



## Introduction

Welcome to our casework e-bulletin. I hope it gives you an insight into our current cases. If it highlights an issue which you have been working on or if you are struggling to find a solution to a legal problem in one of our areas of specialism then consider asking us to take the case on through contacting us on our telephone advice line.

### Team changes

We have recruited a new senior solicitor, Caroline Maguire, for the Western office. Caroline will deliver our employment legal service in the West. Jo Wilson, a barrister, has taken on the post of community care legal adviser in our Western office. Anna Morvern, also a barrister, joined us in January and works in both our offices as an immigration legal adviser.

We were sad to see Mark Reid, Abed Natur and Vincent Sheils leave the Law Centre over the past months. While we were recruiting permanent replacements we were delighted to have support from Lois Hamilton, solicitor and Sabrina Sullivan, a barrister, in maintaining our service.

**Maura McCallion**

Assistant Director (Casework Services)

April 2007

## Social Security



### Court of Appeal

The Law Centre test case on the current social security arrangements for migrant workers from EU accession states which argues that they discriminate against the workers and are contrary to European law was heard in the Court of Appeal in April and we await judgement.

### Social Security Commissioner

We have an ongoing appeal for a young man from Latvia who has had to give up work temporarily due to a serious accident. His appeal against the refusal of Income Support was unsuccessful at tribunal. It was found that he no longer could be regarded as a qualified person. A judicial review against a decision to refuse him homelessness assistance is also being prepared.

### Tribunal

We recently acted for a vulnerable adult who had received compensation of £50,000 as a result of abuse suffered. Therefore, he had been assessed as no longer entitled to Income Support as he had capital in excess of the prescribed amount of £16,000. However, as a result to his vulnerability and intimidation by paramilitaries, most of this sum was forceably extorted. On making a claim for Income Support on 16 August 2006, he was disallowed on the basis that he was treated as having capital of £36,000. Although he was issued a formal disallowance on 13 September 2006, he never received it as he was homeless and was sleeping in a skip. With the help of a friend, he made a second claim to benefit on 5 October 2006 and was disallowed on the same grounds as above. This time, he did appeal and the Tribunal adjourned to allow the Department to be given an opportunity to view the evidence submitted on his behalf. The Department then not only revised the decision which was the subject of the appeal but reopened the decision on the original claim made on 16 August 2006 and agreed that he should have been entitled from then.

We were successful at tribunal in a similar appeal case where the client, who has severe alcohol problems, had spent her capital and needed Income Support.

Another appeal involved a client who had claimed Income Support while she was appealing a decision that she was capable of work from November 2004 to April 2005. She withdrew the appeal by writing to the Appeals Service when she became entitled to Pension Credit at the age of 60. She then received a letter telling her that she would have to repay the Income Support for the entire period the appeal had been ongoing. This was £1042.57 and deductions began from her benefit. We then submitted an appeal on her behalf and the Department revised its decision and reimbursed the deductions. It agreed that there was no recoverable overpayment before the date the appeal was withdrawn.

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**Immigration****Judicial review**

We were successful in stopping the deportation to China by the UK authorities of a Chinese student who held a visa for the Republic of Ireland but who came over the border into Northern Ireland. Our client was detained for a period in Belfast, Scotland and then London but after joint working with solicitors in Dublin and judicial review proceedings being launched here alongside court action in the Republic, the client was allowed to return to Dublin. During her detention in the UK, our client was parted from her very young baby whom she had been breastfeeding.

We also acted for a New Zealand national who contacted the Law Centre urgently on a Monday about removal directions on Wednesday. We threatened judicial review action and submitted detailed representations on the basis of both UK Immigration rules relating to visitors entering the UK and on the basis of the client's durable partnership with an EU national. Removal directions were cancelled on the Tuesday afternoon and the client was granted leave to remain. Although this was not specifically granted under EU durable partnership provisions, this is clearly a major reason why the client was not removed and is one of the first times this argument has been used successfully.

We have an ongoing judicial review which is focusing on whether the right to respect for family life of UK born step children of a Burundian client can amount to a requirement to grant him leave to remain in the UK in order to protect that private and family life.

We were unsuccessful in a judicial review recently involving a client who hoped to have the 'family concession' granted by the Home Office interpreted in such a way that he might be included.

