

Introduction

Welcome to the winter edition of the casework bulletin. If you are phoning us for advice or to refer a case then you may come across new casework team staff members: Eimear McCann, Karen Mercer and Sara Duddy who all started with us this summer.

October saw the introduction of a new benefit: Employment and Support Allowance. We are happy to take advice calls on any issues that come up around its implementation.

We would also flag up that, given the present economic climate, we can advise and take referrals on redundancy, short term working and pay cuts.

Maura McCallion

Assistant Director (Casework Services)

December 2008

Social security



Restrictions on benefits for migrant workers

In November, the House of Lords gave its judgment on **Zalewska v DSD**. This was a test case appeal against a decision of the Northern Ireland Court of Appeal. The court had held that it was lawful to restrict access to Income Support for Ewa Zalewska, our Polish client who had worked here for over twelve months but had failed to register her second job when she moved workplace.

On the first question, whether European Law applies to the UK government's derogation from the Accession Treaty 2003, the House of Lords ruled unanimously that it did.

The second question was whether the regu-

lations for A8 nationals are proportionate. The regulations require workers to register employment with the Home Office and all changes to employment during the first twelve months or lose the right to claim certain means-tested benefits if becoming unemployed. The House of Lords held by three to two that the regulations were proportionate (Lord Justice Hope, Carswell and Brown ruled in favour of DSD, Lady Hale and LJ Neuberger found in our favour).

The case reference is *Zalewska (AP) v Department for Social Development (Northern Ireland)*; [2008] UKHL 67. You can get a copy on request from our library or download it from the BAILII website.

Decision making

We lodged an application for leave to apply for judicial review of a Social Security Commissioner decision not to grant leave of appeal on an Incapacity Benefit case. We felt that undue weight was placed in his decision on a person's delay in contacting the Social Security Agency about missing a medical assessment. We accepted that this is one relevant factor to be taken into account when determining whether a person had shown good cause for failing to attend a medical examination. However, we argued that insufficient weight was placed on other relevant factors. At the first hearing of the case in the High Court, it was conceded that there had been an error and there will now be a new Commissioner decision.

Impact of shared care arrangements

We are researching a potential test case about the failure of the tax credit system to allow for a way of dividing Child Tax Credit among two parents who share care. We are looking into possible discrimination argu-

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ments given that many of the substantial minority carers are fathers and do not benefit from the main responsibility test applied.

Tax credit overpayments

A client referred by Tar Isteach had had administrative problems with tax credits and overpayments for a number of reasons from 2005. HMRC was seeking recovery of two overpayments which were £7,457.09 in total. The decision stated that HMRC relied on information provided by her on 15 Nov 2006 that her children were in full time education.

Our client's case was that she had never made this inaccurate declaration. She had told HMRC that her children had left relevant education and HMRC had confirmed receipt of this information. Before lodging a further complaint with the Adjudicator's office, we sought sight of the annual declaration they relied on. At this stage, HMRC decided to write off the overpayment in full, on the basis that it had not met its responsibilities as set out in the code of practice

In our last bulletin, we highlighted two cases where manual payments being made to clients were being treated as overpayments. Judicial review proceedings were avoided when HMRC reinstated the claims on the computer system, acknowledged that there had been no overpayments and made consolatory payments to both clients.

Community care



Health and social care costs

We acted recently for a cross border worker who had been charged for hospital costs following a stay in hospital for an operation. We successfully argued that there was no power to charge.

We are challenging the approach of a trust in assessing liability to pay for residential care. We are acting for an older woman, now deceased, who owned a former NIHE property jointly with two of her adult children. We are arguing that the trust is not following the assessment regulations. It is instead relying, in error, on the law of partition, to justify assessing our client as being someone who had capital in excess of the funding assistance limit.

Service levels

A judicial review about adequate care arrangements for a young woman with a brain injury is ongoing. The case has been adjourned to allow the Law Centre to gather expert evidence for the court on the adequacy of the trust's approach.

