



in conjunction with

THE LOCAL GOVERNMENT GROUP

SUPPORT FOR PERSONS FROM ABROAD

**PROVISION OF RESIDENTIAL
ACCOMMODATION:**

THE POSITION AFTER *M v SLOUGH*

by

Kelvin Rutledge



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"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".

Section 21(1)(a)

LAC(93)10 (Appendix 1, paragraph 2(1)).

"A person to whom section 115 of the Immigration and Asylum Act 1999 (exclusion from benefits) applies may not be provided with residential accommodation under subsection 1(a) if his need for care and attention has arisen solely - (a) because he is destitute; or (b) because of the physical effects, or anticipated effects, of his being destitute."

Section 21(1A)



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Slough BC v M [2008] UKHL 52

R v Hammersmith & Fulham LBC ex p M

R v Wandsworth LBC ex p O; R v Leicester CC ex p Bhikha

R(Westminster CC) v NASS

R(Wahid) v Tower Hamlets LBC

R(Mani) v Lambeth LBC

R(Pagaziti) v Lewisham LBC



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The facts of M v Slough

- **Zimbabwean overstayer, HIV (AIDS)**
- **Required regular medical checks and medication for which he required the use of a refrigerator**
- **In all other respects able to look after himself.**



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The decision

- a need for medical treatment or medical care alone is not a “need” for the purposes of s.21(1)(a). Section 21(8) expressly prohibits local authorities from providing anything which is authorised or required to be provided by the NHS: per Baroness Hale at paragraph 31;
- a need for “shelter, warmth, food and other basic necessities” is not a relevant need and previous legal authorities to this effect were “mistaken”: per Lord Brown at paragraph 42 and Lord Neuberger at paragraph 64;
- nor does a need for accommodation fall within section 21(1)(a). The homeless have their own welfare scheme (currently Part 7 of the Housing Act 1996): per Baroness Hale at paragraph 33 and Lord Neuberger at paragraph 57;



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"looking after"

"... doing something for the person being cared for which he cannot or should not be expected to do for himself: it might be household tasks which an old person can no longer perform or can only perform with great difficulty; it might be protection from risks which a mentally disabled person cannot perceive; it might be personal care, such as feeding, washing or toileting. This is not an exhaustive list ...".

Per Baroness Hale at paragraph 33;



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Anticipated need

section 21(1)(a) applies to current needs not future needs. The local authority can gear itself to act as soon as the need arises but not before

per Baroness Hale at paragraph 35; Lord Brown at paragraph 43 and Lord Neuberger at paragraph 65.



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The practical effect of the decision

- The role of NASS
- “Only if they already need section 21 care and attention is the local authority responsible; otherwise the responsibility falls on central government”.

Per Lord Brown



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Section 21(1)(a) and mentally disabled persons

- Baroness Hale, para 33
- “care in the community” cases



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Section 21(1A)

- “need” involves the same threshold test as in section 21(1)(a)
- “able bodied / infirm” or “destitute plus” distinction remains but of less significance



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Section 29 assistance

- power to assist “handicapped” persons by providing them with “advice and support in their own homes or elsewhere”
- section 2(1) of the Chronically Sick and Disabled Persons Act 1970
- Section 45 of the Health Services and Public Health Act 1968
- Circular 19/71



Condition	Need to be looked after by social services?	Need arose solely as a result of destitution?	Section 21(1)(a) applies?	Section 21(1A) applies?	Responsibility
Destitute WRPF	No	N/A	No	N/A	NASS
Destitute WRPF	Yes	Yes	Yes	Yes	NASS
Destitute WRPF	Yes	No	Yes	No	Local Authority



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