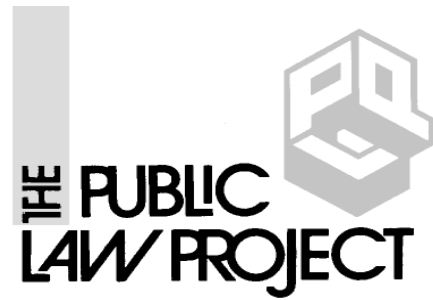


Casework

1993 - 2006



This leaflet contains a summary of some of the most interesting cases run by our legal team over the first 13 years of its work.

The Public Law Project's first solicitor was appointed in September 1993. Since then the team has expanded, but throughout the solicitors' work has involved not only direct legal casework, but also legal advisory and consultancy services and training, as well as contributions to our policy work and publications.

The most high profile part of the lawyers' work, however, is our strategic casework and litigation carried out on behalf of disadvantaged groups and voluntary sector organisations working on their behalf.

The priority areas for casework in the early years were community care, the health service, education, travellers and gypsies, the environment and privatisation of public utilities and service. Then, as now, PLP also sought to bring cases which address general public law issues, such as standing in judicial review cases and the susceptibility of different bodies to judicial review.

Early Casework: 1993 – 2000

Many of PLP's early cases tested the range of factors to be taken into account by local authorities when making their decisions in a variety of fields, including the treatment of travellers and gypsies.

***R v. Wealden District Council, ex parte Wales and others* [1996] 8 Admin. L. R. 529**

This case clarified the powers of local authorities to evict travellers using the Criminal Justice and Public Order Act 1994, in a way which requires local authorities to make significant enquiries as to the welfare of the travellers before exercising their functions.

***R v. Kerrier District Council, ex parte Uzell, Blythe and Simms* [1996] JPL 837; [1996] 71 P. & C.R. 566**

The claimants in this case were travellers who applied for judicial review of the planning authority's decision to seek an injunction against the landowner (the County Council) if it failed to take possession proceedings to evict them from a local traveller site.

The claimants argued that the Defendant planning authority had failed to take into account all the relevant considerations, namely the travellers' housing needs if removed from the site. The case was lost on its facts, but established the important point that, although planning authorities' decisions are *prima facie* concerned with the character of the use of land and not the particular purpose of an occupier, considerations of personal circumstances are relevant in planning enforcement cases.

Other challenges were brought concerning the extent to which resources and financial considerations could lawfully affect decisions to be made, including the following two cases which concerned the provision of services to the disabled and care to the vulnerable.

R v. Gloucester County Council, ex parte Barry

R v. Lancashire County Council, ex parte Royal Association for Disability and Rehabilitation (RADAR) and Gilpin

[1996] 4 All ER 421

In this leading case, the Court of Appeal held that a local authority could not take the availability of its resources into account when assessing the needs of a disabled person and the services necessary to meet those needs under s.2 of the Chronically Sick and Disabled Persons Act 1970. PLP represented Barry, who was appealing against the Divisional Court's refusal to declare that the local authority was not entitled to take such matters into consideration when carrying out its duties. This was joined to the related case against Lancashire County Council, in which PLP represented RADAR and Mrs Gilpin.

PLP again represented Barry when the case subsequently went to the House of Lords, where it was held that, on the contrary, social services authorities *are* entitled to take their resources into account when framing their general eligibility criteria, subject to:

- an obligation to reassess (for existing service users);
- "resources shape eligibility criteria, not assessments";
- "resources cannot be the sole criterion"; and
- Human Rights Act obligations.

Thus resources are relevant, although only in establishing the criteria for what needs a social services authority would meet. Thereafter, where a disabled person met those criteria, resources could no longer be taken into account and the need had to be met.

***R v. Sefton Metropolitan Borough Council, ex parte Help the Aged and others* [1997] 4 All ER 532**

This case challenged Sefton's policy of taking into account its financial resources when deciding whether to provide residential accommodation to those 'in need of care and attention' under the National Assistance Act 1947, s.21(1)(a). The Act stated that where accommodation was provided through third parties, the authority was required to charge the cost to the applicant unless their capital resources fell below £16,000, in which case the cost payable would be reduced. Sefton set a lower capital threshold, deferring applications

from persons whose capital fell below the two thresholds, and leaving such applicants to bear the full financial burden of their care.

