

Introduction

This report gives you some of the flavour of the cases being dealt with by the Law Centre at present. If you have referred a case and want to know how it is going then please get in touch. The Law Centre casework team has expanded to cover Child Support work and a new solicitor, Siobhán McCormack, has started work in our Western office. We are looking for cases to be referred in this area. Her work will cover representation at Child Support appeals and before the Commissioner across Northern Ireland.

Maura McCallion,
Assistant Director (Casework Services)

Social Security



Court of Appeal

An appeal is being pursued from a Commissioner's decision in a DLA case. The Court will be asked to make rulings on the weight given to the evidence of the examining medical practitioner (EMP) in this instance, the relevance if any of the earlier EMP report, which the tribunal would have held on file, and the adequacy of reasons provided by the tribunal in compliance with the tribunal's statutory duty.

Social Security Commissioner

A Social Security Commissioner's decision is awaited on a cross border worker's case referred by Newry Welfare Rights. The legal argument was based on the failure to treat the Irish Republic benefit, Domiciliary Care Allowance (DCA) as analogous to Disability Living Allowance (DLA) for Tax Credit purpose. It was argued that the legislation 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) and is contrary to article 14 ECHR (freedom from discrimination) read with article 8 (respect for family life). The Commissioner's decision is awaited.

Several cases, referred by Falls and Newtownards CAB, were successful before the Commissioner, following the decision in C12-03/04 (DLA). This decision dealt with 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. The deterioration can now be taken into account in adjudication of the claim. Following the decision in C12-03/04 (DLA) the Law Centre, adviceⁿⁱ and NIACAB have made representations to the Social Security Agency about draft guidance to decision-makers which sets out that no refusal on an advance claim is allowed but, instead, the existing claim must be disallowed. A response to these representations is still awaited.

The major cases on article 8 ECHR and the time limits for claiming benefits in relation to bereavement and maternity are ongoing. Our test case has been heard before the Social Security Commissioner and a decision is due shortly.

Social Security Appeal Tribunal

An important case in terms of access to justice was recently resolved for a client who approached the Law Centre after having been told that he was one day out of time for requesting a statement of reasons from the Appeals Service and discretion would not be applied to allow a late request. On investigation, the time limit had been incorrectly applied by the Appeals Service. The time limit runs from the date of notice of the decision being sent or given to all parties to the proceedings [regulation 53(4) of the Social Security and Child Support (Decisions and Appeals) Regulations (NI) 1999]. The Appeals Service applied the time limit from the date of the tribunal hearing although this was incorrect as no presenting officer attended the tribunal and it appeared that the notice had been sent out some two weeks after the hearing. It has now been accepted that the request for the statement of reasons was made within the time.

Recent representations by the Law Centre led to the Social Security Agency writing off recovery of an overpayment of around £10,000 of Income Support to a client who was mentally incapable and in residential care. This case was referred to the Law Centre by social services who were concerned about the impact of recovery on this client.

CASEWORK BULLETIN

2004 Number 1



Immigration



Judicial review

A North African client was successful in his judicial review application before the High Court. His case will now be relisted before an immigration adjudicator when the question of his contact with his Northern Irish born child will be considered in relation to permitting him to remain in the country.

A vulnerable client from Eastern Europe was released from detention after a judicial review challenge was threatened. This case had involved complex issues which prevented a normal bail application being made.

Immigration adjudicator

We were successful in obtaining leave to remain in the UK on human rights grounds for a client with mental health difficulties who was devastated at the prospect of being returned home.

We were also successful in an appeal for a client who had been the victim of war rape. The immigration adjudicator held at appeal that return of this woman to her home country would be in breach of Articles 3 and 8 ECHR and therefore contrary to the Human Rights Act. A client from Nepal who would be at risk if returned was granted asylum after an appeal.

In a recent appeal, the right to respect for family life of a child was held to be sufficient to prevent the removal of a parent with a residence order from the jurisdiction. It was likely that the child would have had to go into care had the parent been deported and this would be a disproportionate interference with the child's Article 8 ECHR right.

Several Chinese clients who would face persecution on the grounds of religion if returned to China were granted asylum on appeal.

Employment



Tribunal

We were successful recently in obtaining a preliminary ruling that the illegality of a contract did not provide a defence to the claim of sex discrimination. This helps protect those vulnerable low wage workers whose

employers are not paying national insurance.

The Law Centre has represented in several cases where clients have been disadvantaged after a change of employer. The complex rules on transfer of undertakings have been applied in these cases, which were referred by the Labour Relations Agency and solicitors in private practice.

A successful settlement was obtained for a client with hearing difficulties. Although the Disability Discrimination Act does not currently apply to very small employers (less than 15 employees), the client was still in a position to take a case for constructive dismissal on basis of treatment that he had received due to his disability.

A settlement of £5000 was obtained for a client in relation to his employer's failure to pay an enhanced pension settlement. This case was referred by Belfast CAB.

An interesting ongoing case involves a claim that an employee was subjected to a detriment because of his refusal to sign an agreement to opt out of the maximum 48 hour week rule under the Working Time Regulations.

We are continuing to take on migrant worker cases. The latest case, referred by Belfast Unemployed Resource Centre, is interesting in that it interacts with the law relating to work permits. The employer is seeking to rely on the expiry of the work permit as a reason for dismissal.

An unfair dismissal case was settled recently when the employer admitted that it had not followed its own internal disciplinary procedure before dismissing the employee. This case was referred by Bangor CAB.

Community Care



Court of Appeal

A disappointing judgment was received in the judicial review case which challenged the legality of a delayed discharge from hospital for an older client who had been assessed as needing nursing home care. The judge ruled that the legislation did not impose a mandatory duty on the social services trust to meet the need which it had assessed and therefore the trust had acted lawfully in delaying her discharge for nine months for budget reasons. An appeal has been lodged at the Court of Appeal.

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CASEWORK BULLETIN

2004 Number 1



Judicial review

A judicial review challenging the failure of a social services trust to assist a disabled client with the adaptation of the heating system within her home is ongoing. The case involves an analysis of the extent of assessment needed, the assistance required and the relevance of low income in relation to the expenditure required to keep the house warm.

Another judicial review involves a challenge to a decision by a trust to reduce a day care placement from five days to three days without the provision of an alternative or a reassessment of need to show a reduced level of need for daytime activities.

County Court

Developments in human rights and housing law at the House of Lords have presented some difficulties in the eviction cases which we were defending on the grounds of an eviction being a disproportionate interference with our clients' private, family and home life. One case has now settled with suitable temporary accommodation being provided. Negotiation of the other case, which involves a client with serious ill-health, has led to a tenancy being granted. The first case was referred by private practice solicitors and the second by Housing Rights Service.

Housing



Court of Appeal

The test case on neighbour intimidation and the responsibilities of the Housing Executive was successful. It was held that the Housing Executive had acted in breach of the Human Rights Act, in particular that it had failed in its positive obligation in relation to the right to respect for private and family life and home. The judgement is an important one in terms of showing the protection which can be afforded by the Human Rights Act. This case was referred by Housing Rights Service.

A Court of Appeal judgment is also now awaited, after a lengthy hearing, on whether there was unlawful age discrimination in the NIHE's previous house sales policy.

Judicial review

Leave to apply for judicial review was granted in relation to a decision by NIHE to exclude a house occupied by a person who has long term 'use and occupancy' status from an improvement scheme. The legal question is whether this is unlawful discrimination in terms of the Human Rights Act. However, the client in question died before the case could proceed and so the issue will not be tested at this stage. This case was initially referred by Housing Rights Service.