R v Westminster CC and Others ex p M, P, A and X

Court of Appeal
Lord Woolf MR, Waite and Henry LJJ
17 February 1997

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 whilst 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 Inevitably, the combined effect of lack of food and accommodation (exacerbated by the inability to speak English, ignorance of the United Kingdom, the stress of fleeing persecution) will result in a person requiring 'care and attention' and so becoming eligible for 'residential accommodation' under NAA 1948 s21. The longer an asylum-seeker remains in this situation the more compelling becomes his/her case for assistance. Local authorities have to bear in mind the wide terms of the Approvals and Directions (see below) and can anticipate the deterioration that will otherwise take place in asylum-seekers' conditions by providing assistance. They do not have to wait until there is damage to health.
2 Paragraph 2 of the Secretary of State's Approvals and Directions at Appendix 1 to LAC(93)10 contains no provisions which are *ultra vires* NAA 1948 s21 but gives a useful introduction to the application of s21.
3 Specific duties to provide housing for the homeless (in NAA 1948 s21(1)(b)) and financial assistance (NAA 1948 Part II) were repealed when Parliament enacted new homelessness legislation (in the Housing (Homeless Persons) Act 1977) and state means-tested income benefit schemes (Ministry of Social Security Act 1966). That does not mean, however, that the phrase 'any other circumstances' in NAA 1948 s21(1)(a) ('persons aged 18 or over who by reason of age, illness, disability or any other circumstances are in need of care and attention') could

not encompass circumstances arising out of homelessness and a complete lack of financial resources resulting in a need to be looked after.

4 The general approach of Parliament in 1948 was that none of those in need should be without all assistance and Parliament can not have intended 'any other circumstances' to be construed *ejusdem generis* with 'age, illness or disability' and so forth. However, even if the *ejusdem generis* rule applied, and the correct genus was personal characteristics resulting in a need for care and attention, as the respondents contended, the applicants still succeeded. Personal characteristics can be caused by external circumstances. Having to sleep rough and go without food can bring about illness and disability requiring care and attention.

5 NAA 1948 was part of a comprehensive scheme of social security introduced following the Beveridge Report to bring about an end to 350 years of the Poor Law and, accordingly, is a prime example of an Act which is 'always speaking' and which should be construed 'on a construction that continually updates its wording to allow for changes since the Act was initially framed' (Bennion *Statutory Interpretation* (Butterworth, 2nd edn), s288 at p617).

Cases referred to in judgment:

Quazi v Quazi [1980] AC 744; [1979] 3 WLR 833; [1979] 3 All ER 897; 123 SJ 824; 10 Fam Law 148, HL.

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

Rands v Oldroyd [1959] 1 QB 204; [1958] 3 WLR 583; [1958] 3 All ER 344; 123 JP 1; 102 SJ 811; 56 LGR 429, DC.

Legislation/guidance referred to in judgment:

National Assistance Act 1948 s21 – Poor Law Act 1930 s15(1)(b) – Ministry of Social Security Act 1966 – Asylum and Immigration Act 1993 s6 – Housing Act 1985 Part III – Asylum and Immigration Act 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:

(1997) *Times*, 19 February, CA.

Representation

Michael Beloff QC and Nigel Giffin (instructed by Council Solicitors, Hammersmith and Fulham London Borough Council, Westminster City Council and Lambeth London Borough Council) appeared on behalf of the respondent councils.

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

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

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Judgment

This is the judgment of the Court. It is an appeal with the leave of Collins J, from his decision to make orders of *certiorari* quashing the decisions of three local authorities refusing to provide accommodation for the respondents, four asylum seekers, whose applications for asylum are presently being considered by the Secretary of State. In compliance with the United Kingdom's international obligations, section 6 of the Asylum Immigration Appeals Act 1993 provides that they

may not be removed from nor requested to leave the United Kingdom pending final determination of their applications.

