

Introduction

Welcome to the casework e-bulletin. We hope you find the cases highlighted useful. We are keen for you to refer strategic and complex cases to us.

Since the last bulletin, Seán McParland has joined our mental health legal team. Seán is a solicitor and will be working from our Western office.

Maura McCallion

Assistant Director (Casework Services)

November 2007

Social Security



We continue to act for a Latvian man who has a spinal injury from a road accident. He would be able to live more independently but for a refusal of public housing and Income Support on the basis of his immigration status. We appealed his benefit refusal to the Social Security Commissioner and lodged a judicial review application against the Housing Executive's decision. We also submitted a future claim for Income Support, the refusal of which is at appeal stage. We were successful in July in obtaining a residence card from the Home Office for our client. The Housing Executive then agreed that he is eligible for housing and we withdrew the judicial review before the hearing. We hope that obtaining the residence card will now help to resolve the legal dispute over his eligibility for benefits and allow him to move out of care.

The Law Centre acted for a sixteen year old Lithuanian national who has been refused a training allowance while attending a Jobskills programme. The mother of this young student has worker status. Representations were made to the Department for Employment and Learning (DEL), pointing out that we believed the non-payment of this allowance to our client breached EC law. The matter was referred by DEL to the Departmental Solicitors Office for an opinion. Following discussions between DEL and the Departmental Solicitors Office, it was agreed that training allowances can be paid to eligible trainees with non-employed status who satisfy certain criteria. In particular, a three year residence test must be completed before the training course begins. This residence test applies to persons

who are 'settled' in the UK and ordinarily resident in the UK; or to a national of any EU country or the spouse or civil partner or child of such a person; or to an EEA migrant worker or spouse or civil partner or child of such a person. There would appear to be no residence test for persons recognized as refugees by the UK government or to their spouse, civil partner or child, who have been granted Humanitarian Protection, or have EU Temporary Protection. The residence test will not apply to persons who have indefinite leave to enter or indefinite leave to remain. The Law Centre is seeking further clarification on the test.

Tribunal

We were successful in appealing a decision of the Social Security Agency to refuse Income Support to a Portuguese woman who had given up work after a relationship breakdown. She and her family were destitute and being supported by social services and the Saint Vincent de Paul Society until the appeal.

In another case, we represented a woman from one of the A8 states which entered the EU in May 2004 came to live and work in NI at that time. Having secured employment in July 2004, working for eleven hours a week, she registered under the Workers' Registration Scheme in September of that year. She remained continuously employed by the same employer until she resigned in November 2006. In August 2006, she had become incapable of work due to ill health and as she had not made sufficient contributions enabling her to qualify for Incapacity Benefit, she applied for Income Support (as a credits only case). She was disallowed however as she was deemed to be a person from abroad and, as such, had an applicable amount of nil for Income Support purposes.

The Law Centre applied two different arguments in her appeal. We argued that as she remained in employment, she was a worker for the purposes of the legislation but alternatively (and if the first ground of appeal was not accepted) she retained her worker status and had the right to reside on the grounds that she was temporarily incapable of work within the meaning of Council Directive 2004/38 and Regulation 7(3)(a) of the Immigration (EEA) Regulations 2006. After discussions, the Department accepted that she was a worker and the decision to disallow was revised in her favour. We would welcome referrals of cases involving similar issues. In particular, we are seeking cases in which claimants are experiencing problems establishing entitlement to means tested benefits eg Income Support, where the number of hours worked are limited.

CASEWORK BULLETIN

2007 Number 2



Immigration



Judicial Review

We recently represented an American seventeen year old, who had returned to the UK following a visit to the Czech Republic. On her return the BIA refused her entry and subsequently set removal directions for the Republic. We intervened days before her intended removal and persuaded BIA to cancel the removal directions, grant her leave to remain as a visitor for a further month (enabling her to be here when her parents came to the UK) on the understanding that she would return to the States at that time.

Negotiations with the Home Office and their solicitors in preparation for lodging a judicial review application were successful in a case where we argued that it was wrong to treat a disputed minor as an adult before a formal age assessment had been carried out. Our client's age was formally assessed under a new protocol developed in Northern Ireland, being the first person to be assessed in this way. Upon receiving the age assessment which found the client to be a minor, the Home Office agreed to treat her as such. The child, a Nigerian national, went on to receive limited leave to remain along with her baby, after we submitted detailed representations about the shameful abuse that she had endured in her home country.

Asylum and Immigration Tribunal

We recently won two asylum appeals from Sudan. The appellants were from Darfur and the tribunal accepted that they would be at risk on return to Sudan.

