

Background

Ordinarily, housing authorities are only able to provide housing assistance (beyond basic advice and assistance) to people who are believed to be eligible for their service. It is unlawful for housing authorities to provide housing assistance to ineligible people using the Councils housing powers.

A person who is subject to immigration control is not eligible for assistance unless they are in one of the classes of exceptions set out in the regulations. Broadly, if a person subject to immigration control has leave to enter or remain in the UK without any restriction to use of public funds, then they will be eligible for assistance.

Those with leave but a restriction on the use of public funds, those with an as yet undetermined claim for asylum, those whose claim for asylum has failed, or those who have entered the UK without permission and who have not made a claim for asylum, are ineligible for assistance.

Pandemic response

As a response to the pandemic, the government took an 'everyone in' approach. With this public health approach, the restriction on access to services based on eligibility for housing/homelessness assistance was put aside, and for a temporary period, a person's immigration status would not prevent them from being accommodated.

In responding to this a number of locations were used to accommodate people, this has been consolidated over the last few months to one location Garforth House, accommodating 13 non EEA nationals, 12 of whom are failed Asylum seekers. Extensive move on work continues where it can, but it is the intention that this facility will wind down within the next few months.

In preparation for the Local Authority's exit strategy from hotel/hostel accommodation early conversations have been had with some third sector partners. These conversations have been focused around the short term accommodation need. Further conversations around the longer term opportunities have been very light touch. We have been advised that some guidance around safely operating very small communal spaces is imminent so the opportunity to now discuss future planning of previous accommodation types is timely.

We have not approached any third sector agency to work with any future cohort of customers who may find themselves without accommodation following a failed Asylum decision.

We will continue to support third sector to re model and provide safe accommodation within the COVID restrictions guidelines. Also to support the third sector to continue to help services users make the appropriate legal claims for Home Office support.

NSAP Next Steps Accommodation Programme

Our submissions to the Next Steps programme announced on 17th September was in three parts, short, medium and longer term accommodation plans. The submission for short term accommodation and support covering a wide variety of schemes was 1.7m, we received 1.3 m a shortfall of approximately £400,000.

MHCLG advised us on October 5th which elements of the bid we had obtained. Due to the shortfall in financial support we are having to rapidly re-look at the costs, value and deliverability of a variety of schemes which does include Garforth House.

It is our intention to speak with partners ASAP to discuss this.

Current position

The letter from Chris Philp sets out the government's intention to resume the issuing of negative cessations. When a person seeking asylum who has been dispersed receives a negative decision on his/her application for asylum, a 21 day notice period begins after which the UKVI accommodation ends unless the applicant appeals.

If a person with a failed asylum application approaches a local authority for housing assistance, they will be ineligible for such assistance. Under the Housing Act 1996, a person will not be eligible for assistance if they are a person from abroad who is ineligible for assistance under s185.

a 'person subject to immigration control' is not eligible for housing assistance unless they come within a class prescribed in regulations made by the Secretary of State.

The regulations prescribing which classes of persons from abroad are eligible and ineligible for housing assistance are set out in the Allocation of Housing and Homelessness (Eligibility) (England) Regulations 2006 (SI 2006/1294), where Provision 5 sets out persons subject to immigration control who are eligible for housing assistance.

<https://www.legislation.gov.uk/ukxi/2006/1294/regulation/5/made>

At an early stage in the pandemic, the government's strategy was 'everyone in', where the priority was public health over application of housing and homelessness law. Chris Philp's letter demonstrates that the government is now returning to pre-pandemic arrangements. Therefore accommodation of people subject to immigration control who have no recourse to public funds will be scaled down and end.

Resumption of existing rules

On 15 September 2020 however, Chris Philp MP, Minister for Immigration Compliance and the Courts wrote to the regional lead of the Strategic Migration Partnership. The Minister referred to his earlier letter of 5 August 2020 to set out that firstly the move on process would be resuming from 11 August following the temporary pause on cessations of asylum support.

The Minister advises that throughout the pause in cessations the Ministry has kept the situation under review and worked with public health colleagues, and that from 15 September 2020, the issuing of negative cessations would resume. This means that asylum support will be discontinued where a person who has claimed asylum has had a negative decision on their claim.

The Minister sets out that "Those without a right to be in the UK should be taking steps to leave the country; we offer support through a Voluntary Returns Scheme that will pay for travel and provide a cash amount, and this can and should be utilised. We will be looking to implement enforced returns for those that do not go voluntarily."