The case established that there was a limited subjective element in determining whether an elderly person was 'in need of care and attention' so as to oblige the authority to provide residential accommodation, which thus entitled an authority to take into account its resources when determining whether an elderly person was in need. However, the Court of Appeal in this case held that once an authority had determined that a person was in need, lack of funds could not excuse it from its statutory duty to provide accommodation. Further, the local authority was not entitled to set a lower capital threshold than that laid down in the National Assistance (Assessment of Resources) Regulations 1992 for determining an applicant's ability to pay.

Important issues of public law can be raised when privatisation is introduced into the provision of previously public services. PLP's casework team has been actively involved in testing these issues from its early years, particularly in the context of healthcare provision.

R v. Bedfordshire Health Authority, ex parte North Bedfordshire Community Health Council (1996)

The Community Health Council (CHC) brought an application for judicial review of the Health Authority's refusal to enforce its contract with a private provider, which was thereby infringing CHC's inspection rights. Following the granting of leave to move, the CHC was able to achieve a favourable settlement which protected its rights despite not being a party to the contract.

Another substantive area of law in which the casework team has been involved from an early stage is education, in particular Special Educational Needs (SEN).

Surrey County Council v. P [1997] ELR 516; [1997] COD 118

P's child, C, had considerable hearing loss, deteriorating vision and low self esteem, but was above average ability and likely to go on to at least sixth form education. Two schools were identified as potentially suitable for C's special educational needs: the visually impaired unit at GA, preferred by P, and the visually impaired cluster at H, which Surrey County Council specified in C's statement. P successfully appealed to the Special Educational Needs Tribunal under the Education Act 1993 s. 170. The LEA appealed against the SEN Tribunal to the High Court (SENT), contending that the Tribunal had not applied the correct test, nor had regard to the relevant evidence, nor given adequate reasons, arguing that both schools were suitable for C and that compliance with P's preference would involve greater expenditure, which was not compatible with the efficient use of resources, and was not compatible with the provision of efficient education for other children there.

The High Court dismissed Surrey's appeal, holding that the language of the SENT's decision left no room for doubt that it did not consider H to be suitable for C's needs. That was a perfectly sensible finding, given the risk of C's confidence being impaired if he were to go through the process of a school setting up a cluster, and that the deterioration of C's eyesight rendered it essential to make the best use of the time he had it. Further, H had no sixth form unit so further disruption was liable to occur if C were placed there. Per curiam, had both GA and H been suitable, the parents' choice should prevail, unless either of the exceptions set out in Sch. 10 para. 3(3) to the Act applied; so that if one involved significant additional expenditure, the LEA would be justified in sending the child to the other, notwithstanding the wishes of the parents.

The early years also saw the casework team laying the foundations of its active interest in litigating access to justice. One of PLP's key contributions has been to the development of the jurisprudence relating to protective costs order (see further the *Corner House* case, below), with which it has persevered in the face of an initially restrictive approach from the courts.

R v. Lord Chancellor, ex parte Child Poverty Action Group

R v. DPP, ex parte Bull (for and on behalf of Amnesty International UK) and the Redress Trust

[1999] 1 WLR 347

CPAG and the other claimants made an interim application for a pre-emptive or protective costs order (PCO). The argument was that *bona fide* public interest challenges, whereby the court's role was not to rule upon the rights of the applicants as individuals, but to prevent public authorities exceeding their powers, would be stifled in the absence of such an order. The application failed, the court holding that the power to make a PCO under the Supreme Court Act 1981, s.51 should be exercised only in the most exceptional cases. It was necessary both that the matters raised were of genuine general public importance, and that the merits of the claim were such that it would be in the public interest to make the order. The financial resources of each party were also relevant, and the court would be more disposed to make a PCO where the respondent was plainly more able to bear the costs, and the applicant, with justification, was likely to abandon the action otherwise. These conditions were not met in the present case.