The Issue

The problem which the Court has to resolve on this appeal is whether these asylum seekers are entitled to relief under section 21(1)(a) of the National Assistance Act 1948 as amended. This turns on the proper construction of that section, which reads:

> *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 –*
> *(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 available to them; and*
> *(aa) resident . . . . accommodation for expectant and nursing mothers who are in need of care and attention which is not otherwise available to them. [emphasis added]*

The problem arises because none of these asylum seekers claimed asylum at point of entry (though two of them did on the day of arrival). Consequently, from the coming into force of the relevant provisions of the Asylum and Immigration Act 1996 ('the 1996 Act') on the 19th August 1996, thereafter they were not entitled to either public housing assistance under Part III of the Housing Act 1985 — 'Housing the Homeless' — or to social security benefits (eg income support and housing benefit). This is common ground between the parties, and is as a result of the provisions of section 9 of the 1996 Act and the Housing Accommodation and Homelessness (Persons Subject to Immigration Control) Order 1996 SI No 1982, para 3 in respect of housing and of sections 10, 11 of and Schedule 1 to the 1996 Act, which gives effect to the Social Security (Persons from Abroad) Miscellaneous Amendments Regulation 1996 (SI No 30). Furthermore under their terms of entry, they are not entitled to take employment.

But it was not the purpose of the 1996 legislation to deprive affected asylum seekers from all the benefits of the welfare state. It is accepted that such asylum seekers may receive treatment when required from the National Health Service. The question for our consideration is whether they are also entitled to the benefit of section 21(1)(a) relief. The outcome of this appeal will not only affect these asylum seekers but the many other asylum seekers who are in the same position.

The Background

The relevant provisions of the 1996 Act were enacted by Parliament to reverse the decision of this Court in *R v Secretary of State for Social Security ex parte Joint Council for the Welfare of Immigrants* and *R v Secretary of State for Social Security, ex parte B* [1996] 4 All ER 385. That case was concerned with the Social Security (Persons from Abroad) Regulations 1996. Regulation 8 of those regulations purported to amend the Income Support (General) Regulations 1987 so as to prevent persons seeking asylum in the United Kingdom who would otherwise be eligible for income support claiming urgent cases payments amounting to 90% of the normal income support level, if they sought asylum otherwise than immediately on arrival in the United Kingdom or had had their claims to asylum rejected by the Home Secretary and were awaiting the outcome of an appeal. In that situation, by a majority, this Court held that the effect of the 1996 Regulations would be to render the rights of asylum seekers who remain here pending determination

of their claim under the Asylum and Immigration Appeals Act 1993 nugatory. This was because they would either be forced by penury to leave before their claims were determined or have to live a life of destitution until then. That court considered such a result would be so draconian that the regulations must be *ultra vires* since only primary legislation could achieve such a result.

Section 9 of the 1996 Act together with the order also reversed the effect of the Court of Appeal's decision in *R v Royal Borough of Kensington & Chelsea ex parte Kihara and others* (1996) 29 HLR 147 (25th June 1996). In that case this court granted judicial review of the decisions of local authorities who had refused to asylum seekers the status of persons having a priority need for accommodation under section 59 of the Housing Act 1985.

The 1996 Act provides the primary legislation which this court considered was necessary to defeat the asylum seekers' entitlement to those benefits. It is unnecessary to refer to the provisions of the 1996 Act as it is not contended it did not achieve this result. However as already indicated the 1996 Act does not refer to section 21 of the National Assistance Act 1948. The 1996 Act therefore leaves intact the rights, if any, of the respondents under section 21. The question at issue on this appeal is not whether they were excluded from the benefit of the provisions of section 21(1)(a) but whether their circumstances are ones to which that section of the 1948 Act could apply. Nonetheless the 1996 Act is an important part of the background to this appeal, since were it not for the provisions of that Act the respondents would not have needed to rely on section 21(1)(a) since they would then have been eligible for social security benefits which are currently governed by the Social Security Contributions and Benefits Act 1992, Part VII (sections 123–127) or assistance under Part III of the Housing Act 1985.

In his judgment of the 8th October 1996 Collins J decided that section 21(1)(a) is 'available as a safety net for those unable to fend for themselves and who are therefore in need of care and attention.' They need 'at least shelter, warmth and food.' Section 21(1)(a) was in his judgment a 'provision of last resort' (page 28 of the transcript) [(1997) 1 CCLR 69, at p83F–G]. Collins J was of the view 'that upon its true construction, section 21(1)(a) does impose a duty upon the [local authorities] 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' (page 30 of the transcript) [(1990) 1 CCLR 69, at p84B–C).

The appellants are the local authorities who are responsible for meeting any entitlement of the appellants under section 21(1)(a) and the Secretary of State. They contend Collins J has misconstrued section 21(1)(a) of the Act of 1948 and that the section has a narrower interpretation than that which he applied and in particular that the section is not capable of applying to persons whose needs are really for money or the freedom to work, and to have a roof over their heads.

