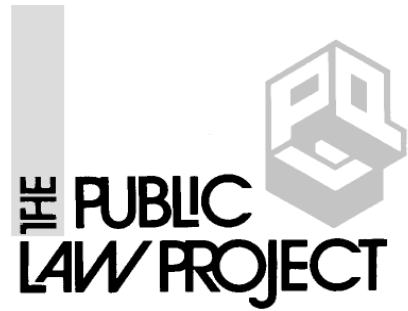


Corporate Accountability Project

**Funded by the Joseph Rowntree
Charitable Trust**



Introduction

In April 2004 PLP secured a £60,000 grant from JRCT to carry out a project working on the regulatory and law enforcement processes which arise out of work-related deaths and injuries. This grant was used to fund the work of lawyers at PLP (amounting to an average of 2 lawyer days per week) and lasted for two years from May 2004 to April 2006.

The primary aims of the project were:

- To increase the accountability of public decision makers who play a role in these processes by seeking to improve the quality of decision-making.
- To challenge unlawful decision-making by investigatory and prosecution bodies where appropriate.
- To bring cases against those bodies which could set a useful precedent.
- To develop this area of the law and enable other practitioners to continue this work after the end of the project.

To achieve these aims, the main activities of the project were:

- Legal consultancy, advice and support to other lawyers and advisers who work with the injured and bereaved.
- Representation and casework in public law matters (complaints, Ombudsmen investigations and judicial reviews).
- Training for lawyers and advisers.

Legal consultancy service

The aim of the service was to provide advice to solicitors and advisers working with the injured and bereaved to improve the range and quality of the service they provide to their clients and to assist them in dealing with individual cases. This was designed to develop the skills and expertise of those working in this area to ensure that they were able to spot relevant issues arising in public body decision-making in the wake of work-related deaths and injuries. The project also sought to ensure that public law expertise was developed sufficiently to allow for the continuation of this work once the consultancy service ceased at the end of the funded project.

As we envisaged from the start, the Centre for Corporate Accountability's Work Related Deaths Advice Service was the greatest user of the consultancy service and we worked very closely with CCA across a wide range of their cases, including taking over direct representation when appropriate. Our work with CCA enabled its service to its clients to become more focussed and effective; CCA could move towards a more 'legalistic' approach to its casework and is more routinely considering judicial review, the ombudsmen, and formal complaints as ways of obtaining a remedy for their clients.

Casework

Rather than taking over conduct of matters being dealt with by CCA, we have chosen where possible to provide support and supervision to CCA's caseworkers on individual cases. This has the advantage of enabling them to increase their skills, experience and legal knowledge whilst at the same time allowing their clients to have the benefit of free legal advice from public law specialists.

In those cases referred to us for judicial review proceedings to be commenced, following receipt of a letter before claim, the public body concerned (the Local Government Ombudsman, and the Health & Safety Executive (HSE)) agreed to withdraw the decision that was being challenged and conduct a full review of the case before making a fresh decision.

Examples of casework

'S': a good example of the type of case where there were many different issues and agencies with overlapping responsibilities. In this case, a 97 year old woman who lived at home suffered a fall and was left unattended for 48 hours, even though she was supposed to have daily visits from carers. After she was found, she was admitted to hospital and died a few days later. Several issues arose. (1) Complaint to the local authority complaint regarding social services and the private agency supplying the carers. (2) The police / CPS investigation into gross negligence manslaughter. Use of the police complaints procedure in relation to adequacy of the investigation. (3) Perceived overlap in the regulatory framework between the HSE and the Commission for Social Care Inspection (CSCI). The HSE refused to investigate as they said it was responsibility of the CSCI but the latter said they could do nothing because the incident preceded its inception as a body. (There was a previous body, the National Care Standard Commission, which had a similar role). (4) Whether there should have been an inquest. Outcomes: still ongoing in terms of the policy issues between the HSE and the CSCI.

'T': In this matter, PLP acted directly for the client as judicial review proceedings were contemplated. The HSE's initial decision was severely flawed and their attitude to the case dismissive. The case concerned a school boy who was killed by his own school bus. HSE initially refused to even consider getting involved, saying the police had already

investigated. This case again raised the important issue of the division of responsibility between the HSE and other agencies, the remit of police investigations and the HSE's policy on investigating work-related road traffic incidents.

When approached by the CCA the HSE refused to even discuss the matter nor give proper reasons. As a consequence of PLP's involvement (and specifically the letter before claim) the HSE considered the case again from scratch and conducted a review of its own policies – including its controversial section 3 Health and Safety at Work Act enforcement priorities policy (relating to deaths of members of the public). The case also contributed to the HSE review of the safety of school buses.

Training

Part of the aim of this project was to seek to disseminate knowledge of the substantive law (e.g. the duties owed by manufacturers and employers to workers and members of the public under health and safety legislation) and in particular public law remedies and their use in this context.

In partnership with CCA, we ran a full day course in November 2004 jointly with the CCA on 'Accountability following work related death and injury', mainly focussing on how to challenge decisions made by the enforcement bodies. This was attended by lawyers in private practice, health and safety professionals and trade unionists. It was very successful and we received extremely positive feedback.

We also developed half-day courses to be delivered in-house at firms which deal with the private law cases arising out of these incidents, to enable them to spot and deal effectively with the public law issues as well.

In addition to the external training delivered, each of the CCA caseworkers received individual training on judicial review and other public law mechanisms. CCA caseworkers had on-going support and supervision in-house to assist them in dealing with cases more effectively.

Further information about this work is available from c.collier@publiclawproject.org.uk

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PLP

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