

## R (Keating & Others) v Cardiff Local Health Board

The Public Law Project represented three service-users of a welfare benefits advice project in Cardiff which had its funding withdrawn by the Local Health Board (the Welsh equivalent of a health authority or primary care trust) on the basis that it did not have the power under the National Health Service Act 1977 to fund such a project. The decision by the LHB had originally been made as part of a voluntary sector review in which the advice service, run by Riverside Advice, had scored in the top band following assessment by an expert panel. They therefore hoped to secure a new three-year funding agreement, but in fact received a letter saying that their work “did not meet health outcomes” and that their funding would cease. It later came to light that the Local Health Board (LHB) had in fact considered it *might* be “ultra vires” (outside their power) to fund the project, and that this was why their funding had been withdrawn.

Riverside and their clients contacted PLP who tried to resolve matters with the LHB through correspondence. As this was unsuccessful, proceedings were issued on the basis that the voluntary sector review process had been unfair (to both Riverside and another project run by Youthlink Wales), and that the LHB did have the power to fund a welfare benefits advice project. After the issue of proceedings, the LHB conceded on the fairness issues and agreed to allow Youthlink Wales a new review (which is currently ongoing). However, they continued to defend the claim on the basis that there were no decided cases on this point and they thought “it would not be proper to continue to fund the Riverside Advice project without the court’s guidance”.

The judicial review claim was heard on 14<sup>th</sup> March 2003, with Mr Justice Moses giving judgment for the Defendants on 23<sup>rd</sup> March. He found that s.3(1) of the NHS Act 1977 only allowed for LHBs to fund a specific – and very narrow – range of services and facilities, and that the advice project did not fall within these. The Claimants instructed PLP to appeal the decision on their behalf and the final hearing took place on 5<sup>th</sup> July in the Court of Appeal with judgment being given on 6<sup>th</sup> July in favour of the Claimants/Appellants.

The Court found that the judge adopted too restrictive an approach to the meaning of the word “facilities” where it appeared in s.3(1)(e) of the Act, in relation to prevention of illness, care and after-care. Lord Justice Brooke held that its meaning should be derived from the context in which the word is used – it means “that which facilitates”. This could therefore include an entire service provision (such as a laundry provision or provision of a day centre), and not simply the accommodation or equipment. Lady Justice Arden and Lord Justice Longmore agreed.

The LHB had already agreed that if the Claimants succeeded on appeal, they would enter into a new three-year funding agreement with Riverside Advice. In effect, this means that the project has kept its funding until 2008. The project assists in the region of 100 to 200 people per year who suffer mental health difficulties and need assistance and specialist advice in relation to their benefits claims and appeals. There is no other comparable service available in Cardiff.

The case had potentially widespread implications for the voluntary sector and the health sector generally as a huge range of health-related projects are funded by PCTs and LHBs throughout England and Wales. As well as saving this individual project, it was very important to establish that health bodies could fund a wide range of services, and not the very limited work as suggested by Cardiff Local Health Board and Moses J at the original hearing.