High Court judgment on asylum hotels gives guidance on adequacy, overcrowding and HMO rules

By Ben Amunwa

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Introduction

On 26 March 2026, the High Court handed down judgment in *R (SH) v Secretary of State for the Home Department* [2026] EWHC 729 (Admin) granting the Claimants' application for judicial review of the adequacy of Home Office accommodation provided to them under s.95 of the Immigration and Asylum Act 1999 ('**IAA 1999**').

This is the first reported case to consider the complex interaction between the overcrowding rules in Part X of the Housing Act 1985 ('**HA 1985**'), the licencing regime for houses in multiple occupation ('**HMOs'**) as set out in Part II of the Housing Act 2004 ('**HA 2004'**) and the accommodation of destitute asylum-seeking families in hotels.

Background

A total of approximately 35,000 individual asylum seekers were accommodated in hotels in the UK as of September 2025. Of that total, there were some 4,300 families, many with minor children.

The Claimants, anonymised as 'SH' and 'BWO', were two asylum seeking mothers with dependent children. Their families were accommodated in hotel rooms for periods of 3 years or more from mid-2022 onwards.

The Claimants were granted permission to proceed with all five grounds of challenge, including alleged breaches of housing legislation, adoption of an unlawful policy, breaches of the statutory duty to provide adequate accommodation and associate common law requirements of reasonableness / rationality.

The judgment

In summary, the judgment of Alan Bates sitting as a Deputy Judge of the High Court concluded:

1. Hotel rooms provided under s.95 of the IAA 1999 are unlikely to meet the definition of a '*dwelling*' in s.343 of the HA 1985, even if used for prolonged periods. This was based on the Court's analysis of the legislative and policy context in this area (§34(1), (4) & (6)-(7)). Overcrowding rules in Part X of the HA 1985 were not entirely irrelevant to the question of whether accommodation met the standard of '*adequacy*' in s.95 IAA 1999. However, the two frameworks were not equivalent (§§34(2) & 42);
2. In the circumstances, the Home Secretary was entitled to adopt a policy that adapted the overcrowding rules to the context of asylum hotels. She was not obliged to replicate Part X of the HA 1985. However, her policy was not in place until June 2024. For some of the time that the Claimants were accommodated in hotel rooms, s/he had no available policy guidance (§§45 & 48);
3. While the HA 2004 licencing regime might apply to SH's hotel room (which lacked a kitchenette), it was unnecessary for the Court to reach a definitive conclusion given that an unlicenced HMO would not necessarily fail to meet the test of adequacy under s.95 of the IAA 1999. Any complaint regarding SH's hotel operating as an unlicenced HMO could be pursued via the local authority responsible for investigating and enforcing that regime (§63);
4. More generally, in a judicial review challenge to s.95 accommodation, the Court confirmed that it applies a heightened degree of scrutiny '*…that properly reflects the significance of asylum support under ss.95-96 IAA 1999 to the individuals who receive it, including for protecting them from being exposed to conditions that could breach their Convention Rights*' (§66);
5. The Home Secretary had breached her duty in s.95 of the IAA 1999 in the individual cases of SH and BWO by providing them with rooms of insufficient size, privacy and conveniences for their families over a prolonged period. Hotel room accommodation was likely to become inadequate for such families after an initial period of 3 months (§§81 & 100);
6. While residential asylum accommodation was provided on a '*no choice*' basis, there was no requirement for asylum seekers to demonstrate '*exceptional circumstances*' before they could request accommodation in a particular location on medical grounds (§§93-95). The correct approach is for the Home Office to identify a person's needs

and to satisfy herself that the accommodation provided or offered is adequate to meet those needs.

Comment

While the Court left open the extent to which overcrowding rules may be relevant in any given case of s.95 hotel accommodation, for now, Part X of the HA 1985 does not apply to hotel accommodation provided by the Home Office and could only ever be indirectly relevant to its adequacy. The application of the overcrowding rules to residential asylum accommodation remains an open question, as does the extent to which the Court should take account of alleged breaches of the HMO licencing regime. There remains a degree of unclarity that is yet to be resolved here.

Elsewhere, the judgment reaffirms the Home Secretary's duty to take account of individual vulnerabilities giving rise to accommodation needs. In SH's case, the Court described the family's living circumstances as '*extraordinarily stressful*' as the family had an infant and a school age child in one hotel room for a lengthy period. Similarly, in BWO's case, the Court acknowledged that the single hotel room that the Defendant provided to the family meant that their sleeping arrangements were '*incompatible with personal dignity*'.

A likely consequence of the High Court's findings is that the Home Office's recently updated '*Allocation of asylum accommodation policy*' will need to be adapted to align with the law. As it stands, that policy contains multiple references to the exceptional circumstances test that has been robustly deprecated in the Court's conclusions.

Representation

3PB's public law barrister, Ben Amunwa, was led by Zoë Leventhal KC and was co-junior with Toby Vanhegan, instructed by Sasha Rozansky and Lily Moghadam of Deighton Pierce Glynn. The Secretary of State was represented by Carine Patry KC, leading Karen Reid, instructed by the Government Legal Department.

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