The Facts

It is possible to deal with the facts shortly as the parties accept that the present appeal is a test case. They are not primarily concerned with the individual circumstances of the respondents and their circumstances were not the subject of any specific submissions on behalf of the appellants. Without prejudice to their contentions, the appellant local authorities have made interim provision for the care and attention of the respondents pending the determination of these proceedings. It is, nonetheless, necessary to have some idea as to their situation before the present arrangements were made so as to appreciate the significance for them of the alternative interpretations of section 21(1)(a) of the 1948 Act.

Each of the respondents is referred to by an initial in accordance with orders which have been made to protect their identity from being disclosed. The order has been made because of the risk that they or their families might suffer in the countries from which they have sought asylum if their identities were revealed. The respondents are lawfully in this country pending the outcome of their asylum applications by reason of section 6 of the Asylum and Immigration Appeals Act 1993 which reflects the United Kingdom's obligation as a signatory to the Geneva Convention of 1951.

The following brief description of their situation is taken from the judgment of Collins J. His account of their situation is not challenged by the appellants.

'A' is an Iraqi Kurd. He arrived in this country from Turkey. He arrived clandestinely in the UK on the 1st August 1996 and later that day claimed asylum. The following day he applied under section 21(1)(a) of the 1948 Act to Westminster City Council for accommodation but the same day that council refused the application on the ground that he was owed no duty under the section. He was a diabetic needing insulin and arrangements were made for this to be supplied to him through the National Health Service.

'P' is a Rumanian national. He arrived in the United Kingdom on a lorry on the 30th July 1996. He said in his affidavit that he passed through immigration control before he had the opportunity to claim asylum, but went to the Home Office the same day and made his claim for asylum. He has slept rough under Waterloo Bridge and following a referral to the Refugee Council, who were unable to assist, he made an application to Lambeth London Borough Council on the 2nd August 1996 for housing under Part III of the 1985 Act. However when that was refused an application was made under section 21(1)(a) of the 1948 Act on the 5th August 1996 and that has also been refused. He had nowhere to live, no money, no means to buy food or shelter, no friends or contacts and spoke no English.

'M' is Algerian. He arrived on the 28th July 1996. He claimed asylum the following day. Apart from two days when he was able to stay with a friend, he slept rough in Hyde Park although he was temporarily helped by the Refugee Council. By the time he was put in touch with his solicitor, he was described as being 'very dishevelled and unkempt and quite traumatised'. He had not eaten for some time, he was friendless, penniless and completely destitute. On the 8th August 1996 'the day after he applied for accommodation under section 21' Hammersmith and Fulham London Borough Council refused his application.

'X' is a Chinese citizen. He arrived in this country on the 19th May 1996 but did not claim asylum until the 8th July 1996. He applied to the London Borough of Lambeth on the 16th August 1996 and on the 21st August 1996 that council decided that 'X' was not entitled to assistance under section 21(1)(a) of the 1948 Act.

The restriction on employment which lasts for a period of six months obviously adds to the difficulties of persons in the position of the respondents. Charities can provide little help because they are swamped by the numbers involved.

It is now appropriate to refer to the other aspect of the problem. That is the position of the appellant local authorities. The local authorities' finances are calculated on a basis which makes no allowance for any commitment which they may have to asylum seekers. If they are obliged to help those in the position of the respondents they will have less resources to help the many others for whom they have responsibilities. The numbers involved undoubtedly do create acute difficulties. The Secretary of State has provided information indicating that at the present time there are 56,000 outstanding asylum applications, 40% of which are

A applications made by those who had already entered this country before claiming. There are 20,390 appeals pending before special adjudicators. For the period May/October 1996 the average time it took for an asylum appeal to be heard by a special adjudicator was 8.8 months. The action which the Secretary of State has taken is designed to prevent asylum seekers who are not genuine from obtaining
B access to public funding.

The overall policy of the Secretary of State is that:

> *Only those asylum seekers who claim asylum on arrival in the United Kingdom (or where it has been certified there has been a fundamental change of circumstances in the asylum seeker's home country) are to be allowed access to publicly*
C *funded benefits and publicly funded housing.*

The rationale behind the policy is that claims not made at the very first moment are more likely to be bogus, but it could not sensibly be argued that all claims not so made are bogus.

