

## Introduction

Welcome to our latest casework bulletin. The aims of these bulletins are to keep you up to date with our strategic cases and to give you ideas for your own casework. We are always keen to have test case points referred to us by members and will be glad to keep you involved in how the cases progress.

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

## Social Security



### High Court - Judicial Review

We have a number of clients in financial difficulty because of tax credit overpayment recovery decisions. Our first judicial review on this, referred by Larne CAB, against a recovery of overpayment of tax credit decision by the Inland Revenue was successful in that HM Revenue and Customs' solicitors conceded the case before hearing, settled our client's concerns and paid the legal costs. While this was a success for the individual client, the lack of a full hearing and judgment on the case means that we will need to find another person to take forward the strategic issues highlighted.

A number of other tax credit overpayment cases have recently been resolved but only after protracted correspondence.

### Social Security Commissioner

We have a longstanding case involving the extent of exportability to another European state of a winter

fuel payment. We asked the Social Security Commissioner to make a referral to the European Court of Justice for a ruling on how the relevant European law should be interpreted. The Commissioner decided, however, to adjourn our case pending a similar case before the Court of Appeal in England. We have been working with Child Poverty Action Group on the later stages of this case as they are interested in the strategic aspect.

We were successful after hearing before the Commissioner in a Disability Living Allowance (DLA) life award case. The DLA life award had been reduced as a result of a periodic enquiry. The Commissioner agreed with our submission that the tribunal had erred in applying the incorrect burden of proof and that this was a substantive error. The tribunal had stated that the only issue for it to consider was entitlement to middle rate care component based on daytime attention and it had failed to consider if the Department had established grounds for removal of the high rate care component.

### Social Security Appeal Tribunal

We had lodged an appeal for a man with responsibility for a new born child who was refused a sure start maternity grant to help him with essentials for the baby. The appeal was based on discrimination contrary to Directive 79/7 EC and articles 8 (right to respect for family life) and 14 (freedom from discrimination) ECHR. However, the appeal was withdrawn when the man was offered an ex gratia payment equivalent to the grant. Although the client's immediate difficulty was solved we were not able to pursue the strategic point and would welcome a similar case to test the point.

The test cases on the compatibility with article 8 ECHR of the absolute time limit for claiming bereavement benefits, given the difficult circumstances of bereaved persons, were successful before the Tribunal. As expected, the decision is being appealed to the Social Security Commissioner by the Department for Social Development. This does provide the opportunity, however, to set a new precedent.

## CASEWORK BULLETIN

2005 Number 1



We were successful in another case referred by social services in Homefirst HSS Trust. The client suffers from cerebral palsy and was in receipt of Attendance Allowance since 1973. With the introduction of DLA in 1992, his claim was transferred with the effect that he has been in receipt of the higher rate of the mobility component and the middle rate of the care component of DLA since then. Believing that he was in receipt of the higher rate of the care component, the Independent Living Fund (ILF) were providing assistance. Once it came to light that he was not receiving the higher rate, the help provided by the fund was withdrawn. When the case was referred in late November 2004, his solicitor had withdrawn his appeal against the decision to refuse to increase his entitlement to the higher rate. The only remedy available at the stage we took the case on was an application for a supersession. We obtained an occupational therapy report and worked with his social worker in the formulation of supporting evidence relevant to the application and which would help the Department when considering whether to increase his entitlement to the higher rate. The Department accepted this evidence and has superseded from the date of the original application. Social services can now apply to the ILF for re-instatement of the care they were providing.

## Immigration



### European Court of Human Rights

Our application to the European Court of Human Rights for a Sri Lankan client was declared inadmissible by the Strasbourg Court. This is disappointing as this filter often operates to weed out cases but little reasoning is given. The client is now campaigning to be allowed to stay in the UK.

### Court of Appeal

We currently have four cases awaiting hearing in the Court of Appeal. One for a Bangladeshi client, appealing a decision of the Immigration Appeal Tribunal on his asylum/human rights case. Clients from Sierra Leone

and Algeria are in the same position. The fourth case is an appeal from a judicial review decision for a Nigerian client and this relates to his detention at Belfast International Airport.

### High Court - Judicial Review

We successfully settled a judicial review of a decision of the Home Office not to grant an ethnic Albanian from Serbia permission to work. The client's asylum application failed but he has not been able to return home without a travel document and has been left in a limbo situation. He had no access to benefits, was living in temporary accommodation which provided meals and he had to live without any access to cash. Just prior to the High Court hearing, the Home Office agreed to allow the client to work, which means that he can now support himself and rebuild his life.

