R v LB Hammersmith and Fulham ex p M; R v LB Lambeth ex p P and X; R v Westminster CC ex p A

Queen's Bench Division
Collins J
8 October 1996

Destitute asylum-seekers unable to provide for themselves or otherwise obtain the basic necessities of life, such as food, shelter and warmth, were persons in need of 'care and attention' for the purposes of National Assistance Act 1948 s21.

Facts

The applicants were single, male asylum-seekers who were:

a) in reasonable physical and mental health; but were
b) without any financial resources of their own, or anywhere to live, and without the right to obtain employment, or friends or relatives in the United Kingdom able to look after them; and
c) by virtue of Asylum and Immigration Act 1996 (AIA) ss9, 10 and 11, ineligible for state benefits such as income support, housing benefit, state housing and homelessness assistance.

Facing months, perhaps years, of utter destitution while their asylum appeals were processed, unless they returned to their countries of persecution, the applicants sought 'residential accommodation' (including board and other basic necessities of life) from the respondent local authorities on the ground that they were in need of 'care and attention' within the meaning of National Assistance Act 1948 (NAA) s21. The respondents rejected their applications on the ground that NAA 1948 s21 only applied to those who needed assistance with day-to-day living functions as the result of physical or mental impairment and that the applicants' needs were simply for (shelter and) money.

Held:

1 A person is in need of 'care and attention' for the purposes of NAA 1948 s21 if s/he is unable to fend for him/herself, ie, provide for the bare necessities of life (shelter, warmth and food), and there is no other source of assistance available.

2 The expression 'any other circumstances' in NAA 1948 s21 ('persons aged 18 or over who by reason of age, illness, disability or any other circumstances are in need of care and attention') is intended to cover unforeseen eventualities and to provide a safety net to protect those in need of care and attention. However, if the expression fell to be construed *ejusdem generis* the correct genus was not persons suffering from such physical and/or mental impairment as to require care and attention in respect of their day-to-day functions, but persons who were unable to fend for themselves.

3(a) Since the AIA 1996 specifies a number of different benefits for which in-country and appellate asylum-seekers are ineligible the court cannot assume that Parliament intended such asylum-seekers to be ineligible for all possible sources of assistance.

(b) NAA 1948 is to be construed in its amended form, but: (i) construing the original wording can be of assistance; and (ii) it can be assumed in the absence of clear words to the contrary that the meaning of the original has not changed.

A (c) It is to be presumed that Parliament has legislated in accordance with the laws of humanity or, in modern parlance, fundamental human rights.

Cases referred to in judgment:

Attorney-General v Lamplough (1878) 3 Ex D 214.

B *R v Greater Manchester North District Coroner ex p Worch and Brunner* [1988] QB 513; [1987] 3 WLR 997; [1987] 3 All ER 661; (1988) 152 JP 498; (1987) 131 SJ 1392; (1988) 152 JPN 574; (1987) 84 LS Gaz 3254, CA.

R v Inhabitants of Eastbourne (1803) 4 East 103, HL.

R v Oldham MBC ex p Garlick [1993] AC 509; [1993] 2 WLR 609; [1993] 2 All ER 65; C (1993) 137 SJ 109; 91 LGR 287; (1993) 25 HLR 319; [1993] 2 FLR 194; [1993] 2 FCR 133; (1993) 143 NLJ 437; *Times*, 19 March; *Independent*, 19 March; *Guardian*, 19 March, HL.

R v RB Kensington and Chelsea ex p Kihara (1996) 29 HLR 147; *Times*, 10 July, CA.

R v Secretary of State for Social Security ex p B and Joint Council for the Welfare of D *Immigrants* [1997] 1 WLR 275; [1996] 4 All ER 385; (1996) 29 HLR 129, CA.

Legislation/guidance referred to in judgment:

National Assistance Act 1948 s21 – Poor Law Act 1930 s15(1)(b) – Asylum and Immigration Act 1993 s6 – Housing Act 1985 Part III – Asylum and Immigration Act E 1996 ss9, 10 and 11 – Secretary of State's Approvals and Directions under s21(1) of the National Assistance Act 1948 (Appendix 1 to LAC(93)10).

This case also reported at:

(1996) 93(42) LS Gaz 28; (1996) 140 SJLB 222; (1996) *Times*, 10 October; F *Independent*, 16 October, QBD.

Representation

D Pannick QC and S Knafler (instructed by Clore & Co) appeared on behalf of the applicants.

G M Beloff QC and S Giffin (instructed by the London Borough of Hammersmith and Fulham and the London Borough of Lambeth) appeared on behalf of the London Borough of Hammersmith and Fulham and the London Borough of Lambeth.

M Beloff QC and C Jones (instructed by the Legal Department, Westminster City Council) appeared on behalf of Westminster City Council.

H N Pleming QC and S Kovats (instructed by the Treasury Solicitors) appeared on behalf of the Secretary of State for Health.

Judgment

MR JUSTICE COLLINS: These four applications for judicial review raise an identical point as to the construction of Section 21(1)(a) of the National Assistance Act I 1948. Each applicant is an asylum seeker who, because he failed to make his application on his arrival in the United Kingdom, is ineligible for any social security benefits or for housing under Part III of the Housing Act 1985: see Asylum and Immigration Act 1996 sections 9 (which relates to housing) and 10, 11 and Sched- J ule 1 Part I (which relate to child benefits and social security benefits). So long as they are claiming asylum, they are entitled to remain in this country and are protected by Section 6 of the Asylum and Immigration Appeals Act 1993 which reads: –

> *During the period beginning when a person makes a claim for asylum and ending when the Secretary of State gives him notice of the decision on the claim,* K *he may not be removed from, or required to leave, the United Kingdom.*

This protection reflects the United Kingdom's obligations as a signatory to the Geneva Convention of 1951.