D *The Proper Approach to the Construction of Section 21*

The plight of asylum seekers who are in the position of the respondents obviously can and should provoke deep sympathy. Their plight is indeed horrendous. However sympathy for their position cannot help in the interpretation of section
E 21 of the 1948 Act. The 1948 Act brought to an end 350 years of the poor law. The national assistance scheme set up by the Act 'replaced both the unemployment assistance and supplementary pensions scheme and, for those outside the scope of those schemes, the poor law, and thus, as the residual social security benefit, it completed the social security system established following the Beveridge Report' (see *Halsbury's Laws*, 4th Ed, Vol 33 at Para 701, and especially footnotes 2 and 13
F as to the Scheme's objective to meet 'all needs which were not covered by insurance'). We emphasise the significance of the Act because it is a prime example of an Act which is 'always speaking', and so should be construed 'on a construction that continuously updates its wording to allow for changes since the Act was
G initially framed' (see Bennion, *Statutory Interpretation*, 2nd Ed Sec 288 at page 617). It was part of a comprehensive scheme: parts of that scheme have been since put in different statutory provisions (see the removal from the Act of primary housing provision and social security benefits to which Mr Beloff QC on behalf of the local authorities and Mr Pleming QC on behalf of the Secretary of State have referred us and which we must examine). But Mr Pannick QC reminds
H us of the breadth of the Act's provisions to meet need.

The long title to the National Assistance Act 1948 stated that it was:

> *An Act to terminate the existing law and to provide in lieu thereof for the assistance of persons in need by the National Assistance Board and by local author-*
I *ities; 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; . . .*

Section 1 which is the only section in Part I provides that it is 'Introductory' and:

J > *1. 'Supersession of existing poor law'. 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 monies 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 . . .*

K It is to be noted that section 21 is in Part III. Although Part II of the 1948 Act was

repealed by Ministry of Social Security Act 1966 and the same Act amended section 1 of the 1948 Act to delete the reference to Part II the relevant reference to Part III of the Act replacing the poor law was retained in section 1 so the section now reads:

> *The existing poor law shall cease to have effect, and shall be replaced by the provisions of . . . Part III of this Act as to accommodation and other services to be provided by local authorities, . . .*

Mr Pannick QC therefore submits on behalf of the respondents that section 21 should be interpreted to reflect the general approach of the poor law and the 1948 Act when it was enacted, the noble purpose being that those who were in need should not be without all assistance.

Part II of the 1948 Act (sections 2–20) created the National Assistance Board. The Board's duty was to assist persons whose resources, including benefits receivable under that Act, needed to be supplemented to meet their requirements (section 4). The Board made monetary grants (section 8); in exceptional cases the Board could give assistance in kind (section 12); the Board was under a duty to provide temporary board and lodgings in reception centres for persons without a settled way of living, (section 17); the Board could make contributions to the funds of voluntary organisations (section 20). The nature of these responsibilities of the Board make it clear that it was to provide *financial assistance* to those with financial needs. The Board's responsibility was not however confined to making monetary grants. It could also exceptionally give assistance in kind and provide temporary board and lodging.

When Part II of the 1948 Act was repealed by the 1966 Ministry of Social Security Act, that Act provided for the assistance which had been given by the Board to be met by a non-contributory benefit. The 1966 Act has now been replaced by the Social Security Contributions and Benefits Act 1992 Part VII. The benefits are now income support and housing benefit. The Jobseekers Act 1995 is also relevant. Since the 1948 Act replaced the poor law, lack of resources of those who require assistance has therefore continued to be met by central government by a distinct code designed to meet financial needs.

Those who needed assistance because they lacked care and attention have always remained the subject of section 21(1)(a) of the 1948 Act which is contained in Part III of the 1948 Act. As originally enacted, section 21(1) of the 1948 Act commenced by stating:

> *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 . . .*

As is to be seen from the present form of the section which has been set out earlier in this judgment, there is no reference to duty and the section says that the local authority 'may' make arrangements. In addition those arrangements are to be 'with the approval of the Secretary of State' and 'to such extent as he may direct'.

