



1 July 2008

**Court of Appeal clarifies the basis on which public interest litigation may be brought in challenge to closure of hospital services**

In an important judgment the Court of Appeal has clarified the basis on which public interest litigation may be brought. The case concerned a challenge to decisions by Wiltshire Primary Care Trust (the PCT) to terminate services provided at the Day Unit and the Minor Injuries Unit of Savernake Hospital in Wiltshire. A legal challenge to the proposed changes is being brought by Ms Val Compton, a former nurse and local citizen, and a member of the campaign group “Community Action for Savernake Hospital”, with the benefit of pro bono representation by counsel obtained through the Bar Pro Bono Unit.

Over a number of hearings, the Administrative Court held Ms Compton’s legal challenge to be arguable: in other words, that it merited a full trial of the issues before a high court judge. However Ms Compton could not afford to take her case to trial unless she received some protection against the risk of being ordered to pay all the PCT’s costs if she lost.

Despite Ms Compton’s lack of resources, the PCT refused to agree not to ask her to pay all its costs if she lost. Ms Compton was therefore forced to apply for a Protective Costs Order (PCO). This is an order that limits in advance - to a sum that the Court decides is reasonable - the amount of money that Ms Compton would have to pay if she loses the case. The Administrative Court agreed to make a PCO, which capped at £20,000 the amount of costs Ms Compton should pay if she lost the case. However the PCT appealed to the Court of Appeal against the PCO arguing that it should not have been granted.

Today, the Court of Appeal has held by a majority that Ms Compton should continue to receive the benefit of a PCO to enable her to bring a legal challenge without fear of having to pay all the PCT’s legal costs should she lose. In so doing, the Court resolved uncertainties that had arisen in practice following the leading 2005 case of *Corner House*<sup>1</sup> (in which the Court of Appeal had also granted PLP permission to intervene), and reaffirmed the importance of Protective Costs Orders in appropriate cases to ensure that public interest challenges can be brought by concerned individuals and NGOs without fear of financial ruin if the case is lost.

---

<sup>1</sup> <http://www.bailii.org/ew/cases/EWCA/Civ/2005/192.html>

Conrad Haley, the Director of the Public Law Project, said:

“I am delighted that the Court permitted PLP to intervene in Mrs Compton’s case, and following PLP’s intervention, have dismissed the PCT’s appeal. The case had important implications for access to justice: had the PCT succeeded in appealing against the PCO, it would have meant that Mrs Compton would have been forced to drop her case for fear of having to pay all of the PCT’s costs, even though the proposed changes to the PCT’s services could affect many thousands of people in Wiltshire, and Mrs Compton had managed to raise pledges of £20,000 from local citizens as a fighting fund to pay towards the PCT’s legal expenses in the event the case was lost.

If Mrs Compton had been forced to drop the case, the people of Wiltshire would have been deprived of access to the court, and ultimately, of justice. We are delighted that a majority of the Court have reaffirmed the important role that Protective Costs Orders have in ensuring access to justice, in cases where there is an imbalance of financial resources between the challenger and the public body whose decision is being challenged. This case continues PLP’s work on this issue, and others involving access to justice.”

**For further information, please contact Ravi Low-Beer at the Public Law Project by telephone: 020 7697 2194, or by email: [r.lowbeer@publiclawproject.org.uk](mailto:r.lowbeer@publiclawproject.org.uk).**

#### **Notes for editors**

1. The Public Law Project ([www.publiclawproject.org.uk](http://www.publiclawproject.org.uk)) is a national legal charity which aims to improve access to public law remedies for those whose access to justice is restricted by poverty or some other form of disadvantage. Within this broad remit PLP has adopted three main objectives:
  - increasing the accountability of public decision-makers;
  - enhancing the quality of public decision-making;
  - improving access to justice.

Public law remedies are those mechanisms by which citizens can challenge the fairness and/or legality of the decisions of public bodies and so hold central and local government and other public authorities to account. They include non-court-based remedies such as complaints procedures and ombudsman schemes and also litigation remedies, in particular judicial review.

To fulfill its objectives PLP undertakes research, policy initiatives, casework and training across the range of public law remedies.

2. A copy of the full judgment will be available on PLP’s website once it is received from the Court.