We successfully represented an appellant who had been refused leave to enter as a visitor. She had intended to apply for an EEA Family permit to join her husband who was working in the UK. However, the British Consulate advised her to apply for a visit visa, which was then refused on the grounds that she could not demonstrate an intention to return to her country of origin. On appeal, we successfully argued that the decision breached her Community law rights and she has now been issued with an EEA family permit.

We were successful in appealing a decision to refuse to grant a student nurse further leave to remain. The Iranian-qualified nurse, specializing in dialysis, wanted to complete the Overseas Nurse Program in Northern Ireland and following the court appeal was able to do

so. A Filipino nurse working in a Ballymena nursing home was also successful in overturning a Home Office refusal of further leave when we represented her before the AIT.

A Chinese minor was granted limited leave but refused asylum. The refusal of asylum was upheld by the Asylum and Immigration Tribunal, but we submitted an application for reconsideration of that decision. A Senior Immigration Judge has ordered that there should be reconsideration on the basis that the appeal judge may have erred in law.

In the case of a Pakistani woman in fear of honour killing, we successfully obtained an order for reconsideration, having argued the matter before the deputy president of the AIT.

Applications

We intervened along with a local MP to assist a family to come to Northern Ireland to see their relative who was seriously ill and awaiting a life-saving liver transplant operation here. The wife and her two young sons were able to obtain expedited visas from the British High Commission in Pakistan with our support.

We obtained indefinite leave to remain for a Thai national who had suffered domestic violence at the hands of her partner here. In this case, we obtained a successful result in the application without having paid the full fee of £750. The fee of £750 for domestic violence applications was introduced in April 2007, and we are continuing to challenge it on a case-by-case basis and at a policy level.

Employment



Tribunal

We had a tribunal hearing in October on the unfair dismissal of a staff member by a new business and the failure of the former owner, who sold the business, to consult the staff on the transfer, as he was required to do under the Transfer of Undertaking legislation. The case settled part way through the hearing for £7,500 in total.

We were successful in settling a case for £5,000 recently. The client was an agency worker. When she became pregnant, the business she was placed with

ADVICE LINE HOURS

Belfast Office:

Monday-Friday, 9.30 am-1.00 pm

028 9024 4401

Western Area Office:

Monday-Friday, 9.30 am-1.00 pm

028 7126 2433

CASEWORK BULLETIN

2007 Number 2



asked the agency to remove her from the workplace, saying that there was a downturn in work. The agency did remove her but it was clear that there had been no downturn in work as more workers from the agency were engaged. As there was clear detrimental treatment of the woman on the basis of pregnancy, both end user business and agency agreed to settle the case prior to hearing.

children's services. The trust is South Eastern Trust. We are considering the merits of lodging a judicial review application. We are also working with counsel on the merits of taking a judicial review to challenge the lack of gender appropriate facilities for a young woman with complex care needs.

Community Care



Judicial Review

We lodged an application for leave to apply for judicial review of a decision of the Northern Health and Social Care Trust not to fund a nursing home placement under its health care responsibilities. The Trust considered our client to be someone who it was working with under social care duties and therefore the costs of her care were recovered in part from her. This case was an attempt to challenge the very limited approach taken in Northern Ireland to funding care outside of hospital. This client was terminally ill with cancer in the Northern Trust area, and has just died. We are now considering how to take the case forward.

We had a case on the extent of article 15 of the Health and Personal Social Services (NI) Order 1972, involving correspondence with trust solicitors. We acted for a mother who is seeking asylum as regards the appropriate accommodation for her and her child who has a number of disabilities and complex care needs. The trust is currently funding her accommodation.

We have legal aid for counsel's opinion for two cases involving a lack of age appropriate respite for two young disabled men who have just moved out of

Mental Health

Judicial Review

We are working on a judicial review application for a young man with a learning disability who has been detained in hospital for over five years. One of the main barriers to his discharge appears to be a lack of appropriate community facilities. The judicial review application will be a challenge to the decision of the Mental Health Review Tribunal that it is lawful to continue to detain him in such circumstances as it is argued that the criteria for detention are not met.

Tribunal

Lapses in complying with the procedures for compulsory admission have also been identified in two cases. We are looking at highlighting this through a damages action for unlawful detention.

Clinic

One of the main aims of the mental health legal service is to improve the representation of people who are detained in hospital as a result of mental illness. As part of our service we are piloting a legal clinic at Gransha Hospital in Derry. Our first clinic took place in November 2007.

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/

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

Western Area Office:

Monday-Friday, 9.30 am-1.00 pm

028 7126 2433