None of the applicants is entitled to work for the first six months of his stay while his application is being considered. None of the applicants has funds of his own: it would be most unusual for an asylum seeker to manage to escape with funds and, if he were indeed an economic migrant rather than a genuine refugee, he would have no means. Furthermore, none of the applicants has friends to whom he can turn for assistance. Thus, unless he can find help from charitable sources, he has no means of livelihood. Each applicant is destitute and faces the dilemma that he must either starve without a roof over his head or return to the country from which he has fled.

In the case of 'M', I have evidence before me from Kate Smart of the Refugee Council, which exists to provide services for asylum seekers and refugees in the United Kingdom. She deposes thus in paragraphs 6 to 9 of her affidavit: –

> *6. The Department of Social Security has stated that up to 40,000 people could be affected by these changes by the end of 1996. Between July 24th and August 16th 1996 the advice team at the Refugee Council saw 430 people who are no longer entitled to benefits and of those many are literally homeless and are being required to sleep 'rough' on the streets as Local Authorities contend that they have no duty to house them.*
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> *7. Many asylum seekers flee from the country of their persecution with little or no opportunity to bring any of their possessions with them. As a result many arrive in the United Kingdom penniless and destitute. Advice Team clients are given information about their rights and entitlements in the United Kingdom.*
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> *8. Through contacts with other charitable institutions the Refugee Council has been able to negotiate a small sum of money to support particularly vulnerable clients. This fund ends at the end of September. Funds are extremely limited and can only be used for short periods of time (a maximum of three days) . There are very severe restrictions placed on the availability of funds to assist these clients.*
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> *9. The Refugee Council is actively seeking free beds. A few Housing Associations, specialising in working with the street homeless, have made free beds available but there are less than 20 in total. There are no free beds in London. There are also no beds provided by churches and other voluntary groups. Obviously the number of free beds available is negligible bearing in mind that there were 400 destitute asylum seekers visiting our advice team during the period of only two weeks.*

She goes on to describe the situation as 'dire' . Certainly, so far as accommodation is concerned, all organisations, such as the Salvation Army, which provide accommodation for the homeless do so on the basis that rent is payable from social security benefits to which those they assist are entitled. That cannot help these asylum seekers.

None of this evidence is disputed. It is in these circumstances that the applicants sought help from the respondent local authorities under s21(1) of the National Assistance Act 1948. Their only connection with the relevant council was that they happened to be sleeping rough in or had been living temporarily in the area or were directed to it by solicitors to whom they went for advice and assistance. Section 21(1) as amended reads as follows: –

> *Subject to and in accordance with the provisions of this Part of this Act, a local authority may with the approval of the Secretary of State, and to such extent as he may direct shall, make arrangements for providing –*

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(a) residential accommodation for persons aged 18 or over who by reason of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them; and

(aa) resident (sic) accommodation for expectant and nursing mothers who are in need of care and attention which is not otherwise available to them.

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The authorities denied that they had any responsibility to act under s21(1). Broadly speaking, they said that the applicants were not in need of care and assistance, within the meaning of the section. In her affidavit on behalf of Westminster, the Director of Social Services explained her and her authority's approach to s21(1) thus: –

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Care and attention is understood to be needed where a person's mental or physical condition causes that person to be at risk and to require the care and attention of others in respect of his day to day functions. It is not understood to refer to financial needs nor pure housing needs.

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The argument was encapsulated by Mr Pleming QC, for the Secretary of State, in the assertion that the applicants were in need of money, not care and attention, and so were not within the ambit of the subsection. It was refined by reference to the *ejusdem generis* rule, it being submitted that 'any other circumstances' referred to in s21(1)(a) were limited to circumstances relating to the physical condition of the individual seeking assistance.

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These applications therefore turn on the true construction of s21(1)(a) of the National Assistance Act 1948. It is important to bear that in mind since some of the argument has been taken up with consideration of the intention of Parliament in enacting the relevant provisions of the Asylum and Immigration Act 1996. That Act nowhere refers to the 1948 Act. Accordingly, whatever Parliament intended in the 1996 Act cannot affect the construction of s21(1)(a) of the 1948 Act. Nevertheless, the 1996 Act is clearly relevant in that it is the cause of the destitution which has led the applicants to seek assistance under s21(1)(a) of the 1948 Act and it may be material if Parliament, and others who have considered the plight of these asylum seekers, believed that there would be no redress under s21(1)(a).

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Before considering the statutory provisions in the 1948 Act and the history of the 1996 Act in more detail, I should recite the essential facts of the four cases. Each is referred to by a letter only pursuant to orders made by Hooper J for reasons which are obvious. If they are genuine refugees, there is a risk that the authorities in the country from which they have fled will take reprisals against their families or may even pursue them here.

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'A' is an Iraqi Kurd. He arrived in this country in a lorry, travelling overland from Turkey, on 1st August 1996. He applied for asylum to the Home Office that day, claiming that he had fallen foul of the security forces in Iraq, where he had been imprisoned and tortured, and would suffer the same or worse should he be returned. Since his arrival in London he had been destitute, having no money, no-one to turn to and nowhere to live. On 2nd August 1996 he applied to Westminster for assistance, but was refused on the ground that no duty was owed to him under s21(1) of the 1948 Act. He was in good health, although a diabetic needing insulin. Arrangements were made for insulin to be supplied through the NHS. Otherwise, he could not be helped and was referred to the Refugee Council. He, as all the applicants, has been provided with temporary accommodation and assistance since being granted leave to move for judicial review.