The current approvals and directions given in exercise of the powers conferred by section 21(1) were published as Appendix 1 to the Department of Health circular LAC(93)10 ('the 1993 Directions'). The Directions cannot change the proper interpretation of section 21. They are however revealing as to how the Secretary of State considers section 21 is to be applied. So far as they are relevant to the issues being considered here the Directions provide:

> *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*

(b) directs local authorities to make arrangements under section 21(1)(a) if the Act in relation to persons who are ordinary residents in their area and other 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 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.*

(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. *[emphasis added]*

The directions cited suggest that the Secretary of State himself is adopting a generous approach to the interpretation of the section.

Section 21(1) as originally enacted also imposed a duty on every local authority to provide:

(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 in any particular case may determine.

The first half of section 21(1)(b) is dealing with a situation where a person has a priority need for accommodation because of an emergency, but the second half by its reference to 'such other circumstances' gave the local authority a wider discretion if in 'any particular case' the authority so determines. The Housing (Homeless Persons) Act 1977 repealed section 21(1)(b) and section 25 of the 1948 Act which gave the Board power to require a local authority to provide accommodation where a person is in urgent need. The 1977 Act was in turn replaced by Part III of the Housing Act 1985. That Act placed a duty on a local housing authority to those who were unintentionally homeless persons in priority need (section 65). Section 59(1) provides:

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 or with whom such a person resides or might reasonably be expected to reside;

(d) a person who is homeless or threatened with homelessness as a result of an emergency such as flood, fire or other disaster.

Finally reference should be made to the National Health Service and Community Care Act 1990 which established a statutory framework for the provision of community care including accommodation provided under section 21(1)(b) of the 1948 Act.

The result of this plethora of statutory provisions, is correctly summarised by Mr Beloff. He submitted that the effect of the legislation was to provide three separate solutions for three different problems. The problems being; lack of resources which had originally been dealt with under Part II of the 1948 Act; lack

of care and attention which alone continued to be dealt with by Part III of the 1948 Act and finally lack of accommodation which initially had been dealt with by section 21(1)(b) of the 1948 Act.

Basing their submissions upon this division, the appellants argue that the purpose of section 21(1)(a) was not to provide money for those in need of money or to provide accommodation for those who need 'accommodation per se' but to provide accommodation for those who required care and attention. Such persons could be rich and own their own homes but still could need the local authority's assistance under section 21(1)(a). The accommodation was not in itself an end but a means whereby the required care and attention can be provided.

From this base the appellants urge that it is only necessary to take one further and final step. They contend that asylum seekers' needs are for food and accommodation and not for care and attention and consequently asylum seekers cannot avail themselves of section 21(1)(a).

Clearly that proposition is too broadly stated. A late-claiming asylum seeker who was old, ill or disabled could certainly rely on the section. But even excepting such asylum seekers, it is at this final stage that the appellants' argument breaks down. The fact that asylum seekers have a need for food and accommodation which would but for the statutory prohibition contained in the 1996 Act be met under other statutory provisions does not mean that they cannot qualify as having a problem which results in their needing care and attention which is a condition precedent to their being entitled to rely on section 21(1)(a) of the 1948 Act.

It is accepted that the provisions of the 1996 Act do not prevent asylum seekers receiving treatment when this is required from the National Health Service. The position is the same in the case of section 21(1)(a) of the 1948 Act. The latter section does specify that the need for care and attention should arise 'by reason of age, illness, disability or any other circumstances.' The appellants contend 'any other circumstances' must be governed by the *ejusdem generis* rule. Under that rule, if applicable, the meaning of wide words 'or any other circumstances' [which put them in need of care and attention] would be restricted by more limited words 'age, illness or disability'. But did Parliament at any time in the legislative history of section 21, up to and including the 1990 amendment replacing 'infirmity' by 'illness, disability', intend such limitation? We incline to the view Parliament did not. The poor laws had provided, *inter alia*, for assisting by providing work for 'poor persons having no means to maintain themselves' (*Halsbury's Laws* 4th Ed Vol 33 para 701 footnote 2), and we accept Mr Pannick's submission that the general approach of Parliament was that those who were in need, should not be without all assistance. If that is right, the *ejusdem generis* rule would not apply:

> *It is, at best, a very secondary guide to the meaning of a statute. The all-important matter is to consider the purpose of the statute: see* Rands v Oldroyd *[1959] 1 QB 209.*
>
> *If the legislative purpose of a statute is such that a statutory series should be read* ejusdem generis*, so be it : the rule is helpful. But, if it is not, the rule is more likely to defeat than to fulfil the purpose of the statute. The rule, like many other rules of statutory construction, is a useful servant but a bad master (*Quazi v Quazi *[1980] AC 744 at 883H, per Lord Scarman).*