The Second Phase: 2000 to present

Challenges concerning the relevance to decision-making authorities of their financial resources have continued to form an important part of PLP's casework. In a series of cases, PLP has recently explored this issue on behalf of a range of voluntary sector providers faced with potentially fatal funding cuts.

***R (Capenhurst and others) v. Leicester City Council* [2004] EWHC 2124 (Admin); (2004) 7 CCL Rep 557; [2004] ACD 93**

On setting its budget and following a review of the voluntary sector, the City Council decided to stop paying grants to a large number of well-established community groups, adopting a policy instead of funding only organisations providing 'core services'. This meant that many community groups would close down or have to greatly reduce their service provision. The funding review had been undertaken in a very short time frame, with limited disclosure and a lack of clarity and transparency as to the decision-making process and the criteria applied to funding applications. Service-users of six organizations brought a claim in judicial review challenging the Council's decisions.

The judge accepted that once the Council had undertaken a consultation over new funding arrangements, this must be conducted fairly, and that the Council had failed to do so. In finding for the claimants, Silber J could find no evidence that the Council had explained its new criteria properly or alerted the groups to the new definition of 'core services'. He therefore quashed the decisions and ordered that a new process be undertaken in which the Council had to ensure that it explained its criteria clearly and comprehensively.

***R (Keating and others) v. Cardiff Local Health Board* [2006] 1 WLR 158; [2005] 3 All ER 1000; [2005] EWCA Civ 847; (2005) 8 CCL Rep 504; (2005) 85 BMLR 190; *The Times*, September 6, 2005**

This case concerned the provision of advice and assistance in relation to welfare benefits for those with mental health problems under the National Health Service Act 1977, s.3.

The claimants were service-users of a welfare benefits service for people with mental health difficulties (Riverside Advice) and a youth education project (Youthlink Wales). Both groups had been funded for a number of years by Cardiff Local Health Board (CLHB), and scored highly in a review of voluntary organizations in receipt of CLHB grants in 2004. However, both had their new funding applications refused with no explanation. The Claimants therefore challenged the decisions as being unfair and irrational.

Following the issue of proceedings, CLHB conceded the claim in relation to Youthlink and agreed to carry out a new, fair review process. However, it claimed that it did not have the power under the NHS Act 1977 to fund a mental health advice project, and that previous funding of Riverside Advice had been *ultra vires*.

At first instance, Moses J found in favour of the CHLB on the basis that local health boards were only allowed to fund a specific and narrow range of services (medical, nursing, dental and ambulance, and services for diagnosis and treatment) and facilities (for the prevention of illness, care or after-care). The judge was not satisfied that the provision of welfare benefits advice could be considered either services or facilities under the Act.

However, the Court of Appeal held that this was too restrictive an approach, and accepted that the definitions of 'services' and 'facilities' within the Act should be given broad

interpretations. If a local health board thought it appropriate to provide a particular “facility” as part of the health service, this could include the entire service provision. It was therefore lawful for Riverside’s project to be funded by CLHB, if CLHB considered such a service appropriate as part of health care provision. Prior to the hearing in the Court of Appeal, both the Department of Health and Welsh Assembly Government had intervened to support the claimants’ case.

PLP’s ongoing work on ‘empowering the voluntary sector’ (the project is due to end in 2009) has ensured that many advice agencies and community groups did not suffer funding cuts which would have otherwise threatened their continued existence. Work in the early stages of this project was undertaken in Burton-upon Trent, Sheffield, Plymouth, Kettering, Lincolnshire, Walsall, Manchester and Cardiff. Mostly, litigation has not proved necessary. Once the various groups had received advice on the public law duties of fairness and consultation imposed upon their funding authorities, most have been able to change or vary the decisions of those authorities. In some cases the settlement has followed the issue of proceedings or the grant of permission. For more details of this area of our work, see *Empowering the Voluntary Sector* on our website (www.publiclawproject.org.uk/EmpowerVolSect.html)

The casework team’s experience in addressing the relevance of authorities’ financial resources has also proven to be important in the context of health care provision, not least the important House of Lords test case of *Stennett*.