**Asylum and Immigration Tribunal**

We were successful in a family reunion case recently. This case involved the child of a former client of the Law Centre who had been granted refugee status. The UK Embassy refused entry to the child as they did not believe he was the child of our former client. We challenged this on appeal unsuccessfully but argued successfully for reconsideration and the son was allowed entry. He will now be able to join his mother and father in the UK after many years of separation.

A second case is still ongoing. Again, refugee status was recognized for a Law Centre client and the UK Embassy allowed the rest of the family to join the refugee, but refused entry to the child who was over eighteen. We challenged this refusal, lost on appeal, managed to have reconsideration granted and then were successful on article 8 'truly exceptional' grounds as regards the right to respect for private and family life. The Home Office has appealed against this decision and we continue to argue for family reunion.

**Other work**

We acted for a Ukrainian woman with no immigration status as she had become estranged from her EU national husband due to domestic violence before she could confirm her status as the wife of an EU national. An exceptional application was made on her behalf although the Home Office had refused her twice before due to her inability to prove that she was related to a qualified person under EU law. Following a series of representations by the Law Centre on her behalf, she has now been issued with a five year residence card. This case was referred by the Simon Community.

We have finally succeeded in assisting a Canadian woman whose partner is from Northern Ireland. The couple had returned to Northern Ireland for the male partner's grandmother's funeral, when he suffered from a life threatening disease and lost his legs. The Home Office wanted her to return to Canada, even though she was caring for him (they have been together for fourteen years). After numerous battles, including an injunction in the High Court to prevent her removal, the Home Office has finally given her leave to remain on a discretionary basis for three years.

*We have been working with Ballymena CAB and union representatives on the legal position of EU Accession workers from Romania. A briefing has now been produced (see [www.lawcentreni.org](http://www.lawcentreni.org)) and we understand that at least some of the workers have successfully resolved their employment situation.*

**Employment****Industrial Tribunal**

We have a number of new cases for Lithuanian and Polish clients, all working for one employer, in relation to discriminatory treatment in rates of pay and terms and conditions.

An unfair dismissal case was successfully settled for £10,000 and an agreed reference. This case

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involved a breach of the statutory dismissal and disciplinary procedures in that the disciplinary meeting which led to the dismissal was held in the employee's absence even though the employer was notified that the employee was too sick to attend.

Another case involving unfair dismissal and breach of contract was successfully settled without the need to issue an IT1 after we contacted the employer with a letter of claim.

## Community Care



We received a number of referrals about delayed discharge from hospital in March due to lack of funding for community care services. These cases have been successfully settled without the need for judicial review action.

Another recent case involves a challenge to a trust around its failure to meet assessed need within a reasonable time. The need is for provision of a replacement shower chair which has resulted in a manual handling/ hoisting issue causing discomfort to the client and impacting on her autonomy.

We are also working on a case on the way in which the assessment of the need for nursing care was carried out. This impacted on the amount the client was expected to pay for care.

We are looking at a number of potential challenges to the lack of an assessment as to whether care outside of hospital is provided under legislative provisions relating to health or social care. There are significant differences in charging for care depending on the origin of the duty on the trust.

## Mental Health

### Judicial review

We obtained legal aid to commence judicial review proceedings against a trust for failure to meet the need for treatment for a client with a diagnosed personality disorder. The trust responded by making a referral for the client to a service provider in England.

We continue to act for a client in relation to compulsory medical treatment which he considers will not be effective, despite an unsuccessful tribunal

application. A key issue in this case is around the lack of a clear diagnosis and agreement on the way forward in improving his mental health.

### Mental Health Review Tribunal

Much of our work in this new service will involve representation before the Mental Health Review Tribunal. We were successful in our first case which ensured that a man who had been detained for treatment for mental disorder was discharged from hospital as the tribunal agreed with our argument that the grounds for detention were no longer met.

We are also acting for a client with a learning disability and mental illness as regards the best hospital environment for him to receive treatment.

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/)

**Copies of this report in large text format are available on request. Contact Publications Department at Law Centre (NI), telephone 028 9024 4401.**

**ADVICE LINE HOURS Belfast Office:**

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

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Monday-Friday, 9.30 am-1.00 pm **028 7126 2433**