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'P' is a Rumanian national. He arrived in the United Kingdom by lorry on 30th July 1996. He says in his affidavit that he passed through immigration control

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before he had the opportunity to claim asylum, but went to the Home Office later the same day and made his claim for asylum. He had, he said, been threatened by the police that he would be falsely accused of offences and convicted and imprisoned on the basis of perjured evidence. He had slept rough under Waterloo Bridge and, following a referral to the Refugee Council, who were unable to assist, had been passed on to Lambeth Council. On 1st August his application was refused. He had nowhere to live, no money, no means to buy food or shelter, no friends or contacts and spoke no English. But, since he did not fall within the criteria applied by Lambeth to determine whether he was in need of community care, Lambeth could not help him. Those criteria are limited to old age, some physical or mental illness or disability or learning difficulties.

'M' is Algerian. He arrived at Dover by boat on 28th July 1996. He did not claim asylum on entry because, he says, he was scared that he would be returned immediately if he did, but went to the Home Office the next day. He states that his life is at risk. Apart from two nights when he was allowed to stay in a flat belonging to an Algerian he met, he slept rough in Hyde Park until 7th August, when he was helped by the Refugee Council temporarily. By the time he was put in touch with his solicitor, he was described as 'very dishevelled and unkempt and quite traumatised'. It was obvious that he had been sleeping rough and had not eaten for some time: he was immediately given food. He is friendless, penniless and completely destitute. His application was refused by Hammersmith and Fulham on the ground that he had 'no needs beyond that for shelter and money' and so was not in need of care and attention.

'X' arrived in the United Kingdom from China on 19th May 1996. He speaks no English. He gives a harrowing account of persecution in China, consisting of long confinement in labour camps and torture. He was, he says, so traumatised by what had happened that he was too scared to make himself known to the authorities here and slept rough until he was told to go to seek help from the United Nations High Commissioner for Refugees. This he did and on 10th June 1996 made his claim for asylum to the Home Office. He managed to obtain accommodation, but on 25th July 1996 (on the coming into force of the 1996 Act) his benefits were stopped and he was eventually evicted on 15th August 1996. He is now destitute. His application to Lambeth was refused because he was not elderly, disabled or ill.

The pattern is thus similar. The local authorities each point out the financial constraints upon them and justify the narrow interpretation they place on s21(1) of the 1948 Act on the basis that they will be quite unable to cope with those who clearly fell within its terms if they also have a duty to those who are in difficulties because of lack of money but are otherwise healthy and not in need of care and attention. I have great sympathy with them, but financial constraints and the problems which will be created if the duty is wider than was believed are irrelevant to the proper construction of the section. If the duty exists, it must be performed. How it is to be funded is a matter to be sorted out between the authorities and central Government, particularly as the problem is likely to be predominantly one which arises in Central London.

The background to the problem lies in the enormous increase in asylum seekers arriving in this country. In the view of the Home Office, the vast majority of these are not genuine refugees but are economic migrants. The statistics show that in fact about 25% are ultimately given leave to remain, only 4–5% on the basis that they are refugees within the meaning of the 1951 Convention; the balance are given exceptional leave because they are, for example, fugitives from civil war or torture for a non-convention reason. The 75% refused are regarded as economic

A migrants. The numbers applying have put an enormous pressure on the Home Office officials responsible for determining the claims and upon the appellate authorities. Thus there are lengthy delays in considering the claims and in the meantime the applicants have to be permitted to remain in the United Kingdom. By December 1995 there were more than 69,000 outstanding claims. The result B was that it was taking far longer than six months and sometimes as long as two to three years to determine claims. If the Home Office reject a claim, there is a right of appeal. This is usually exercised so that there are yet further delays. I was told that there is now a backlog in the appellate system of some 60,000 cases and it is not reducing. Since applicants must not be removed until any appeals are deter- C mined (see Section 8 of and Paragraphs 7, 8 and 9 of Schedule 2 to the Act of 1993), they may remain here for years. The cost is huge, amounting to some £200m per year.

Faced with this and the prospect of increasing numbers, the Government decided to act to deter bogus applicants. It did so by enacting the Social Security D (Persons from Abroad) Miscellaneous Amendments Regulations 1996 (SI 1996 No 30) which came into force on 5th February 1996. The effect of these was to deny any social security benefits to asylum seekers who did not make their applications for asylum on their arrival at the port of entry. The validity of those Regulations was challenged and, following rejection of the application for judicial review E by the Divisional Court, on 21st June 1996 the Court of Appeal by a majority (Simon Brown and Waite LJJ) decided that they were *ultra vires*: see *R v Secretary of State for Social Security ex parte B and Joint Council for the Welfare of Immigrants* [1996] 4 All ER 385.

The majority were particularly moved by the effect the Regulations would have F on genuine asylum seekers.