R v. Manchester City Council, ex parte Stennett
R v. Redcar and Cleveland Borough Council, ex parte Armstrong
R v. Harrow London Borough Council, ex parte Cobham
[2002] 2 AC 1127

Section 117 of the Mental Health Act 1983 imposes a duty jointly on health authorities and social services authorities to provide after-care services to many people who have been detained for assessment or treatment. The duty continues until the health authority and social services authority are satisfied that the individual is no longer in need of the service. Around the country, different local authorities took differing approaches about whether they could charge for residential after-care. PLP initiated a test case against two local authorities who maintained that they could. The High Court rejected the authorities’ argument that s. 117 was simply a gateway to other means by which services could be provided. Instead, s.117 was held to establish a direct duty to provide services free of charge. The decision was appealed, but eventually upheld by both the Court of Appeal and the House of Lords.

The relevance of financial resources to care decisions goes beyond consideration of authorities’ finances. PLP has also been keen to challenge decisions made by authorities on the basis of individual applicants’ perceived resources.

R (on the application of Hurt) v. Sheffield City Council

R (on the application of Mason) v. Sheffield City Council

Both claimants were elderly Sheffield residents provided with residential accommodation by Sheffield City Council. Prior to their move into care, both had given their homes to their adult children. When the means assessment for charging for care was carried out by the Council, the claimants were held to have deliberately deprived themselves of capital (i.e. their former homes) to avoid care home charges. This meant that on the basis of their 'notional capital' they were liable to pay for their residential care.

Both had appealed through the City Council's social services complaints procedure, but had been unsuccessful in overturning the decisions. The City Council appeared to be misapplying the Charging for Residential Accommodation Guidance (CRAG) which set out the basis for such assessments. There was no evidence that either claimant had given away their homes to avoid charges. The Council seemed to have based its decision on the fact that they had transferred their properties, rather than establishing any motivation or deliberate intent.

Both claimants therefore brought judicial review claims to challenge the Council's decisions. Initially the Council indicated they would defend the claims, but once their evidence and detailed grounds of resistance were due, they decided to concede, and agreed to settle the proceedings on the basis of a declaration that both claimants had not deliberately deprived themselves of capital, and that their means assessments would not include the 'notional capital' of the transferred properties.

This meant in effect that both claimants were found not to be liable for their care home charges.

Redhead

In a related case, also against Sheffield City Council, the claimant was represented by PLP through the complaints procedure, including representation before the Social Services third stage complaints panel. In theory, this is a method of alternative dispute resolution procedure or an alternative remedy that should be exhausted before any claim in judicial review is made. (However, the Panel does not provide an independent fresh decision as it is made up of councillors and has limited scope for considering matters of law.)

Our argument before the Panel was again that the Council had got the law wrong in that they were applying the Guidance incorrectly, and making an assumption that was not supported by the facts. As before in the other cases (see above), the Panel found against the client, upholding the Council's decision that she had intentionally deprived herself of capital to avoid care home charges, despite the fact that there was no evidence to support this. In this instance, the client decided not to pursue a claim for judicial review.

The casework team has found that disputes over the relevance of individual's resources can arise in the context of social security also.

R (on the application of Hassan) v. Leicester City Council

The claimant was a lone parent with four young children. Her rent exceeded her housing benefit and therefore she applied to her local authority, Leicester City Council, for Discretionary Housing Payments (DHP). Her application was refused on the ground that her expenditure on certain items (including cakes and squash for her children) was excessive. The Council also indicated that she did not satisfy the 'exceptional hardship' test that the scheme required. The test under the relevant legislation was in fact whether the Council was satisfied that she needed additional help with her housing costs. A challenge was brought to this decision-making process on the basis that the wrong test had been applied, that the Council had failed to undertake sufficient enquiry, that it had not asked itself the right question, and that it had reached an unreasonable decision. Permission was refused on the papers but granted at an oral hearing. Shortly after permission was granted, the Council agreed to reconsider the claimant's application for DHP, conceding that their original decision-making process had been flawed.

