



Introduction

This report covers the first six months of 2003. Hopefully, the report will highlight some of the work we have done so far this year and be of use to members in their own work. Please contact us if you need more information on any of the issues raised.

There will be some staff changes this summer. Maura Hutchinson is going on maternity leave and Lois Biggerstaff is leaving to travel the world. As a result, Peter Fitzmaurice, our employment worker in Belfast, is transferring to the immigration unit, and new staff members Catherine Jackson (immigration) and Daire Murphy (employment) will be starting with us. Catherine is a US attorney and Daire is a barrister. In social security, Patricia Carty is returning from maternity leave.

Maura McCallion,

Assistant Director (Casework Services)

Social Security



The Law Centre is challenging the absolute time limit of three months after the date of confinement for claiming a Sure Start Maternity Grant and the three month time limit for claiming Widows' (now Bereavement) Benefits. The challenge is based on the rigidity of the time limit being contrary to article 8 (right to respect for family life) of the European Convention of Human Rights. The first appeal concerning a Sure Start Maternity Grant has been heard by the Chief Social Security Commissioner who sought additional written submissions on the extent of the powers in the Human Rights Act to interpret legislation. A decision is due shortly.

In an interesting development, the government introduced a new time limit for the lump sum Bereavement Benefit for those widowed after April 2003. The payment can now be claimed up until twelve months after the date of the death of the husband or wife.

The Law Centre is challenging legislation which applied to Working Families Tax Credit (and now its

successor Working Tax Credit) where receipt of the Irish Republic benefit Domiciliary Care Allowance (DCA) does not lead to an award of a disability credit for children when assessing entitlement. The applicant, a cross border worker, is arguing that the payment should be treated as analogous to Disability Living Allowance (care component) which triggers entitlement to an extra credit. The legal argument is that this failure to treat DCA as analogous is contrary to European law in that migrant workers should have the same tax and social advantages as domestic workers (article 7(2) of EC Regulation 1612/68). It is also argued that the current position is contrary to article 14 ECHR (freedom from discrimination) read with article 8 (respect for family life). The case, referred by Newry Welfare Rights, is due to be heard before the Commissioner on 1 October 2003. The Inland Revenue is bringing over counsel from London to argue the case.

The Law Centre recently succeeded in an appeal before a tribunal of Commissioners (C17/02-03(IS)(T)), that housing costs should be paid to a party living in a home (but not the owner occupier) to prevent an eviction. The background was unusual and complex. In essence, the applicant, who was unable to manage her own affairs, lived with her parents who were facing eviction for mortgage arrears. Paragraph 1 of Schedule 3 of the Income Support (General) Regulations allows a person not party to the mortgage to be treated as liable where meeting housing costs is necessary to remain in the home and it is reasonable in all the circumstances. The Tribunal of Commissioners applied this regulation and agreed that housing costs be paid to the daughter from November 2000.

We have taken on a new case which will look at the legality of the refusal of an application by a single male parent for a Sure Start Maternity Grant (under article 8 ECHR taken with article 14 ECHR).

We were successful at two Commissioner hearings on the awarding of Disability Living Allowance to children where the tribunal failed to apply the correct test in establishing whether the requirements of these children were substantially in excess of a child of the same age who did not have a disability.

A complex Disability Living Allowance case is before the Commissioner. There are three strategic points. The first is whether comments made by the medically qualified member of the tribunal should be put to the attending parties so that they can respond. The Law

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Centre argument is based on natural justice and the right to a fair hearing protected by the Human Rights Act. The Commissioner will also be considering the law on advance renewal claims where the claimant's condition deteriorates in the period after submission of the claim form and before the formal date of renewal. At present, the deterioration cannot be taken into account in adjudication of the claim and the Commissioner will be asked to rule on the legality of this under the Human Rights Act. The final point in this case is about revised decisions and appeals, ie which decision is being appealed. This is particularly relevant to those whose condition is deteriorating.

Other new cases of interest include a challenge to the use by a tribunal of a hand drawn map of Belfast City Hall. The appellant was asked to judge walking distance using this map, which was not to scale. There was no assessment of whether or not the person was familiar with the distances involved in walking around City Hall. This case was referred by Falls CAB.

We are representing in an appeal tribunal for a family member of a European worker who has been refused benefit for the period when the permit was lapsed.

We are also looking at whether the tribunal's inquisitorial role means that it should not rely on apparent concessions from an unrepresented appellant but should consider the issue for itself.

Immigration



Our appeal to the Immigration Appeal Tribunal in London was successful for a Chinese client who had been involved in pro-democracy demonstrations. The case has been remitted to the adjudicator for another hearing. We were also successful in having a case remitted for a client who is unable to return to an Eastern European country because of a blood feud.

