs for care and support.’

She had difficulty with basic self-care, food preparation and management of medication. It was argued that Haringey had a duty to accommodate her under Care Act 2014 due to her care needs. Haringey argued that the legal tests for this from case law prior to the Care Act 2014 were no longer applicable. The High Court quashed Haringey's assessment of SG's needs under the Care Act on the grounds that it was conducted without an independent advocate. At paragraph 40 the judge stated 'this appears to me the paradigm case where such an advocate was required, as in the absence of one the claimant was in no position to influence matters ... I think the assessment was flawed as a result and must be redone.' It was argued that she was not assigned an advocate nor was she assessed by a suitably trained and competent agent, contrary to regulation 5 of the Care and Support (Independent Advocacy Support) Regulations 2014.

Also the case refers to the power of the local authority and the ramification of its discretion, which did not adequately consider the possibility of a duty to provide accommodation to meet SG's needs. The Court of Appeal in *SG v Haringey* [2017] dismissed the claimant's appeal against the High Court's decision. Subsequently SG was granted refugee status and then was accommodated by Haringey following termination of her asylum support as a result of her new immigration status.

The decision in *R (On the Application of GS) v London Borough of Camden (Rev 1)* [2016] raises a significant point - that a number of other avenues of redress can be explored in the event of refusal in relation to a need assessment under the Care Act; these may include raising issues under the Equality Act 2010, European Convention on Human Rights, and Localism Act 2011. Following an assessment under the Care Act, it was concluded that the Claimant did not have a need for care and support, in particular a need for accommodation, and as a result they brought a judicial review. The local authority's position was that the need for accommodation was not a need for care and support within the Care Act 2014 and that it had no power under statute to provide for such a need; the Claimant's situation was one that did not put her at risk of a breach of her rights under the European Convention on Human Rights. The authority had made the decision not to exercise its power to provide care and support under section 18 or 19 of the Care Act 2014 and section 1 of the Localism Act 2011³. The Court decided that the Defendant's decision not to exercise the power available to it under section 1 of the Localism Act was unlawful.

³ The general power of competence is a power available to local authorities in England to do 'anything that individuals generally may do' (S1(1) of the Act); even though this may be 'in nature, extent or otherwise... unlike anything that other public bodies may do', it accommodates for their functional creativity significantly.

This case demonstrates the utilisation of the Localism Act as a means of meeting the needs of people who were short of meeting the threshold of the Care Act in order to avoid human rights violation. This point once again illustrates innovation as a means of closing the gaps that the Care Act leaves behind. In other words attempts are made to reach a fair, just and equitable outcome in cases where the Care Act does not meet the need of the most vulnerable.

The restrictive and exclusionary measures enforced by legal rules reinforce the need for innovative and strategic approaches in providing accommodation and support in respect of asylum seekers and failed asylum seekers. Reference must also be made to other exclusionary legislation. Section 55, 'Late claim for asylum: refusal of support', contained in the Nationality, Immigration and Asylum Act 2002 authorises withdrawal of support from asylum seekers. Section 55(1) broadly states that the Secretary of State may not provide or arrange for the provision of support to a person if her claim was not made as soon as reasonably practicable after her arrival in the United Kingdom. Equally section 9 'Failed asylum seekers: withdrawal of support' of Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and section 115 of the Immigration and Asylum Act 1999 are further evidence of restrictive measures arguably for deterrent purposes (Da Lomba, 2005). A hostile environment designed to make it uncomfortable to remain in the UK and the threat of destitution are an incentive to leave (Randall, 2015).

Local authority social services may be able to provide accommodation under section 18 of the Care Act 2014, or under the Localism Act 2011. The Localism Act should be considered and used for those who are likely to be solely destitute, without any appearance of care and support needs, pending enquiries. For people prohibited from receiving Care Act support under section 54/schedule 3 of the Nationality, Immigration and Asylum Act, the human rights/EU treaty rights exceptions justify use of section 19 of the Care Act to avoid an imminent breach of human rights or EU treaty rights.