R v. Dorset County Council, ex parte Personal Representatives of Christopher Beeson & Secretary of State for Health (interested party) [2002] LTL 19/12/2002; [2003] HRLR 345; [2003] UKHRR 353; [2004] BLGR 92

This case concerned both the substantive law and the procedure involved in local authorities applying the means test to residential care home residents seeking help with their fees. The process did not allow for a hearing before an independent tribunal. The claimant's argument that this infringed Article 6 of the European Convention on Human Rights was upheld by the Administrative Court. However, this was overturned by the Court of Appeal which stated that although Article 6 was engaged, the statutory scheme designed by Parliament, coupled with the availability of judicial review, would usually be sufficient. However, the finding by the Administrative Court that the local authority had failed to apply the correct test when determining that the claimant had deprived himself of an asset in order to obtain more help with his care fees, was not challenged.

Particularly in recent years, social security challenges have provided a field in which PLP has been able to develop the jurisprudence on discrimination.

R v. Secretary of State for Work and Pensions, ex parte Barber [2002] 2 FLR 1181; **The Times, August 29, 2002.**

The claimant brought proceedings against the Secretary of State upon his refusal to split payment of Child Benefit so as to make it payable to both him and his former spouse. The couple had separated and the child spent equal time with both parents in a shared care

arrangement. The case explored the attitude of the courts in the early stages following the coming into force of the Human Rights Act. Although the claimant failed before the Administrative Court, he was given leave to appeal by the Court of Appeal. Unfortunately, on account of factors unrelated to the legal merits of the case, the appeal did not proceed.

***R v. Secretary of State for Work and Pensions, ex parte Carlos Bobezes* [2005] 3 All ER 497; [2005] LTL 16/2/2005; *The Times*, March 14, 2005**

The claimant alleged indirect discrimination based on nationality in relation to the payment of income support dependant upon child allowance under the Income Support (General)

Regulations 1987, Regulation 16(5). He also maintained that it was not an essential component to such a claim for the claimant to produce statistical evidence showing the discrimination, because such statistical evidence was not collated, and in any event the discrimination was self-evident. The Court of Appeal agreed and said that the correct test was to compare the children of migrant workers with British children whose families were normally resident in the UK. Indirect discrimination was liable to affect a significant number of migrant workers without statistical proof being available.

***Francis v. Secretary of State for Work and Pensions* [2006] 1 All ER 748; [2005] EWCA Civ 1303; [2005] 3 FCR 526; [2006] HRLR 9; *The Times*, November 17, 2005; *The Independent*, November 17, 2005**

This Court of Appeal case was based on the contention that the refusal of the Secretary of State for Work and Pensions to award a £500 Sure Start Maternity Grant (SSMG) to Sara Francis was discriminatory and therefore unlawful under Article 14 of ECHR. The appellant argued that there was no relevant difference between an Adoption Order and a Residence Order for the purposes of SSMG since in both cases the person who is actually looking after the child is the one in need of the financial support to assist them in buying essential items for the new baby (cot, pushchair etc) that SSMG is designed to provide.

Ms Francis' nephew had been taken into care by the local authority when he was just 3 days old as her sister was unable to care for him due to serious health problems. Ms Francis took over looking after him when he was a few weeks old. She did not want to adopt him as she did not want to sever the child's ties with his natural mother, whom he saw occasionally. It was not disputed that Ms Francis satisfied the means test conditions for SSMG, nor that it would have been available to her had she adopted her sister's child, or if she was his natural mother.

Despite these circumstances, Ms Francis' claim was refused by the Department for Work and Pensions and on appeal by the Social Security Appeal Tribunal. She appealed to the Social Security Commissioner and Mr Commissioner Williams who dismissed both her appeal arguments that the reference to adoption in Regulation 5 of the Social Fund Maternity and Funeral Expenses (General) Regulations 1987 should be given a broad meaning to include a person who has a Residence order for the baby in question, and that a failure to give SSMG to those with a residence order was discriminatory as there was no objective justification for her being treated differently from an adopter.

At the Court of Appeal, Sir Peter Gibson, Auld LJ and Moore-Bick LJ unanimously held that the difference in treatment between those carers who have an adoption order in respect of a baby and those who have a residence order was discriminatory, that there was no rational justification for the difference in treatment, and that it was therefore unlawful under section 6 of the Human Rights Act 1998 for Sara Francis not to be paid SSMG in respect of her nephew.