At pages 21C to 23D of the transcript, Simon Brown LJ paints a graphic picture of the difficulties these asylum seekers are likely to face. Those difficulties are exacerbated by the decision to refuse housing under Part III of the Housing Act, 1985, so that even the vulnerable have no protection. I do not need to recite the G passage *in extenso*. At page 23C–D he summarises the position: –

> *Truly, deprived asylum seekers are in a unique position and one which threatens total destitution. No doubt, as Mr Richards [who was appearing for the Secretary of State] submits, voluntary organisations do what they can to help. The need, however, far exceeds their capacity.*

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At page 36B–E, Simon Brown LJ concludes his judgment in these words:

> *For the purposes of this appeal, however, it suffices to say that I for my part regard the Regulations now in force as so uncompromisingly draconian in effect that, they must indeed be held* ultra vires. *I would found my decision not on the narrow ground of constructive refoulement envisaged by the UNHCR and rejected by the Divisional Court, but rather on the wider ground that rights necessarily implicit in the 1933 Act are now inevitably being overborne. Parliament cannot have intended a significant number of genuine asylum seekers to be impaled on the horns of so intolerable a dilemma: the need either to abandon their claims to refugee status or alternatively to maintain them as best they can but in a state of utter destitution. Primary legislation alone could in my judgment achieve that sorry state of affairs.*

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Waite LJ expressed his agreement in a short judgment which is worth citing in K full (pp 36F–38B): –

The principle is undisputed. Subsidiary legislation must not only be within the vires *of the enabling statute but must also be so drawn as not to conflict with statutory rights already enacted by other primary legislation. Once that is accepted, the question in the present case becomes one of degree and extent. Do the impugned regulations deprive a significant number of asylum seekers of the rights conferred by the Asylum and Immigration Appeals Act 1993 to remain in the United Kingdom while their claims are considered and any appeal is disposed of? The public as a whole, and those asylum seekers with genuine claims to press in particular, have an interest in discouraging spurious or ill-founded applications. The guestion is not to be answered, however, by appeal to such considerations of policy, persuasive though they may be. Nor, in my judgment, is the answer to be found through an inquiry as to whether the effect of the regulations on the rights conferred by the 1993 Act is direct or indirect. It involves looking with an objective eye at the practical result for most of those affected by the regulations. The class of asylum seeker comprehended by the regulations is a wide one – embracing all those who have made their application on arrival or who are awaiting the determination of an appeal against refusal of an application. They are not permitted to work for reward. Among their number there may be a few – but it can only be a very few – who are able to benefit from the efforts of the charities who work devotedly but with severely limited resources to house and help asylum seekers. But the effect of the regulations upon the vast majority will be to leave them without even the most basic means of subsistence. The stark question that has therefore to be answered is whether regulations which deprive a very large number of asylum seekers of the basic means of sustaining life itself have the effect of rendering their ostensible statutory right to a proper consideration of their claims in this country valueless in practice by making it not merely difficult but totally impossible for them to remain here to pursue those claims. For all the reasons stated by Lord Justice Simon Brown, with which I agree entirely, the answer to the question, when it is so expressed, can only, in my view, be yes. I would allow the appeal.*

On 25th June 1996 the same court, this time unanimously, decided that asylum seekers could be 'vulnerable' within the meaning of s59(1)(c) of the Housing Act 1985 and so have a priority need for accommodation, thus imposing a duty on a local authority to secure that accommodation is made available: see *R v Royal Borough of Kensington & Chelsea ex p Kihara* (1996) 29 HLR 147, CA. The language of s59(1)(c) is important in the light of the *ejusdem generis* argument raised by the respondents and the Secretary of State in relation to s21(1)(a) of the 1948 Act. It reads, so far as material: –

The following have a priority need for accommodation . . .
(c) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason . . .

It was argued that the specified conditions in s59(1)(c) all related to some bodily or mental infirmity and therefore constituted a genus. Accordingly, it was submitted, 'other special reason' should be construed so as to be limited to some other comparable weakness or frailty. This argument was rejected. Neill LJ said at p17G–18D of the transcript: –

(1) 'Vulnerable' means vulnerable in the context of a need for housing accommodation.

(2) The ejusdem generis *rule has no application for the purpose of construing 'other special reason'. In my judgment this is a free-standing category which,*

A *though it has to be construed in its context, is not restricted by any notion of physical or mental weakness other than that which is inherent in the word 'vulnerable' itself. Though the word 'reason' is in the singular I am satisfied that the housing authority would be entitled to look at a combination of circumstances: cf* Bowers *case (supra) at 246A.*

B *(3) The word 'special' indicates that the difficulties faced by the applicant are of an unusual degree of gravity, and are such as to differentiate the applicant from other homeless persons. On the other hand it is to be remembered that there is a special provision in section 59(1)(d) to cater for persons who are homeless 'as a result of an emergency such as flood, fire or other disaster'.*

C *(4) Though I appreciate the enormous burden placed on housing authorities by the problem of homelessness the words 'special reason' seem to me to require, as no doubt in fact takes place, a careful examination of circumstances of the individual applicant.*

D And at p19C–F of the transcript he explained why an applicant could be treated as vulnerable, saying: –

One turns therefore to the personal circumstances of the appellants. I can take the circumstances of Miss Araya as an example. She has no capital. She has no income. She is prohibited from obtaining employment and therefore has no
E *opportunity of earning any money. She has no family or friends in this country. According to the fax from Shelter dated 26 February 1996, she has no knowledge of the English language. Apart from any emergency accommodation which has been made available to her, she is homeless.*

Her situation is certainly not unique, but her vulnerability results from circum-
F stances which mark her out from the great majority of homeless people. The situation of the other appellants is similar.