The Home Office withdrew its appeal to the Immigration Appeal Tribunal in London against our successful establishing of refugee status for a stateless African client at adjudicator level.

We were successful after an adjudicator hearing in obtaining asylum for a client from Nepal, an opposition party member from Zimbabwe who had suffered torture, and for Moroccan and Chinese clients.

Clients were released from Maghaberry prison after a number of bail applications were made by the immigration unit. These included clients from China and Zimbabwe.

We obtained indefinite leave to remain status for a client who had suffered domestic violence. Her previous permission to be in the UK had been dependent on her marriage but she wished to separate and remain in the UK. This was a difficult application as the rules at the time were not favourable to her circumstances.

New strategic cases opened include an appeal in which we are seeking to extend the definition of 'exceptional compassionate circumstances' in relation to family reunion.

Employment



The employment unit successfully settled a case for a client who was refused time off to care for a dependant. The client received £1,500. A case of unfair dismissal and sex discrimination was settled for £3,000.

A client was paid backdated National Minimum Wage after involvement of the Inland Revenue NMW Compliance Unit. As a result, she was then treated unfavourably by her employer to the extent that the Law Centre is now representing her in a claim for constructive dismissal.

We are also testing the definition of apprenticeship for the purpose of the exclusion from the National Minimum Wage legislation. Our client has been refused the National Minimum Wage because his employer is categorising him as an apprentice.

The Law Centre recently won a preliminary hearing on the just and equitable time limit extension for a client who is profoundly deaf and who submitted his application two and a half months late despite receiving written advice from the Equality Commission. The Law Centre introduced evidence as to the client's understanding of written English given that British sign language was the applicant's first language. This case was referred by RNID.

Two cases where the employers are trying to rely on the illegality of the contract to avoid responsibility for the failure to protect the employment rights of our

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clients have been taken on by the unit. The tribunal heard submissions on the illegality defence and a ruling is expected soon.

A complex case involving bullying and harassment is approaching hearing stage.

New strategic cases opened include two appeals referred by Bangor CAB on the rights of part time workers under the new legislation, a disability discrimination case for a client with mental health difficulties and a case which will involve argument on the length of service requirement for unfair dismissal.

toileting facilities. The Law Centre submission was that the trust had failed in its statutory obligation to assist our client in arranging for the adaptation of her home as it had simply referred her to the Northern Ireland Housing Executive who did not award a grant. The means test element of the disabled facilities grant scheme was also challenged as unlawful due to its failure to take account of outgoings in calculating the resources available to an applicant. It was argued that the means test is ultra vires the enabling regulations and leads to a breach of the right to respect for private and family life due to the impact on the person of being left without basic facilities.

Community Care



A GP opinion on the mental capacity of a man who had suffered a stroke to manage his financial affairs was taken into account by a social services trust in its decision about whether he could return home from care. After representations from the Law Centre, the trust has agreed to assist him in returning home on a phased basis. This case was referred by Speech Matters.

Another trust settled a case in which a judicial review action had been planned after representations from the community care unit. This allowed a client who is terminally ill to return home from hospital with an adequate care package. The initial decision had been heavily influenced by the financial position of the trust as opposed to the needs and wishes of the client and her family.

Legal arguments on the use of resources in care decisions have led to increased respite and other care services for clients and carers.

Two new judicial reviews are ongoing in the High Court. The first one is on the interpretation of the duty to assess adaptation needs. The questions is whether the assessment should take account of more than just functional needs and encompass wider health or disability needs. The second case concerns a reduction of a placement at a day centre in a client's care plan without the substitution of alternative services to meet the person's need.

The judicial review, which looks at the responsibility of public bodies as regards disability adaptations, was heard on 11 June and judgment is expected in September. The case concerns accessible washing and

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 and was unsuccessful but is due to be heard in the Court of Appeal on 11 September. In the meantime, the house was sold to the perpetrators of the intimidation and a further judicial review was necessary. The Law Centre was successful in having the house sale declared unlawful. A decision about whether or not title to the house will need to be transferred back to NIHE will be made after the outcome of the Court of Appeal hearing on the main case.

Judgment was given in the county court that BiH Housing Association is a public authority for the purposes of the Human Rights Act, as argued by the Law Centre despite the resistance of the housing association. This test case extends the protection of the human rights of those affected by decisions of housing associations.

Finally, NIHE recently conceded that the human rights arguments put forward by the Law Centre were sufficiently persuasive as to lead it to drop its county court action for recovery of possession of a client's home. NIHE had been pursuing recovery for over a year.

The above three cases were referred by Housing Rights Service.

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