Despite our interest in developing jurisprudence and the wider public law picture, our casework team has measured its success not only by litigating, but also by engineering effective and beneficial settlements. This has been particularly important to clients affected by social security decisions.

Ex parte Ellington (2000)

The claimant was alleged to have received an overpayment of benefit. The Secretary of State for Work and Pensions recovered this overpayment under what he referred to as 'common law principles'. This meant that the claimant had no right of appeal, and was instantly thrown into debt. A claim was issued following which the Secretary of State agreed to return all monies. It is not known whether he did this because he agreed that such a power did not actually exist, or whether he agreed that its use in this particular case was unfair.

R (Driver) v. Secretary of State for Work and Pensions (2005)

The Claimant had severe learning disabilities and could not manage his own affairs. His mother had been his appointee for one welfare benefit for a number of years, the home administrator where he lived dealing with his other benefit. His mother's appointeeship was withdrawn without warning or consultation and the DWP refused to reinstate her, claiming there could only be one appointee for all benefits. Despite the Regulations clearly allowing more than one appointee, the DWP would not overturn their decision, stating that the Department now had a policy of only one appointee for all benefits.

Proceedings were issued, and permission granted at an oral hearing. The defendant then agreed to concede the claim by reappointing the claimant's mother as appointee for the relevant benefit.

Although community care law is now well established and being pursued by lawyers in private practice all over the country, our interest in this area continues, particularly where there is a new or interesting feature. For instance, the assessment of damages payable for a breach of a Convention right under the Human Rights Act 1998.

R (Thorne) v. Thames Valley Health Authority and Buckinghamshire County Council (2003)

The Claimant, a severely disabled woman, was placed in very unsuitable accommodation while waiting for an argument between her local social services and health authorities to be resolved. Both authorities were arguing that the other should fund her needs and refusing to enter into any compromise solution. The matter was resolved once JR proceedings had been initiated – (1) funding was agreed for both accommodation and support needs; and, importantly, (2) a £10,000 settlement was reached for the breach of the Claimant's rights under Article 8 ECHR.

Challenges in the context of Access to Justice continue to be a central plank in PLP's casework.

Ex parte Tham (2000) CF/3662/1999

PLP was instructed to pursue a claim against the Lord Chancellor over the lack of legal aid for representation before Social Security Commissioners. The claim was not issued as the Lord Chancellor agreed to fund the case. This was the first use by the Lord Chancellor of his discretionary powers to fund matters 'out of scope' of civil legal aid, and the first time publicly funded representation was provided to an individual before the Commissioners. In the event, the claimant's social security appeal was successful.

R (on the application of Coffey) v. the Legally Qualified Panel Member of the Appeals Service (Secretary of State for Work and Pensions as interested party) (2004)

The claimant had literacy problems and suffered from severe depression. When his application for disability living allowance (DLA) was refused, he missed the deadline for appealing because he could not read the paperwork, nor find someone to help him. When he approached a welfare benefits adviser, the adviser made an application to the Appeals Service District Chair that the claimant's application be dealt with out of time, because of the claimant's obvious difficulties in pursuing an appeal within the one month deadline. This application was refused on the basis that there were no exceptional circumstances and that the claimant could have made his appeal in time. There is no right of appeal against the District Chair's decision, and therefore the only possible challenge was by way of judicial review: the claimant was to argue that the District chair had failed to apply the law correctly in considering the exceptional circumstances test and had not properly considered the facts of the case.

Proceedings were issued against the Legally Qualified Panel Member (i.e. the District Chair who made the decision), and the Secretary of State for Work and Pensions was served as an interested party. After service of proceedings, the Chair agreed to reconsider his decision. Although he still misapplied the law, he allowed the claimant to make a late appeal. The

judicial review proceedings were stayed while the substantive appeal was heard. The award of DLA was allowed on that appeal, and the judicial review case was settled, with the DWP paying the claimant's costs.