Simon Brown LJ dealt with the *ejusdem generis* argument at pp23E–24E of the transcript, saying: –

G *I turn briefly to the respondent's* ejusdem generis *argument. Although we were treated to extensive citation of the authorities in this field, the governing principles can. I think, be briefly stated. The* ejusdem generis *rule can never apply unless the examples given (a) are referrable to a clearly ascertainable genus and (b) do not exhaust that genus. Neither the use (as here), nor the absence, of the*
H *word 'other' is decisive. The rule itself is a servant and not a master, useful only so long as it assists in discovering the legislative purpose of the enactment.*

The central difficulties faced by Mr Straker are, it seems to me, these. First, that the genus represented by the 4 examples given – old age, mental illness, mental handicap and physical disability – all potentially disabling bodily characteristics
I *– exhausts that genus, at any rate given that pregnant women are deemed to be in priority need under section 59(1)(a) and thus fall outside paragraph (c). 'Extreme youth', I should add, was held by the House of Lords not to be a special reason within paragraph (c), the needs of dependent children being met by giving their parents a priority right to accommodation under paragraph (b) – see* R v
J Oldham Metropolitan Borough Council ex p Garlick *[1993] AC 509 at 517.*

Second, it is impossible to fit within the identified genus – those with potentially disabling bodily characteristics – battered wives, whom everyone agrees Parliament intended to include within paragraph (c). Battered wives are not frail: they are simply 'at risk of further violence' as the Code puts it.

K *It follows that in my judgment the* ejusdem generis *rule cannot apply here. One therefore asks the simple question: is total resourcelessness causing clear physical*

vulnerability capable of being a 'special reason'? To that question there seems to me but one answer: yes.

It is essential to remember that this so-called rule, like most such, is a servant and not a master and is no more than a guide to the purpose of an enactment in any given case.

The Government determined that it was necessary to legislate to reverse those decisions. Amendments, which became sections 9 to 11 of the 1996 Act, were introduced into the Bill which was then going through Parliament. The intention to do this was announced in the House of Lords on 24th June 1996 by the Minister of State, Department of Social Security (Lord Mackay of Ardbrecknish). In the course of his statement, he indicated that an attempt would be made to lessen the impact of the legislation on the genuine refugee by introducing arrangements whereby those who were ultimately 'found to be genuine refugees' could receive benefit to cover the period during which their applications were being considered and so repay charities or voluntary bodies who had supported them in the meantime: see *Hansard (Lords)* 24/6/96 Column 596. This promise was put into effect in s11(2) of the 1996 Act, which reads: –

(2) Regulations may provide that, where such a person who is so excluded is subsequently recorded by the Secretary of State as a refugee within the meaning of the Convention –

(a) that person may, within a prescribed period, claim the whole or any prescribed proportion of any income support, housing benefit or council tax benefit to which he would have been entitled had he been recorded as a refugee immediately after he made a claim for asylum; and

(b) where he makes such a claim as is mentioned in paragraph (a) above in respect of housing benefit or council tax benefit having resided in the areas of two or more local authorities in Great Britain, the claim shall be investigated and determined, and any benefit awarded shall be paid or allowed, by such one of those authorities as may be prescribed.

At the date of the hearing before me, no regulations had been made under s11(2) and I was told that their content was under active consideration. But the provision is of limited value to asylum seekers; only the 4–5% who are found to be within the Convention can benefit: the 20% given exceptional leave to remain and who are therefore not to be regarded as economic migrants or bogus cannot take advantage of the provision. Furthermore, it places the charities in the invidious position of having to decide on the chances of success of the individual applicant, a decision which they are wholly unqualified to make and one which they would be very reluctant to have to make.

It is clear that Parliament was well aware of the likely effect of the enactment of the 1996 Act in the form proposed by the government. Mr Beloff submitted that Parliament acted as it did in the belief that the result would be totally to deprive asylum seekers of access to public assistance of any sort so that, unless they could find charitable persons or bodies who were prepared to help, they would indeed be destitute and face the intolerable dilemma referred to by Simon Brown LJ in *ex parte B* at p36D of the transcript. The possibility of recourse to s21(1) of the 1948 Act was not mentioned before the Court of Appeal and it does indeed appear that Parliament decided that the increasing pressure of asylum seekers, most of whom were not genuine, and the enormous cost to the public purse resulting from the pressure required truly draconian measures. Mr Beloff accordingly submits that to allow these applications would be to frustrate the will

A of Parliament which has been so clearly and unequivocally set out in the 1996 Act.

The argument is superficially a powerful one. But it assumes that Parliament was aware of and was intending to prevent access to all possible sources of assistance. If so, Parliament could have made clear beyond doubt that that was B what it was doing. As it is, the 1996 Act specifies a number of different benefits which an asylum seeker cannot receive. I am not prepared to assume that Parliament necessarily believed that it had enumerated all conceivable sources of possible assistance. I note that s21(1) was not referred to and that an inference can be drawn that Parliament therefore assumed that its provisions could not be con- C strued as the applicants submit they should. I shall bear that in mind in determining the true construction of s21(1)(a), but I repeat that the intention of Parliament in the enactment of s21(1)(a) must determine its true construction, not the intention of Parliament in enacting the relevant provisions of the 1996 Act. I shall return to the argument about the 1996 Act when I have considered the proper D construction of s21(1)(a) since, as will become clear, I do not believe there is the conflict that Mr Beloff suggests.

I must now turn to the 1948 Act and the amendments to s21(1). I have to consider the section in its original form since it has been argued that the meaning of s21(1)(a) cannot be changed by subsequent amendments. The general rule, it is E submitted, is that unaltered words in an Act are to be construed as meaning what they did before the others were amended: see *A G v Lamplough* (1878) 3 Ex D 214. In that case, it was clear that the intention of Parliament in deleting particular words from the section in question was to exclude particular articles from liability to tax. The subsequent general words could, looked at in isolation, have prevented F that intent being achieved. Hence, in order to give effect to the clear intention of Parliament, the general words had to continue to be construed in the restrictive fashion appropriate when the particular words, subsequently repealed, were in the Act. Thus *A G v Lamplough* is merely an example of the court construing an Act so as to give effect to the intention of Parliament and, in order to do so, having G to consider the original form in which it was enacted. A similar exercise was carried out in *R v Greater Manchester North District Coroner ex p Worch* [1988] 1 QB 513, Slade LJ, who gave the judgment of the court, saying at p528B: –

> *The original Section 21(a) of the [Coroners (Amendment) Act] 1926 is no longer law, since it has been replaced by Section 23(3) of the Births and Deaths Registra- H tion Act 1953. Nevertheless, the original subsection is admissible in construing the section as a whole and, in our judgment, throws light on its construction. It demonstrates that the section as a whole contemplates a two-stage process.*

I have to construe the 1948 Act as amended and give effect to the parliamentary I intention in leaving the Act in its amended form. I may be assisted by construing the original wording and it may be assumed, in the absence of clear words to the contrary, that the meaning of the original has not been changed. That is as far as the so-called rule in *A G v Lamplough* goes.

