

10 May 2018

Section 17 Support for Migrant Families

Khatija Hafesji
Barrister
Monckton Chambers

Our clients

- Children and/or their parents who are:
 - Subject to immigration control and have no recourse to public funds; or
 - No immigration status and not asylum seekers
- Case Studies

Section 17 CA89

- S. 17(1) Children Act 1989 – duty to provide services
- S. 17(3) Children Act 1989 – power to provide services
- S. 17(6) – accommodation or money
- S.17(10) – definition of child in need
- *R(G) v Barnet London Borough Council* [2004] 2 AC 208

2 types of case

- *R (MN) v London Borough of Hackney* [2013] EWHC 1205 (Admin) at [19]:
- Immigration control and NRPF - s.17(3) discretion
- Breach of immigration laws and not an asylum seeker – s.17(3) and that such support is necessary to prevent a breach of their Convention (art.8) rights.
- *R(O) v Lambeth* at [13], considers breach of convention rights.
- S.10 Immigration and Asylum Act 1999

Principles of a good assessment

R (O) v Lambeth Borough Council [2016] EWHC 937 at [17]-[22]

- Social worker judgment;
- Wording of assessment;
- Information and explanation from the applicant;
- Adverse inferences – *R(S&J) v Haringey*;
- Ex post facto

“Working Together” Guidance

Persuading a court

- These cases, in particular, are won or lost on the strength of the evidence;
- Attention to detail – assessments, bank statements;
- Providing extensive witness evidence from former “support networks”;
- Co-operation, openness, transparency from applicants;

Practical Steps

- Obtain the assessment as soon as possible;
- Be creative with evidence – medical, school, religious institutions, neighbours etc.;
- Be pro-active in obtaining evidence, these cases often require active casework;
- The power at the coalface;

Developing the case law

- Is there a case to be made for fact-finding hearings?
- *R(OK) and others v Barking and Dagenham* [2017] EWHC (Admin) 2092 and oral evidence
- Art 1 and 3 ECHR, see *R(Adam, Limbuela and Tesema) v Home Secretary* [2005] UKHL 66 and *Labita v Italy* [ECHR] 26772/95
- Deference vs higher intensity of review

Khatija Hafesji

Monckton Chambers

email khafesji@monckton.com

The logo for Monckton Chambers is a dark red rectangle containing white text. On the left is a large, stylized letter 'M'. To its right, the word 'MONCKTON' is written in a bold, sans-serif font. A thin white horizontal line is positioned below 'MONCKTON'. Below this line, the word 'CHAMBERS' is written in a smaller, spaced-out, sans-serif font.

M **MONCKTON**
CHAMBERS