



**LAW CENTRE (NI)**

**STRATEGIC CASE SELECTION POLICY 2011-2012**



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## Introduction

The Law Centre aims to promote social justice through its work. As an organisation employing specialist legal advisers, one of the ways in which the Law Centre can achieve this is through strategic casework.

In order to make best use of the resources available and maintain quality standards, the Law Centre needs to be selective in the cases which it takes on. Potential cases are referred to the legal advisers by members through the advice line, at practitioner fora and at training events. Some people approach the Law Centre directly.

Where appropriate, the Law Centre will refer out cases to our member agencies who specialise in first tier advice and representation. The Law Centre seeks to operate at the second tier or specialist level.

At present, the Law Centre works in five main areas of law: social security, immigration, mental health, community care and employment. We also take on a limited number of other social welfare law cases.

The Law Centre is run by a management committee. This is made up of representatives elected from our not for profit advice sector members, together with members of the legal profession and persons with other expertise.

## Conflict of interest

As legal advisers, we are unable to act in any case which would involve a conflict of interest between ourselves and the client.

We will not represent in a case which is a challenge to a decision of our full members, ie those who are not-for-profit advice giving agencies, due to the conflict of interest which would arise. This would occur, for example, in an employment dispute.

We have some general rules for deciding whether to take a case on or not. These apply across all subject areas. Within each area, we prioritise certain types of cases and the priorities for the next year are detailed below.

## General rules

There are six factors which we take into account in deciding whether to accept a case. These are:

- staff workload;
- strategic importance of case;
- merits of case;
- availability of other advice and representation services;
- financial means of the client;
- timing of referral.

The weight given to a particular factor will depend on the circumstances of the case. Some examples are given below.

Law Centre (NI), in deciding whether to accept a case, will not unlawfully discriminate on the grounds of race, disability, religious belief, political opinion, gender, marital status, sexual orientation, age or family relationship.



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## **Workload**

The Law Centre operates maximum caseload figures for its caseworkers. These are set to allow for the non-casework commitments of the casework staff - such as training and publications commitments. A principal determining factor in accepting cases on referral is the question of whether or not the caseworker is at maximum caseload. Nevertheless, where such figures are reached by a caseworker, there will always remain a small degree of flexibility to accept strategically important cases.

## **Strategic significance**

The Law Centre particularly seeks cases which have a strategic importance. This means that the outcome of the case affects more people than the individual client concerned. We will afford a higher priority to strategically important cases than to those which only involve issues of fact relevant to an individual. Certain areas of casework, such as industrial tribunals or immigration appeals, inevitably go before tribunals of fact, but every opportunity is taken to progress such cases on point of law appeals where appropriate and to identify new areas of law for testing.

## **Merits**

A fundamental issue is that of whether the client has a good case or not. Much of our work is aimed at determining the merits of appeals to the Commissioner, judicial review, industrial tribunal proceedings, etc. We will often open cases for opinions on the merits and later conclude that there are no legal grounds for pursuing a case further. This may involve obtaining counsel's opinion. We may believe that a case has no legal merits from the outset and does not warrant a file being opened at all. However, where a case has a potentially strategic significance as a test case or is of vital individual importance, even where the legal arguments are not strong, we may still accept it as appropriate for the further development of the law.

## **Degree of difficulty and availability of other help**

The Law Centre's distinctive contribution to the voluntary advice sector is the employment of legally qualified or highly experienced advice staff. Where legal needs can be adequately met by other agencies, it will be inappropriate for us to take on cases at particular levels, for example straightforward social security appeals.

Nevertheless, there will be instances where complex legal issues arise in such cases which will warrant them being accepted. It is also possible that, for the purposes of training or because a case has been remitted to a lower tribunal by a court or appellate body, we will represent in such cases. Where a previous client requests help in essentially the same matter as before, the individual caseworker will also have discretion as to whether or not the case should be taken on. No general preference will be given to previous clients over other potential clients.

## **Financial means**

The client's ability to pay a professional adviser is a relevant consideration in terms of our acceptance of cases. Nevertheless, we consider that access to experienced and skilled professional advisers in some areas is limited. Where this is the case, the financial means of the client is not a relevant consideration. Otherwise, if a client has accessible capital of £10,000 or more or annual gross income of £25,000 or more then we may decide not to take the case on. We will then refer the person to a private practice solicitor.



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If the issue raised in the case is a strategic issue which affects more than the individual then we may decide to take the case on regardless of the client's means.

If a case involves advice on immigration or representation before the Asylum and Immigration Tribunal then we will normally only act for those who are financially eligible for legal aid. A client may be required to pay a financial contribution to the Legal Services Commission.

If a case involves judicial review or other court action where costs may be ordered against an unsuccessful litigant then we will be unable to represent those who are not financially eligible for legal aid unless an agreement can be reached with the potential respondents. A client receiving legal aid may be required to pay a financial contribution to the Legal Services Commission.

In some non-court cases, it may be appropriate for us to request a non-legally aided client to bear the cost of instructing counsel, eg, for an expert legal opinion.

## **Timing of referral**

If a case is referred to us close to a deadline or a hearing then we may not take the case on if we consider it will not be possible to provide an effective service.

## **Weight of factors in selecting cases**

Any decision about acceptance of a case should have regard to all the above factors.

Finance is a factor which will be considered in each case, in the manner noted above. Where a client's financial position changes over the period of the case, we may consider whether or not we should continue to represent using the financial considerations mentioned.