In reality, I do not think there is any conflict between the Act as amended and as J enacted in its original form. Each in my judgment leads to the same conclusion. But I should set out the relevant provisions so that the arguments can be understood.

The purpose of the National Assistance Act was succinctly set out in the preamble and in s1, which read: –

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> *An Act to terminate the existing poor law and to provide in lieu thereof for the*

assistance of persons in need by the National Assistance Board and by local authorities; to make further provision for the welfare of disabled, sick, aged and other persons and for regulating homes for disabled and aged persons and charities for disabled persons; to amend the law relating to non-contributory old age pensions; to make provision as to the burial or cremation of deceased persons; and for purposes connected with the matters aforesaid.

1. The existing poor law shall cease to have effect, and shall be replaced by the provisions of Part II of this Act as to the rendering, out of moneys provided by Parliament, of assistance to persons in need, the provisions of Part III of this Act as to accommodation and other services to be provided by local authorities, and the related provisions of Part IV of this Act.

Essentially, it was to supersede the existing poor law and to provide that those in need should have access to state benefits for the relief of poverty and to accommodation and other services to be provided by local authorities. The summary of the Bill (Cmd 7248) in paragraph 3 refers to two main groups of services which it identifies as follows: –

A. National assistance, taking the form mainly of financial aid to those in need (and whose needs are not otherwise met by National Insurance or from any other source). This is to be a function of central government and a national, not a local, charge – and all local government responsibility for the relief of destitution will give place to it.
B. Residential accommodation for the aged and infirm and others who require care and attention to be provided in this way, with special welfare services for certain handicapped persons. This is to be a local government function entrusted to the councils of counties, county boroughs, and (in Scotland) large burghs, and a local rate charge with some Exchequer assistance. It will not be concerned with the relief of destitution as in the past, and the local poor law institution – as now known – will disappear.

Paragraphs 23 and 24 are also material. They read: –

Persons who may be accommodated
23. The Bill places a duty on the Local Authorities to provide residential accommodation for persons who, by reason of age, infirmity or other circumstances, are in need of care and attention not otherwise available to them. These will not include sick persons who need treatment in hospital and is therefore the responsibility of the National Health Service, but will comprise many types of elderly, infirm, disabled or sub-normal people who are unable to lead a normal home life. The service will include all necessary cases, maintenance and amenities.

Accommodation to be paid for
24. Residential accommodation of this kind will be provided in Homes and Hostels designed to meet the varying needs of the parties concerned. The service will be available to those in need of it irrespective of their means. The Local Authority will thus cease to be merely a reliever of destitution, and will become the provider of comfortable accommodation, with care and attention for those who, owing to age or infirmity, cannot wholly look after themselves. The Local Authority will fix a standard charge for the accommodation provided and the resident, if his resources permit, will pay the charge in full. If he is unable to do so, the charge will be reduced to an amount that he can afford to pay and at the same time retain for himself a reasonable sum as pocket money – but always

A *subject to a prescribed minimum charge, so that in all cases a payment will be made by the resident himself and all suggestion of the workhouse will disappear.*

In the Act, Part II covered assistance from central funds through the National Assistance Board. Part III, commencing with s21, is headed 'Local Authority Services' and s21 itself has the side note 'Duty of local authorities to provide accommodation'. So far as material, it read: –

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21.–(1) It shall be the duty of every local authority, subject to and in accordance with the provisions of this Part of this Act, to provide –

(a) residential accommodation for persons who by reason of age, infirmity or any other circumstances are in need of care and attention which is not otherwise available to them;

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(b) temporary accommodation for persons who are in urgent need thereof, being need arising in circumstances which could not reasonably have been foreseen or in such other circumstances as the authority may in any particular case determine.

D

(2) In the exercise of their said duty a local authority shall have regard to the welfare of all persons for whom accommodation is provided, and in particular to the need for providing accommodation of different descriptions suited to different descriptions of persons as are mentioned in the last foregoing subsection.

E

(4) Accommodation provided by a local authority in the exercise of their said functions shall be provided in premises managed by the authority or, to such extent as may be specified in the scheme under this section, in such premises managed by another local authority as may be agreed between the two authorities and on such terms, including terms as to the reimbursement of expenditure incurred by the said other authority, as may be so agreed.

F

(5) References in this Act to accommodation provided under this Part thereof shall be construed as references to accommodation provided in accordance with this and the five next following sections, and as including references to board and other services, amenities and requisites provided in connection with the accommodation except where in the opinion of the authority managing the premises their provision is unnecessary.

G

(7) Without prejudice to the generality of the foregoing provisions of this section, a local authority may –

(a) provide, in such cases as they may consider appropriate, for the conveyance of persons to and from premises in which accommodation is provided for them under this Part of the Act;

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(b) themselves provide on the premises in which accommodation is being provided such health services, not being specialist services or services of a kind normally provided only on admission to a hospital, as appear to the authority requisite and as may be specified in the scheme under this section;

I

(c) arrange for the provision on the premises of local health services.

