



Introduction

Winter 2002/3 has been yet another period of change for the Law Centre. We have five new staff members: Vincent Sheils and Patricia Southern (community care), Lee Hatton and Catherine McPherson (social security) and Lois Biggerstaff (immigration). Lois was previously our employment caseworker. Ellen Weaver has also returned from her career break and is working on a part-time basis as an immigration worker. Patricia Carty is currently on maternity leave. The volume of specialist legal advice and casework continues to be high and it is hoped that members will soon get to know the new legal advisers.

**Maura McCallion, Assistant Director
(Casework Services)**

Social Security



Among successful cases at the Social Security Commissioner was decision C8/02-03(1B) in relation to the manual dexterity aspect of the personal capability test for Incapacity Benefit. The tribunal was held not to have adequately dealt with the manual dexterity issues. It appeared to have confined itself to assessing the person against descriptor 7(b) on his ability to turn cooker knobs.

The Commissioner held that the tribunal had erred in failing to address and decide whether or not the person could turn a sink tap, which is the second part of the descriptor. This was an important case in that it has been confirmed that a person need only satisfy one of the two aspects of this descriptor in order to be allocated points. This case was referred to us by the Appeals Service for representation.

The Chief Commissioner also upheld the argument of the Law Centre that a tribunal considering a Severe Disablement Allowance appeal had erred in

law in not giving an adequate statement of reasons for its decision. Specifically, the tribunal failed to deal with the issue of loss of concentration in deciding on loss of faculty. This case, referenced as C1/02-03(SDA) was referred by the Association for Spina Bifida and Hydrocephalus.

A number of cases in which we were successful at Commissioner level and remitted to tribunal were successfully concluded in this period.

The Law Centre was recently unsuccessful before the Social Security Commissioner in the first case governing the application of the habitual residence test to returning UK nationals. The applicants an elderly couple returning to Northern Ireland had left Zimbabwe due to the civil unrest. The claim for Income Support was disallowed though partially upheld on appeal so that the benefit was only refused for the first six weeks back in Northern Ireland. This decision was upheld by the Commissioner who noted that former residents may be able to establish habitual residence immediately on returning to Northern Ireland, however, in this case the objective factors of the return did not necessarily indicate an intention to abandon previous habitual residence in Zimbabwe. The findings of fact and statement of reasons were adequate and there was no error of law in the decision. The Law Centre is currently considering an appeal.

A number of interesting challenges to time limits are currently before appeal tribunals with one claim already proceeding to the Social Security Commissioner.

The cases concern the absolute time limit of three months from date of death applied to widows' benefits (now bereavement benefits) and Sure Start maternity payments. The argument is that the inflexible time limit is contrary to Article 6 (right to a fair hearing/trial) and Article 8 (right to family life). Interestingly, a new twelve month time limit is being introduced for those bereaved from April 2003 for claiming the lump sum bereavement payment.

Another interesting appeal tribunal case awaiting a decision is a challenge to rules that tie entitlement to personal allowances for children in Income Support to receipt of Child Benefit. The applicant and three children left the home of her common law husband following domestic violence. As the common law husband was claiming Child Benefit he remained entitled to that benefit for a further three weeks and, as

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a result of Regulation 15 of the Income Support (General) Regulations, the applicant was unable to claim for the children in her benefit for that period. The appeal argues that the regulation should be struck down under the Human Rights Act as being contrary to Article 8 of the Convention (the right to family life). Whichever way the appeal goes, this case is likely to reach the Social Security Commissioner.

The Law Centre's applications to the European Court of Human Rights on behalf of widowers for failure to pay benefits equivalent to those available to widows prior to April 2001 continue to make slow progress. In the two most advanced cases, figures on the comparable level of benefits that would have been paid to a widow have been agreed but no friendly settlement has been reached as the UK government is awaiting the outcome of the Hooper judgement in the Court of Appeal in England.

New cases of interest include a human rights challenge to the reduction in Income Support paid to a mother who is refusing to name the father of her child for child support purposes, as she is afraid of repercussions. The Social Security Commissioner has been asked to look at the way in which the tribunal applied the 'undue distress' exemption test, particularly in light of the woman's right to respect for private life under Article 8 of the European convention of Human Rights.

