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Access to Education for Migrant Children
Free School Meals, Pupil Premium, and 2-year
old early education

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Legal challenges to schemes that excluded migrant children

- 2 year-old early education provision
- Coronavirus Free School Meals vouchers
- Free School Meals eligibility criteria
- Pupil Premium
- Healthy Start Scheme



Exclusion of children from migrant families from additional education support

- Free School Meals (“FSM”) eligibility criteria frequently adopted as the criteria for access to other support and funding in the education context and more generally intended to help children from disadvantaged backgrounds.
- Criteria for FSM at section 512ZB of the Education Act 1996
- Problem for children from migrant backgrounds is that the FSM criteria requires receipt of welfare benefits that many of their parents will be excluded from as a result of their immigration status (NRPF/s.4 asylum support etc.)
- Consequence – children from some of the most financially deprived families are excluded from support.



Free School Meals litigation

- Proposed JR of the coronavirus FSM voucher scheme – challenge to the exclusion of NRPF children resulted in the extension of the scheme.
- Subsequent proposed JR of the income threshold employed in the FSM extension for NRPF families
- Proposed JR to the eligibility criteria for FSM in primary legislation. SSE agreed that there would be a review of the criteria, and that pending that review the temporary extension would continue. No review as yet...



Pupil Premium

- Pupil premium is paid for each child who is receiving FSM, or has done so at any stage in the preceding 6 years.
- £1,345 eligible primary schools pupils and £955 for secondary schools. Schools decide how to spend the grant, but it must be in accordance with the overarching function of promoting the educational attainment of disadvantaged children.
- DFE guidance advised schools not to include children receiving FSM under the temporary extension when completing the census.
- JR of the exclusion resulted in the SS agreeing to implement an application process for schools to claim PP for those in receipt of FSM under the temporary extension.



Early education for 2-year olds

- Research showed huge benefits for 2 year olds from disadvantaged backgrounds being able to access early education provision.
- 15 hours free early education provision for 2 year olds from disadvantaged backgrounds.
- Eligibility criteria in the regulations adopted the FSM criteria (requiring parents to be in receipt of benefits) thereby excluding many migrant children
- First 2 JRs – the first by a British child extended eligibility criteria to the children of parents with leave and NRPF and Zambrano carers; extended eligibility to s.4 asylum support children (this challenge brought by Central England Law Centre).
- Second JR to extend eligibility to non-British children whose parents were unlawfully in the UK and in receipt of s.17 CA 1989 support



Arguments to consider?

- Regard had to material considerations?
- Consistent with statutory purpose(s)?
- Rational?
- Breaches of human rights – A14 in conjunction with A8/A21P/A3?
- Equality Act – indirect discrimination?
- Section 149 EA PSEDs complied with?



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