(8) Save as provided in the last foregoing subsection, nothing in this section shall authorise or require a local authority to make any provision authorised or required to be made (whether by that or by any other authority) by or under any enactment not contained in this Part of this Act.

J

It is submitted by the respondents and the Secretary of State that Parliament did not then envisage or intend that lack of funds should give rise to any duty under s21(1). Poverty was to be dealt with in Part II. Accordingly, it is said, the words in s21(1)(a) 'or any other circumstances' cannot be construed as referring to lack of money. I have had my attention drawn to *Hansard*. The minister was questioned

K

about the ambit of the words 'or any other circumstances'. His reply was that they were included to cover difficult or marginal cases, but, it would seem, to ensure there was no gap between s21(1)(a) and (b): see *Hansard (Commons)* 21/1/1948 Columns 2497–2498. The only example the minister could think of was that of a woman who had given birth and required something more than temporary accommodation on leaving hospital.

It is in my judgment clear that the words 'or any other circumstances' were intended to cover eventualities not foreseen and to ensure that there was a safety net to protect those who were in need of care and attention. In 1948, Parliament did not envisage that anyone would be in need of care and attention by reason of lack of access to funds. But if someone did present himself who was starving and destitute and had no means of obtaining any money to obtain food or shelter, there is no reason to think that he would not have been covered by the words used. The whole purpose of the National Assistance Act 1948 was to ensure that no-one would be left destitute because of an inability to fend for himself.

I have used the words 'inability to fend for himself' advisedly because there, as it seems to me, is the genus if genus be needed. 'Age or infirmity' denote physical conditions beyond the control of the individual. Each produces the need for care and attention. If some other matter beyond the control of the individual produces a need for care and attention, it is properly within the scope of the subsection. If he chooses not to claim what he is entitled to or misuses what he receives, he will not be covered.

The amendments seem to me to reinforce that view. In 1966, it was decided to set up a new regime for dealing with social security benefits and the Ministry of Social Security Act 1966 repealed Part II of the 1948 Act. But it amended s1 of the Act in a somewhat curious fashion by deleting the words 'of Part II of this Act as to the rendering, out of moneys provided by Parliament, of assistance to persons in need, the provisions'. It is difficult to see why s1 was left at all, since the existing poor law had been repealed by the 1948 Act: see Section 62(3) and Schedule 7 Part I. By 1966, s1 was otiose. Nonetheless, Parliament chose to leave it as amended. I must assume that was done for a purpose. That could only have been to underline the point that those who were in need of care and attention should continue to be able to be cared for. Mr Pleming submitted, if I correctly followed him, that it became necessary to see what services had been provided by local authorities under the poor law and that only those were to remain within Part III. That submission does not take him very far since, for example, s15(1)(b) of the Poor Law Act 1930 imposed a duty on a local authority 'to provide such relief as may be necessary for the lame, impotent, old, blind and such other persons who are poor and unable to work'.

In 1972, the Local Government Act substituted the introductry words of s21 and in 1977, the Housing (Homeless Persons) Act repealed s21(1)(b). Those in urgent need of temporary housing by reason of some unforeseen event or otherwise are now dealt with under the Housing Act 1985 Part III, the scope of which is somewhat narrower than s21(1)(b). It is noteworthy that the Secretary of State's Approvals and Directions given under s21(1) (which came into effect on April 1st 1993) seem to envisage a wider construction of s21(1)(a) than that now contended for by his counsel. Paragraph 2 of those Directions reads: –

2.–(1) The Secretary of State hereby –

(a) approves the making by local authorities of arrangements under section 21(1)(a) of the Act in relation to persons with no settled residence and, to

A *such extent as the authority may consider desirable, in relation to persons who are ordinarily resident in the area of another local authority, with the consent of that other authority; and*

(b) directs local authorities to make arrangements under s21(1)(a) of the Act in relation to persons who are ordinarily resident in their area and other

B *persons who are in urgent need thereof,*

to provide residential accommodation for persons aged 18 or over who by reason of age, illness, disability or any other circumstance are in need of care and attention not otherwise available to them.

(2) Without prejudice to the generality of sub-paragraph (1), the Secretary of

C *State hereby directs local authorities to make arrangements under section 21(1)(a) of the Act to provide temporary accommodation for persons who are in urgent need thereof in circumstances where the need for that accommodation could not reasonably have been foreseen.*

(3) Without prejudice to the generality of sub-paragraph (1), the Secretary of

D *State hereby directs local authorities to make arrangements under section 21(1)(a) of the Act to provide accommodation –*

(a) in relation to persons who are or have been suffering from mental disorder; or

(b) for the purposes of the prevention of mental disorder,

for persons who are ordinarily resident in their area and for persons with no

E *settled residence who are in the authority's area.*

(4) Without prejudice to the generality of sub-paragraph (1) and subject to section 24(4) of the Act, the Secretary of State hereby approves the making by local authorities of arrangements under section 21(1)(a) of the Act to provide residential accommodation –

F *(a) in relation to persons who are or have been suffering from mental disorder; or*

(b) for the purposes of the prevention of mental disorder,

for persons who are ordinarily resident in the area of another local authority but who following discharge from hospital have become resident in the authority's area.

G *(5) Without prejudice to the generality of sub-paragraph (1), the Secretary of State hereby approves the making by local authorities of arrangements under section 21(1)(a) of the Act to provide accommodation to meet the needs of persons for –*

(a) the prevention of illness;

H *(b) the care of those suffering from illness; and*

(c) the aftercare of those so suffering.