But even were it applicable, the rule provides them with very limited assistance. They submit that the rule together with the specific reference by amendment in (aa) of the subsection to expectant and nursing mothers means that the subsection focuses on 'personal characteristics rather than the external conditions of

the applicant'. However what does this involve? Personal characteristics can be caused by external conditions. For example one of the problems of the asylum seeker is that they have to sleep rough and go without food. This can bring about illness and disability which can result in their needing care and attention 'which is not otherwise available to them'. While there are undoubtedly the three paths of legislative provision, as identified by the appellants, this does not mean that the paths could not overlap making an applicant prima facie eligible for more than one form of assistance. This overlap is confirmed by the need for section 21(8) which provides:

> *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 [or authorised or required to be provided under the National Health Service Act 1977].*

The effect of the 1996 Act is to prevent local authorities relying upon subsection 8, since there are no longer any relevant provisions so far as asylum seekers are concerned, with the consequence that the local authorities' responsibilities are wider than they otherwise would be. As the Secretary of State has recognised in giving the 1993 Directions, it is clearly the intention of Parliament that section 21(1)(a) should be used 'to provide temporary accommodation for persons in urgent need thereof in circumstances where the need for that accommodation could not have reasonably have been foreseen' and 'to meet the needs of persons for (a) the prevention of illness'. The destitute condition to which asylum seekers can be reduced as a result of the 1996 Act coupled with the period of time which, despite the Secretary of State's best efforts, elapses before their applications are disposed of means inevitably that they can fall within a class who local authorities can properly regard as being persons whose needs they have a responsibility to meet by the provision of accommodation under section 21(1)(a). The longer the asylum seekers remain in this condition the more compelling their case becomes to receive assistance under the subsection. There is nothing remarkable in this since there is no dispute as to their entitlement to treatment from the Health Service and if Parliament has left the entitlement to treatment there is no obvious reason why it should not take the same course as to care and attention under section 21.

It follows therefore that in general the approach of Mr Justice Collins was correct and this appeal should be dismissed. Mr Beloff regards Collins J's judgment as being flawed because he treated section 21(1)(a) as 'a residual obligation to be engaged *whenever* other functions designed to alleviate hardship were not in place.' In particular it is submitted that Collins J was in error in interpreting 'or any other circumstances' as being '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' (transcript page 23E) [(1997) 1 CCLR 69, at p81B–C]. It is also suggested that he was in error in saying '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' (transcript page 28E/F) [(1997) 1 CCLR 69, at p83E–F]. These comments and similar comments contained in Collins J's judgment may be the result of a misunderstanding, especially because of the judge's references to 'safety net'. The judge's comments should not be taken as indicating that section 21(1)(a) is a safety net provision on which anyone who is short of money and/or short of accommodation can rely and in so far as the judge intended them to be read literally he was in error. Section 21(1)(a) does not have this wide application.

Asylum seekers are not entitled merely because they lack money and accommodation to claim they automatically qualify under section 21(1)(a). What they are entitled to claim (and this is the result of the 1996 Act) is that they can as a result of their predicament after they arrive in this country reach a state where they qualify under the subsection because of the effect upon them of the problems under which they are labouring. In addition to the lack of food and accommodation is to be added their inability to speak the language, their ignorance of this country and the fact they have been subject to the stress of coming to this country in circumstances which at least involve their contending to be refugees. Inevitably the combined effect of these factors with the passage of time will produce one or more of the conditions specifically referred to in section 21(1)(a). It is for the authority to decide whether they qualify. In making their decision, they can bear in mind the wide terms of the Direction to which reference has already been made, as contrary to Mr Beloff's submission the direction is not *ultra vires* and gives a useful introduction to the application of the subsection. In particular the authorities can anticipate the deterioration which would otherwise take place in the asylum seekers condition by providing assistance under the section. They do not need to wait until the health of the asylum seeker has been damaged.

The result is that section 21(1)(a) should enable assistance to be provided at least in the case of some asylum seekers. It also means that an added burden has been placed upon local authorities which but for the 1996 Act would have had to be met in part by central government. This consequence is not however one for which the court can give any relief. This court's task is limited to seeking to clarify the proper interpretation and scope of section 21(1)(a) which having been done means this appeal should be dismissed.