We are pursuing a potential test case considering the impact of shared childcare arrangements on Working Families Tax Credit. An application for leave to appeal to the Social Security Commissioner has recently been lodged.

Immigration



A successful High Court judicial review decision was obtained in the case of R. The judge agreed with the Law Centre submission that the court is obliged to look at factual matters if Article 3 of the ECHR is engaged. The case was remitted to the Immigration Appeal Tribunal. Further judicial review decisions and hearings are awaited.

Successful legal argument before the Immigration Appeal Tribunal in London led to a ruling in favour of a Chinese client. It was held that a forcible return to China

would be a breach of the government's obligation under the Human Rights Act in that the client would be subject to inhuman and degrading treatment.

The government has withdrawn its appeal to the Immigration Appeal Tribunal in the test case of Annies. This means that the adjudicator's interpretation of 'dependant' and 'descendant' stands and that the client is able to remain with her adoptive family in Northern Ireland.

The immigration unit has been successful on a number of occasions before the immigration adjudicator. Asylum status has been confirmed for Chinese and African clients. Indefinite leave to remain was obtained for a client with health problems which could not be properly treated in his country of origin.

New cases of interest include potential human rights challenges to the rules on removal of accommodation and support for those who have exhausted the asylum procedure but who have not been given travel documents for return to their country of origin. These people may be left destitute and cannot avail of state support.

Employment



The employment unit continues to be busy with tribunal applications. A settlement of £10,000 was obtained for client with a learning disability who was unfairly dismissed and discriminated against on the grounds of his disability. This case was referred by East Belfast CAB. A case involving a claim of unfair dismissal, breach of contract and disability discrimination was settled for £7,500. Two harassment cases were also settled prior to hearing. Ongoing cases include a dismissal for assertion of the right to the minimum wage, a claim on behalf of a worker who made a protected disclosure and was treated detrimentally as a result and a number of migrant workers cases. We are also able to give these clients specialist immigration advice.

The Working Time (NI) Regulations case for 51 factory workers in relation to a failure to include a shift allowance as part of holiday pay, referred to in the last report, is reaching settlement. This case was referred to us by private practice solicitors.

ADVICE LINE HOURS

Belfast Office:

Monday-Friday, 9.30 am-1.00 pm

028 9024 4401

Western Area Office:

Monday-Friday, 9.30 am-5.00 pm

028 7126 2433



Community Care



Three tribunal cases have been lodged challenging the failure to pay Attendance Allowance to those who are entitled to Income Support but not social services support while in residential care. These should be interesting test cases on the interpretation of the Attendance Allowance regulations as the current practice results in those on Income Support receiving less overall state support towards their care. These cases were referred by social services, East Belfast Independent Advice Bureau and the Alzheimer's Society.

A successful settlement of backdated Disability Living Allowance was obtained for a client with a learning disability who had wrongly been asked to pay towards transport to day care. Ballymena CAB referred this case.

A judicial review, which looks at the responsibility of public bodies as regards funding of disability adaptations, will be heard in the next few months.

therefore had to act in a way which protected the right to respect for family life of the person whom they sought to evict. It was held that BiH, the landlord involved, was a public authority for the purposes of the Human Rights Act although the facts of this case did not lead to a breach of the client's rights. Nevertheless, the case reminds advisers not to limit human rights arguments to statutory bodies. Housing Rights Service referred this case.

Housing



The judicial review considering the Northern Ireland Housing Executive's failure to apply sanctions in a neighbour intimidation case due to a perceived risk to staff was heard in full in November. The judge noted that this is an important case not only for the parties but also for the whole of Northern Ireland but found in favour of the NIHE's approach. We are seeking leave to appeal this judgement to the Court of Appeal. Housing Rights Service referred this case.

Leave has been granted for a judicial review on the nature of temporary accommodation provided by the NIHE to a homeless man with shared care of his children. The accommodation offered does not allow for overnight stays. This case was referred by First Housing Aid and Support Services.

A defence to an eviction was heard in November when the Law Centre pursued the strategic argument that the housing association landlord was a public authority in terms of the Human Rights Act and