(6) Without prejudice to the generality of sub-paragraph (1), the Secretary of State hereby approves the making by local authorities of arrangements under section 21(1)(a) of the Act specifically for persons who are alcoholic or drug-

I *dependent.*

Paragraph 2(2) seems to reflect the wording of the repealed s21(1)(b) . It is suggested it may be *ultra vires*, but it is stated to cover only arrangements under s21(1)(a): I see no reason why someone who is without accommodation because, for example, he has been flooded out and has nowhere to go should not, if he

J cannot qualify under the Housing Act 1985 because not in priority need, be considered to be in need of care and attention and therefore within s21(1)(a). That is what the Secretary of State seems to be saying in Paragraph 2(2). Paragraph 2(5) makes the obvious point that local authorities should not wait until someone is ill but can act to prevent illness. Someone may be in need of care and attention if,

K without it, he will inevitably fall ill.

Finally, the words 'illness, disability' were substituted for 'infirmity' in s21(1)(a) and s21(1)(aa) was added by the National Health Service and Community Care Act 1990, the limitation of s21(1)(a) to those over 18 having been effected by the Children Act 1989. It is to be noted that 'accommodation' is given an extended meaning by s21(5). It includes board and other services to the extent they are considered necessary.

The amendments do not seem to me to change the construction of s21(1)(a). Rather they confirm the intention that s21(1)(a) should be available as a safety net for those unable to fend for themselves and who are therefore in need of care and attention. I regard *ex p Kihara* (supra) as persuasive authority that, in construing s21(1)(a), the *ejusdem generis* rule does not apply to restrict its scope as the respondents and the Secretary of State submit. To adapt Neill LJ's words, which seem to me to be as appropriate to s21(1)(a) as they were to s59(1)(c) of the Housing Act 1985, 'any other circumstances' are free standing categories which, though they have to be construed in their context, are not restricted by any notion of physical or mental weakness other than such as are inherent in the expression 'in need of care and attention'.

That brings me finally to the words 'in need of care and attention'. I have been referred by both sides to cases concerned with the words 'care' and 'attention'. I found none of them of any assistance. The phrase is a composite one and, as the expression 'driving without due care and attention' will immediately make clear, its meaning will depend upon its context. Potentially, it has a wide ambit. It seems to me that in ordinary English usage someone who is unable to provide for himself the basic necessities of life can properly be said to be in need of care and attention. He needs at least shelter, warmth and food. It is said that these applicants need only money, not care and attention. The point is that they cannot get money and without it they cannot fend for themselves. If they have access to money, they do not need care and attention. Without such access, they do.

This is a provision of last resort. Local authorities are entitled to satisfy themselves that there is truly no other source of assistance available and that accommodation within the meaning of s21(5) is needed to provide for the bare necessities of life. Counsel accepted that if an asylum seeker fell ill so that he was, through illness, in need of care and attention, he would qualify for assistance, although in such circumstances he would probably be cared for in hospital through the National Health Service and so not need local authority accommodation because of s21(8). The illness would have to be sufficiently grave. Effectively, it would have to be life threatening; otherwise, if the respondents' arguments are followed, it could be alleviated by the provision of money to buy proper nourishment or aspirins or whatever from a chemist. The prospect of asylum seekers being taken to hospital, nursed back to health, discharged onto the streets, allowed to fall ill again and so on is hardly attractive, but that would be the effect of the construction favoured by the respondents.

The right to life is a fundamental human right. It is one which the law will protect. This consideration was referred to in *R v Inhabitants of Eastbourne* (1803) 4 East 103, where Lord Ellenborough CJ said at p107: –

> *As to there being no obligation for maintaining poor foreigners before the statutes ascertaining the different methods of acquiring settlements, the law of humanity, which is anterior to all positive laws, obliges us to afford them relief, to save them from starving . . .*

This observation was made in the context of an argument by counsel that it did

A 'not appear that a foreigner, . . . could have been within the view and intent of the legislature in framing the system of poor laws'; see p104. Although the 'law of humanity', which I would interpret as the protection of fundamental rights, cannot prevail against the clear words words of a statute, it is to be presumed that Parliament has legislated in accordance with it.

B It seems to me, therefore, that upon its true construction, s21(1)(a) does impose a duty upon the respondents to provide for the applicants if satisfied that any of them have no other means of support and therefore are in need of care and attention, since such a need may exist where a person is unable to provide for himself.

C I do not regard this conclusion as in any way frustrating the will of Parliament in enacting the 1996 Act. I find it impossible to believe that Parliament intended that an asylum seeker, who because of s6 of the 1993 Act was lawfully here and who could not lawfully be removed from the country, should be left destitute, starving and at risk of grave illness and even death because he could find no-one D to provide him with the bare necessities of life. Clearly Parliament intended that, unless they applied on entry, asylum seekers should find it very difficult to exist in this country. No doubt, it was hoped that the bogus would thereby be deterred from coming or forced to return whence they came. But if an entrant faced the dilemma and decided that he had to stay, because to return would be to court E persecution, I am sure that Parliament would not have intended that he must nonetheless be left to starve. It is after all likely that genuine claimants will stay here since they have real fears of persecution if they return. But if Parliament really did intend that in no circumstances should any assistance (other than hospital care) be available to these asylum seekers, it must say so in terms. If it F did, it would almost certainly put itself in breach of the European Convention on Human Rights and of the Geneva Convention and that is another reason why I find it unlikely that the safety net has been removed.

For those reasons, I think the respondents have adopted far too narrow a construction of s21(1)(a) and must reconsider whether the individual applicants G must be assisted.