***R v. Lord Chancellor, ex parte Lightfoot* [2000] QB 597**

The claimant argued that the mandatory deposit required to meet the Official Receiver's fees when petitioning for bankruptcy, insofar as there was no discretion to waive it, unlawfully restricted her constitutional right of access to the court, and breached her rights under Article 6(1) and Article 14 of the European Convention on Human Rights. In dismissing the appeal it was held that (1) the deposit was not a prerequisite to accessing the court for adjudication of a general dispute, but rather a contribution towards providing services which were of benefit to the debtor; not every debtor had a right to the rehabilitative scheme, releasing her from her debts, irrespective of her ability to contribute; (2) even if a constitutional right was in play, Parliament had clearly authorized the abrogation of any right to 'free' access to the bankruptcy courts in the relevant legislation; (3) Article 6(1) only applied if there was a dispute, the outcome of which would decide rights and obligations. The court's jurisdiction over a debtor's own petition in bankruptcy did not involve such a determination.

On a practical level, it is the costs of litigation which can most readily affect an individual's access to justice. Costs litigation, including the development of the protective costs order, has proven to be one of the most frequent and significant aspects of our team's work.

***R v. Calderdale Metropolitan Borough Council, ex parte Houghton* (2000) 3 C.C.L. Rep 228**

The applicant applied for a costs order following the withdrawal of her application for judicial review of Calderdale MBC's care plan which had been made for her under the National Health Service and Community Care Act 1990.

The claimant had multiple sclerosis and other disabilities, and felt that her care plan was inadequate. In the first stage of this case, the claimant had successfully challenged Calderdale's four-stage appeal procedure for determining the charges to be paid for community care in the home by people receiving benefits. Having won her appeal at the third stage of the procedure, leading to the reduction in charges, the original charge was then restored at the fourth stage. No explanation was given for either decision. Permission for judicial review was granted, primarily because of the lack of proper reasons for the ultimate decision. Calderdale then settled the case on the basis that it would rehear the appeal, revise its guidance, and introduce a simplified appeals procedure benefiting all of its residents receiving home care.

After withdrawal, a costs order was granted on the basis that the applicant's judicial review would arguably have succeeded, and as such she was entitled to her costs.

***R (on the application of Refugee Legal Centre) v. Secretary of State for the Home Department* [2005] 1 WLR 2219; [2005] ACD 52; [2004] LTL 12/11/2004; *The Times*, November 24, 2004**

The Court of Appeal was asked to examine a 'super fast track' asylum determination procedure being piloted by the Home Office, in order to ensure that it was fair to asylum applicants. The Court held that it was, so long as the Home Office was prepared to publish guidance setting out the circumstances when the application of the procedure would be unfair and therefore when it would deviate from the process. But the case is also notable for the fact that the Refugee Legal Centre obtained the first ever full Protective Costs Order. This was in the form of a preliminary order insulating the claimant from having to pay any of the Home Secretary's legal costs in the Court of Appeal, whatever the result of the case.

***R (Corner House Research) v. Secretary of State for Trade and Industry* [2005] 1 WLR 2600; [2005] EWCA Civ 192**

This was an appeal against the refusal of an application for a protective costs order in judicial review proceedings arising from a challenge by a small NGO of the failure to consult over the new anti-corruption policy issued by the Export Credit Guarantee Department (part of the Department of Trade and Industry). The Public Law Project intervened as an interested third party because of the importance of costs protection in public interest litigation in judicial review and their recent work on such applications.

Clarifying the four principles set down by Dyson J in *R v Lord Chancellor ex p CPAG* [1999] 1 WLR 347 on PCO's in public law, the Court of Appeal held that (1) Dyson J correctly stated that it was only in the most exceptional circumstances that the discretion to make a PCO should be exercised in a case involving a public interest challenge; and (2) that the governing principles for granting a PCO should be restated in the following terms:

1. A protective costs order may be made at any stage of the proceedings, on such conditions as the court thinks fit, provided that the court is satisfied that:
 - i) The issues raised are of general public importance;
 - ii) The public interest requires that those issues should be resolved;
 - iii) The applicant has no private interest in the outcome of the case;
 - iv) Having regard to the financial resources of the applicant and the respondent(s) and to the amount of costs that are likely to be involved it is fair and just to make the order;
 - v) If the order is not made the applicant will probably discontinue the proceedings and will be acting reasonably in so doing.
2. If those acting for the applicant are doing so pro bono this will be likely to enhance the merits of the application for a PCO.
3. It is for the court, in its discretion, to decide whether it is fair and just to make the order in the light of the considerations set out above.
4. A PCO can take a number of different forms and the choice of the form of the order is an important aspect of the discretion exercised by the judge.