Conclusion

UKVI, a part of the Home Office, is responsible for the provision of accommodation and support for the vast majority of asylum seekers in the UK (previously this role fell to the UK Border Agency and before that to the National Asylum Support Service). Local authority social services also play a

This was provided for in the Localism Act 2011 and replaces the well-being powers in the Local Government Act 2000. It was brought into force for local authorities on 18 February 2012.

parallel role in providing accommodation and support to asylum seekers, failed asylum seekers or those with accommodation, care and support needs. The chapter has drawn on wide ranging materials to highlight the inherent vulnerability of asylum seekers in general. Many asylum seekers may have known and unknown underlying issues including mental health and anxiety concerns and educational deficiencies.

Asylum seekers face a system in which at each step of the way they need to prove their eligibility for legal, social and educational support. Similar challenges and complexity are also shared and experienced by frontline practitioners. Social workers need to have a workable knowledge of a number of fields in association with the provision and support they may need to offer to asylum seekers and their potential paucity of knowledge may cost human beings their lives. One way to tackle these challenges would be to bring the law, policy and practice in respect of asylum seekers under the umbrella of one legal regime. However, in the context of the legislative restrictions that asylum seekers are currently subject to, the potential safeguards and exceptions depend upon the innovative and strategic management of individual cases by practitioners and rely heavily on their legal and cultural capital.

Cast study: Arya and Beata

Arya and Beata were a married couple and environmentalists who lived in Iran with their daughter Bahar and Beata's elderly mother Azar. Caught up in a political power struggle in a midst of persecution and prosecution of environmentalists, the couple are accused of spying and were imprisoned. Beata died in prison under suspicious circumstances. Having feared for their lives, Azar and her grandchild Bahar fled to the UK. Azar speaks no English, has severe arthritis and impaired sight due to sever cataracts. Bahar is 15 and has a learning disability. Bahar and her grandmother at the moment are staying with Iranian acquaintances on a temporary basis and have claimed asylum. The pair has had the screening but has not had the Asylum Interview yet.

While on bail for the death of his wife in prison and fearing for his life, Arya travels with a trafficker and manages to escape on arrival in the UK but is extremely traumatised and has no documents. He finds his family but there is no room for them to remain with the friends. Arya intends to seek asylum in the UK too. They have very few clothes, possessions or money. The friends contact the Home Office Visas and immigration and local authority.

Commentary

A health and social care assessment of needs should be carried out by social services in respect of Azar, Arya and Bahar. It must be noted that even through an interpreter these three asylum seekers (Arya is to seek asylum) may not be able to articulate their needs. Therefore 'needs assessment' ought to be carried out with language, knowledge and cultural sensitivity. As a child, Bahar's immigration status is irrelevant as she is subject to The Children Act 1989 and the associated guidelines and regulations.

Home office staff and relevant commercial partners should refer for needs assessment any adult asylum seeker who appears to have a care need. (For a more comprehensive coverage please see *Asylum seekers with care needs. Version 2. Published for Home Office staff on 03 August 2018* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/731907/Asylum-Seekers-With-Care-Needs-v2.0ext.pdf)

Non-urgent needs:

Where a newly arrived asylum seeker has potential care needs that do not appear to be urgent, or otherwise to require assessment prior to dispersal, assessment of those needs may await the person being dispersed. A person dispersed to a local authority's area should be considered ordinarily resident in that area, and any needs or carer's assessment will be requested from that local authority.

Urgent needs:

Where a person presents with urgent needs that may require any of the following:

- residential care
- specific accommodation
- day to day assistance with basic personal care

a needs assessment should be requested from the local authority in whose area the adult is present at the earliest practicable point in the process. For example, where a person claiming asylum at a port of entry presents with urgent care needs, the local authority in whose area the port is situated should be requested to do an urgent assessment. If in immediate need of medical care, it will be necessary in the first instance to refer the individual to the nearest hospital.