We acted for a client with motor neuron disease who had been discharged from hospital without an appropriate care package. We requested an immediate reassessment of his needs and his wife's needs as carer. Services were put in place although the client died shortly after.

Respite care

The Law Centre's two judicial review actions about the lack of age appropriate respite facilities were avoided when the trust involved took action. The trust converted a room to be used as a respite bedroom in an existing facility. Respite breaks have now successfully taken place.

Paying for care

We are looking for referrals of cases where a person in residential care is being charged for care on the basis that a substantial value has been placed on a joint share in their former home. This might be a case where a parent owns the home jointly with an adult child. We are interested in testing the current approach to valuation of joint interests in property by health and social care trusts.

ADVICE LINE HOURS

Belfast Office:

Monday-Friday, 9.30 am-1.00 pm

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**Immigration****Family reunion**

We were in dispute with the Home Office and the Foreign and Commonwealth Office about granting leave to enter the UK for family members of a refugee client. The family members included young children in the Middle East whose lives were in grave danger. The case proceeded through the courts until the government conceded just prior to a hearing before the House of Lords. The family was reunited shortly afterwards.

Two American clients were granted leave to remain as a result of an application made by the Law Centre. They had come to Northern Ireland to support their mother when she had been the victim of sectarian attacks.

European law rights

The Court of Appeal has granted leave to appeal from a negative decision of the Asylum and Immigration Tribunal. This case turns on the interpretation of European law and in particular on whether a European national bringing a dependant from India into the UK needs to comply with UK immigration law.

Challenging removal decisions

We were granted leave to apply for judicial review in a case about the process for removal of British citizenship.

The removal of a Nigerian citizen in a relationship with an Irish national was deferred following representation from the Law Centre. We argued that refusing the couple the right to appeal against the decision that they were not in a durable relationship was unlawful.

Detention

We successfully acted for a Chinese client who moved from criminal detention to immigration detention in HMP Maghaberry. We also made a case for temporary admission which was accepted, allowing his release.

Discretionary leave

We obtained discretionary leave to remain in the UK for a Pakistani national who had been working here before becoming seriously ill.

Mental health**Decision making**

A Mental Health Review Tribunal decision was quashed on our application for judicial review due to flaws in the reasoning of the tribunal decision. The tribunal referred to a document which had not been before it at the hearing. The client was able to have another tribunal hearing and was discharged from detention.

Lack of specialist service

We are preparing a judicial review challenge on the lack of suitable services in Northern Ireland for people with a diagnosis of personality disorder.

Detention of long term hospital patients

We have been in touch with the Official Solicitor about a case involving the review of long term detention of people who lack capacity. The case concerns the failure of a trust to meet the time limits for referring them to the tribunal for the basis of their detention to be reviewed. If the case proceeds to judicial review, we hope to highlight the absence in the system of proper protection for people who lack capacity.

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Employment



Redundancy

A potential industrial tribunal case was settled for £4,000 after we advised a client on the legal issues arising out of his redundancy. There had been no consultation by his employer.

An agricultural worker who was dismissed after many years of work settled his case against his former employer for £6,000. The case had reached the stage of a directions hearing at the industrial tribunal before settlement was agreed. Another agricultural worker who was unfairly dismissed settled for £6,750.

An employee dismissed for a failure to reach targets was able to settle for £7,500 on the basis that the statutory dismissal procedures were not followed and a case of substantive unfair dismissal was being made. Settlement was reached before the employer submitted its defence. The employee was particularly pleased with this settlement as the claim was made more than four months out of time on the basis that, due to ill health, it had not been reasonably practicable for the claim to be submitted within the normal time limit ■

For copies of decisions referred to in this bulletin please contact Mary Blair, Law Centre (NI) librarian.

Law Centre (NI) court judgments are available online on the Northern Ireland Court Service website at:

www.courtsni.gov.uk/en-GB/Judicial+Decisions/

**Copies of this report in large text format are available on request.
Contact Publications Department at Law Centre (NI):**

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