For several years PLP enjoyed a successful partnership with the Centre for Corporate Accountability, thanks to grant funding from the Joseph Rowntree Charitable Trust. During this period many people bereaved by workplace incidents or suffering from injuries at work were advised on the public law remedies available to them in ensuring accountability in relation to the regulatory and enforcement agencies involved in workplace safety and the investigation of such incident. For more information on this project, see the Corporate Accountability Project download from our website. Two examples, both of cases which were settled, are given below.

R (Stewart) v HM Coroner for Avon (2002)

This case concerned a serious incident on the Severn bridge in which 5 workers fell to their deaths from a gantry that was poorly secured. There was ample evidence that the employer had failed to take basic safety precautions, and the Claimant wanted an inquest to be held into the death of his son. The Coroner, wrongly directing himself on the law, decided that the adjourned inquest would not be reconvened since there had been a health and safety prosecution. After judicial review proceedings had been issued the Coroner finally changed his mind. At the resulting inquest a verdict of unlawful killing was returned, effectively forcing the CPS to reconsider prosecuting for manslaughter or corporate manslaughter.

Tanhai (2005)

A 13 year old boy was killed by his own school bus in an incident which appeared entirely preventable. The Health and Safety executive refused to investigate the incident although the boy's parents were sure that lessons could and should be learnt for the future. After failing to persuade the HSE to take the case on by negotiation, the HSE eventually agreed after being threatened with judicial review proceedings. The results of the investigation led to changes in the regulation of school bus operations across the country.

Miscellaneous cases

Care, Funding, Relevance of Authority's resources

Wholly finance driven decision by Trust to reduce supply of nappies for severely autistic 10 year old girl who suffers from double incontinence (local community health council referred case to PLP): (1) no consultation; (2) ceiling regardless of clinical need; (3) ignored national guidance. JR threatened – ultimately settled.

Care Policy, Privatization

Health Authority's policy on referring patients for treatment outside the NHS – settled in client's favour.

Care Policy

JR of Trust's over-rigid interpretation of its clinical management policy – settled in client's favour.

Care, Privatization, Information

Debilitating allergies: 1996 referral to private hospital for treatment; Trust refused to pay for it; Trust's refusal to allow access to "confidential" reports by Health Authorities as to efficacy of proposed treatments and funding of treatments at that private hospital. – Rights of Access to Health Information – permission to JR granted – then settled in client's favour.

Social Security

Social Security commissioners grant appeal from Social Security Tribunal which did not explain why it had disregarded medical advice.

Immigration

Successful challenge against Home Secretary's unlawful delay in determining an application to revoke a deportation order

Discrimination – Social Security

Several cases where people from abroad fall foul of rules requiring evidence of identity before being provided with a benefit or other entitlement (DM demanding form of evidence more generally possessed by indigenous population, and refuses to consider other, equally valid, evidence. Persons from abroad denied social security benefits as the authorities had refused to issue them with NI numbers, and those who wished to work were being denied driving licenses. PLP threatened litigation, and co-ordinated other advice agencies and organizations in responding to the problem. All cases were settled to the clients' favour and proceedings were not necessary. The issue has now largely been resolved but new cases continue to arise where decision-makers attempt to enforce their own internal departmental guidance too rigidly.

Discrimination – Sexual Orientation – Education & Immigration

Refusal to approve a gay teacher for employment on suitability grounds (case settled in client's favour).

Refusal of entry clearance to same sex partner outside immigration rules and existing policy – JR proposed – settled favourably – clearance granted.

Current and future casework

For information on PLP's current casework, and casework priorities, see the PLP website:

www.publiclawproject.org.uk/CurrentCases.html and

www.publiclawproject.org.uk/CurrCasePrior.html