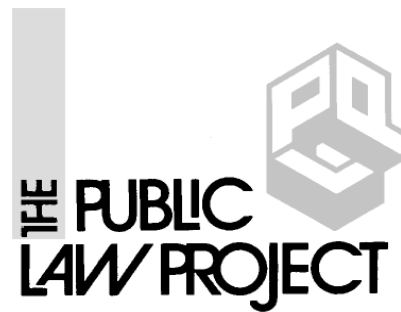


13 July 2005



Successful Challenge to Advice Project Funding Cut

Three users of Cardiff welfare benefits advice project, Riverside Advice, have successfully challenged the withdrawal of the project's funding by Cardiff Local Health Board in the Court of Appeal.

The Public Law Project last week successfully brought a challenge in the Court of Appeal on behalf of three service-users (Mr Keating, Mrs Rees and Mr Thompson) of Riverside Advice, a Cardiff-based welfare benefits advice project. Riverside Advice had its funding withdrawn by Cardiff Local Health Board (the Welsh equivalent of a health authority or primary care trust) on the basis that it did not have the power under the National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 project represents in the region of 80 to 100 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.

Implications of this case

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 Primary Care Trusts and Local Health Boards (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 Mr Justice Moses at the original judicial review hearing in this case.

Background to the case

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 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it *might* be "ultra vires" (outside their power) to fund the project, and that this was why their funding had been withdrawn.

PLP, on behalf of Riverside and their clients, 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. Subsequently, the LHB conceded on the fairness issues and agreed to allow Youthlink Wales a new review (which is currently ongoing). However, the LHB 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”.

Concluding Judgments

The first judicial review claim was heard on 14th March 2003, with Mr Justice Moses giving judgment for the LHB on 23rd 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 service-users of Riverside Advice instructed PLP to appeal the decision on their behalf and the final hearing took place on 5th July in the Court of Appeal with judgment being given on 6th July in their favour.

The Court found that the definitions of ‘services’ and ‘facilities’ should be given a broad interpretation and that on this basis it was lawful for the LHB to fund the advice project. The LHB had already agreed that if Riverside Advice 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.

For further information, please contact Hannah Jones at The Public Law Project – Tel: (020) 7697 2196 Email: h.jones@publiclawproject.org.uk

Editors’ Notes

- 1) In summary, the basis for the Court of Appeal’s decision was that the original 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.
- 2) The full Court of Appeal judgement for the case (R (Keating & Others) v Cardiff Local Health Board) can be found at: <http://www.bailii.org/ew/cases/EWCA/Civ/2005/847.html>
- 3) The Public Law Project (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 fulfil its objectives PLP undertakes research, policy initiatives, casework and training across the range of public law remedies.