In accepting cases, the caseload of the relevant Law Centre staff members is always a significant factor. Where caseload maximum has been reached by an individual caseworker, only a case of particular strategic or vital individual importance will normally be accepted.

The strategic importance of the case is also always a significant factor. In all circumstances, a strategic case will be opened in preference to a non-strategic case. Where a case has strategic significance, the availability of alternative representation and the merits of the case will become secondary considerations.

The factors of merits, availability of alternative assistance and degree of difficulty should be considered in every case. Even where workload is low, it will still be generally inappropriate to accept cases where a sufficiently high level of expertise is not required or where a case is unmeritorious.

In some situations, the timing of the referral may mean that we are unable to represent.

## **Strategic priorities**

### **□ Social security**

It is currently our priority to offer advice on the merits of an appeal to, and representation before, the Social Security Commissioner. This work covers all social security benefits and tax credits dealt with by the Social Security Commissioner. We will pursue appeals to the Court of Appeal and beyond if necessary and undertake judicial reviews in the High Court where appropriate.

We will also aim to represent in social security tribunals which involve a complex point of law or where there is little other representation available, eg Industrial Injuries Benefit. In some of the Commissioner cases in which we represent, the case will be remitted to a tribunal and we may continue to represent



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until final completion of the case. Otherwise, we recognise that there is representation in this area by many of our member agencies. We primarily see our role in relation to tribunal representation as one of consultancy support.

We will not accept referral of Social Fund reviews and Social Fund Inspector reviews unless they raise a strategic point of law.

In 2011-2012, we are particularly interested in:

- developing points of European or human rights law, particularly in relation to migrant workers and immigration;
- testing legal issues arising out of the implementation of Employment Support Allowance (ESA) and the migration arrangements of moving claimants from Incapacity benefit to ESA; and
- testing issues affecting cross border workers and other cross border social security issues.

## □ **Employment**

We act for employees only and never represent employers. In the selection of employment cases we will have regard to whether the applicant is a Trade Union member and has access to alternative representation through that Union or through the Union's legal advisers. If alternative representation could be available, it will not usually be appropriate for the Law Centre to represent.

We will generally provide advice on the merits of an application to, and if appropriate, representation before the Industrial Tribunal. We will also pursue cases to the Court of Appeal and beyond if necessary. Our priority is cases where there is no other representation available. Therefore we will not generally take on cases which primarily consist of a matter of discrimination law as the Equality Commission is funded to provide representation in this area.

The Law Centre does not normally represent employees in internal employment matters, such as disciplinary hearings before an employer. However, in recognition of the value of preventative casework, possibly including arbitration, in certain situations, we may sometimes undertake representation in this field. This is subject to the understanding that the Law Centre will not intervene where it is felt that such involvement might lead to the longer term detriment of the employee.

Our strategic priorities for 2011-2012 will be:

- cases where statutory rights are recognised as being of such importance that the law protects against unlawful interference in these rights by making it automatically unfair to dismiss employees for asserting them.

This is regardless of how long an employee has been working for an employer. It includes dismissals or detrimental treatment relating to assertion of the rights relating to the following:

- time off for family and dependants provisions;
- health and safety;
- the national minimum wage or not to have unlawful deductions made from wages;
- restrictions on hours of work and the right to paid holidays under working time legislation;
- public interest disclosures/whistle-blowing; and
- not to be treated less favourably as a fixed-term worker; and
- cases involving the exploitation and infringement of the employment rights of migrant workers.



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## □ Immigration

We provide representation in asylum and immigration appeals and judicial review in the High Court (NI). We also represent at the Court of Appeal (NI) and beyond where necessary.

We may advise and assist with complex applications to UKBA, namely those involving asylum, the application of discretion, cases involving human rights, European law and international law.

We do not advise and assist on cases that directly relate to tier one business applications, nationality and citizenship.

In 2011-2012 we will give priority to:

- appeals, European law and the testing of new immigration legislation, rules and policies that may have a strategic impact.

We will prioritise representation for vulnerable persons, children, detained clients and those who are subject to imminent removal from the UK.

## □ Community Care

We will give assistance in cases which raise issues concerning the legal responsibilities of health and social care trusts and other public bodies in the provision of Health and Social Care. In particular we will provide advice and assistance to people who have needs due to physical or mental disability, ill health or age or whose needs arise because of their role as carer.

Where necessary, we will initiate judicial review proceedings in the High Court to clarify interpretation of health and social services law and/ or to challenge decisions made by public bodies or made by Health and Social Care Trusts. We will pursue appeals to the Court of Appeal and beyond where necessary.

In 2011-2012 we will give priority to:

- judicial review cases involving human rights law and interpretation of new legislation and policies, particularly those focused on service reduction;
- cases which allow us to work on developing the role of the Northern Ireland Ombudsman in community care.

## □ Mental Health

We will give assistance in cases on the responsibilities of health and social services trusts in relation to treatment and care for people with mental health difficulties.

We will represent clients before the Mental Health Review Tribunal where they wish to challenge guardianship or detention and compulsory treatment in hospital. We will represent clients in strategic cases in the High Court and beyond where appropriate.

In 2011-2012 we will give priority to:

- cases which raise important human rights issues. We are particularly interested in challenging delays in arranging tribunal hearings, consent to treatment provisions, informal admissions and delays in discharge and after care arrangements;
- cases about inadequate service provision.

## □ Other work

We may take on a case which does not fall within our core areas if we consider it to be of strategic importance and where we feel we are best placed to provide effective representation.