We have also lodged judicial review proceedings for a client from Kosovo who has been refused permission to stay in the UK under the family concession scheme which the Home Office operated at the end of 2004. The issue here is that our client has been wrongly refused on the basis of having no dependents at the relevant time, which was not the case.

### Statutory Review

We were successful in overturning the Home Office's application to appeal against a successful adjudicator's decision for a Sudanese client. This means that the client has now had his refugee status acknowledged.

### Asylum and Immigration Tribunal

We were recently successful in appeals for a Nepalese asylum seeker and a asylum seeker who is a minor from China. The Home Office also withdrew two decisions on the morning of the appeal hearings. The first involved EC law, where the Home Office had not accepted that the client was a 'worker'. She had returned to the UK pregnant, but had a letter from her previous employer, which stated she would have been working but for the pregnancy. The second was a student (no recourse to public funds) whose application for further leave to remain was refused solely on the basis that he had claimed Child Benefit for his Irish child. This case raised a potentially important issue, the Home Office withdrew the decision without conceding the issue. We are therefore looking for further cases to test the point and referrals are welcome.

**ADVICE LINE HOURS Belfast Office:**

Monday-Friday, 9.30 am-1.00 pm **028 9024 4401**

**Western Area Office:**

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**Employment****Court of Appeal**

We were unsuccessful in our disability discrimination test case, *William Ross v Precision Industrial Services Limited and Du Pont (UK) Limited*. The judgment is available on-line (see end of bulletin).

**Industrial Tribunal**

We have successfully settled two cases where there has been a failure to comply with the Transfer of Undertaking regulations. We were also successful in settling a case before hearing on a constructive dismissal case over failure to pay the national minimum wage. Another successful settlement involved a cash payment and a commitment to carry out anti harassment training by the employer. This case was for a client who had been assaulted by a colleague and had attempted to whistleblow about the situation.

**Community Care****Court of Appeal**

A Court of Appeal case on home adaptations for a client who has MS has floundered because the client's income has increased to the extent that she falls outside the legal aid financial limit. We are now exploring other possibilities for continuing the funding of the case.

**High Court - Judicial Review**

We have been involved in a case with Armagh and Dungannon HSS Trust on responsibility for financial assistance with rent during a period when a client is required to pay rent on two houses, a property which is being adapted for his needs as a disabled person and temporary accommodation while the works are being carried out. The trust agreed to carry out an assessment under s.4 of the Disabled Persons (NI) Act 1989 for s. 2

Chronically Sick and Disabled Persons (NI) Act 1978 services. The trust then decided not to give any financial assistance and advised that the matter should be raised with the Northern Ireland Housing Executive, despite being advised by us that there is no statutory basis for the NIHE to offer this assistance. Legal aid has been granted for judicial review but the client has decided that he should move permanently, being dispirited at the prospect of waiting for the outcome of legal action before being able to have his home adapted. We are seeking permission from the Legal Services Commission to pursue the matter in any event in order to clarify the legal position for the future.

**High Court**

We are acting for a client defending a High Court Writ issued by South and East Belfast HSS Trust on family members arising from an allegation of deliberate deprivation of capital by their parent who is in long term care. There are some interesting legal points about joint and several responsibility but it also allows us to raise the issue of the statutory basis for charging the person in care in the first place. We are going to argue that the care is primarily health care rather than social care and therefore should be free of charge. We have been hoping to test this point for some time but had difficulty getting a client who is entitled to legal aid.

We are also working on a Human Rights Act damages case, primarily against the Mental Health Review Tribunal, but also North and West Belfast HSS Trust, following the successful judicial review on the lengthy detention of a client with learning difficulties in Muckamore Abbey Hospital (an application by DH for judicial review). The judicial review was successful on grounds of the failure to give adequate reasons. This case will allow more exploration of the Human Rights Act (article 5 ECHR - right to liberty) implications of detention in the absence of an appropriate community placement.

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

**Law Centre court judgments are available on line on the Northern Ireland Court Service website at:**

**[www.courtsni.gov.uk/en-GB/Judicial+Decisions/](http://www.courtsni.gov.uk/en-GB/Judicial+Decisions/)**

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