Urgent needs where the person has already been accommodated by Home Office:

Where, exceptionally, a person has already been accommodated by the Home Office before an urgent care need is revealed and therefore no request for assessment has been made, an urgent assessment must be requested from the authority in whose area the accommodation is situated. Such an assessment should be requested by the first responder (for instance the accommodation provider, the caseworker or other person, using specialist safeguarding staff where appropriate) when made aware of the care need. Where a local authority is requested to do a needs assessment either because the asylum seeker is ordinarily resident in its area, or is present in its area but of no settled residence, that local authority is obliged to do so in accordance with the terms of the Care Act 2014.

Priority actions required after the needs assessment has been carried out are:

- GP registration for all three
- School enrolment for Bahar
- English class for all

Recommended reading

Williams, L. (2004) 'Refugees and asylum seekers as a group at risk of adult abuse', *Journal of Adult Protection*, 6, 4, 4-15.

Hayes, D and Humphries, B. (2004). *Social Work, Immigration and Asylum: Debates, Dilemmas and Ethical Issues for Social Work and Social Care Practice*. London and New York: Jessica Kingsley.

Aspinall, P. and Watters, C. (2010). *Refugees and Asylum Seekers: A Review from an Equality and Human Rights Perspective*. London: Equality and Human Rights Commission.

SCIE (2015) *Good Practice in Social Care for Refugees and Asylum Seekers. SCIE Guide 37*. London: Social Care Institute for Excellence.

References

Da Lomba, S. (2005) 'The Threat of Destitution as a Deterrent against Asylum Seeking in the European Union'. *Refugee* 23(1): 81–93.

Farmer, N. J. (2017). 'No Recourse to Public Funds', insecure immigration status and destitution: the role of social work? *Critical and Radical Social Work*, 5(3), 357-367.

Hollway, W and Jefferson, T (2013) *Doing Qualitative Research Differently: A Psychosocial Approach* (2nd ed) London: Sage.

Hristova, T., Apostolova, R., Deneva, N. and Fiedler, M. (2014) Trapped in Europe's Quagmire: The Situation of Asylum Seekers and Refugees in Bulgaria. bordermonitoring.eu
<http://bordermonitoring.eu/wp-content/uploads/reports/bm.eu-2014-bulgaria.en.pdf>

Humphries, B. (2004). An unacceptable role for social work: Implementing immigration policy. *British Journal of Social Work*, 34(1), 93-107.

Kaja (Political asylum; standard of proof) (Zaire) [1994] UKIAT 11038 (10 June 1994)
Koyazia Kaja v. Secretary of State for the Home Department, HX/7-673/93 (11038), United Kingdom: Asylum and Immigration Tribunal / Immigration Appellate Authority, 10 June 1994, available at: https://www.refworld.org/cases,GBR_AIT,3ae6b68e0.html [accessed 9 December 2018]

Kidd, J and Manthorpe, J (2017) Modern Slavery – the adult safeguarding interface. *Journal of Adult Protection*, 19:3, 158 -166

Minsky, R. (1998). *Psychoanalysis and Culture: Contemporary States of Mind*. Cambridge: Polity Press.

Ramezankhah, F. 'Asylum Stories: A Socio-Legal Study of Iranian Claims for Asylum in the UK' (PhD thesis), Keele University 2013).

Ramezankhah, F. (2017). The Tale of Two Men: Testimonial Styles in the Presentation of Asylum Claims. *International Journal of Refugee Law*, 29(1), pp.110-137.

Randall, A. (2015). *Challenging the destitution policy: Civil society organisations supporting destitute migrants (Working Paper 131)*. University of Birmingham.

Shapiro, M. (2008). *The war inside: Child psychoanalysis and remaking the self in Britain, 1930-1960*. Unpublished PhD Thesis (Abstract). Rutgers The State University of New Jersey - New Brunswick.

Taherkhani, S, Negarandeh, R, Simbar, M and Ahmadi, F (2017) Barriers to seeking help among abused Iranina women. *Journal of Adult Protection*, 19:5, 261-273
<https://www.keele.ac.uk/law/legaloutreachcollaboration/>

UN High Commissioner for Refugees (2011) *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*. UNHCR.