



JUNE 2009 ... VOL 1 ... PART 1

PUBLIC LAW NEWSLETTER

Welcome to the first edition of Hardwicke Building's Public Law Group Newsletter!

CHAMBERS NEWS

We are delighted to announce the arrival of a new Practice Director. Amanda Illing will be joining us from Matrix Chambers in July.

Hardwicke Building is reorganising its current structure of 11 different practice teams into four client-focused Practice Groups. Our new Practice Groups will incorporate all Hardwicke's existing specialist teams, and will be Public Law; Commercial; Insurance; and Property & Private Client.

Hardwicke Building has been shortlisted in the Chambers of the Year category in The Lawyer Awards 2009. The winners will be announced at a ceremony on The Grosvenor House Hotel, London on the 23rd of June.

LEGAL NEWS

In a landmark ruling on 20 May 2009, the House of Lords held that local authorities have a duty to accommodate homeless teens under s. 20 Children Act 1989: *R(G) (FC) v London Borough of Southwark [2009] UKHL 26*. The case challenged the practice by some authorities of requiring homeless children to apply for accommodation under homelessness legislation, instead of providing them with accommodation and other services under s. 20. The case concerned a Somali boy, aged 17, whose mother threw him out. He was forced to "sofa-surf" with friends, as well as sleeping in cars, and became involved in gang culture. He was sent to live in a B&B. Southwark decided that he needed "help with accommodation" only.

The Applicant (represented by Fisher Meredith) lost in the High Court, and again, by a majority, in the Court of Appeal. The dissenting judge, Lord Justice Rix, argued: "a child, even one on the brink of adulthood, is considered and treated by Parliament as a vulnerable person to whom the state, in the form of the local authority, owes a duty which goes wider than the mere provision of accommodation."

The House of Lords expressed surprise that things had got to this pass. It had already ruled in a case involving Fulham last year: "local children's services authorities cannot avoid their responsibilities towards this challenging age group by passing them over to the local housing authorities" - *R (M) v Hammersmith & Fulham LBC [2008] 1 WLR 535*.

JUDICIAL REVIEW TODAY

Two important reports from the Public Law Project, launched on June 1st, make interesting reading. The Dynamics of Judicial Review Litigation and Mediation are two pieces of independent research into the legal landscape, post-Bowman. His reforms require intending applicants to send a pre-action protocol letter to defendants, and that defendants are involved in the permission stage by filing an Acknowledgement of Service.

The reports highlight the marked difference in litigation culture between claimant lawyers and those working for local authorities. The latter frequently experience internal financial pressures, which may militate against timely communication with claimant lawyers. Strikingly, though permission is now granted in less than half the applications filed in 2006 compared with 1996, the rate of settlement pre-permission has more than doubled since the 1990s. This is particularly so in homelessness claims (62% of which settle pre-permission) and asylum support (61%).

The scope for mediation is therefore still comparatively limited, particular as many judicial review applications

seek urgent relief. Interestingly, claimants seem more willing to consider mediation: more than 4 times as many defendant lawyers rejected mediation on the basis that there was “no room for compromise”, according to the PLP’s study. Mediation can also prove more expensive.

VIEWS FROM THE BENCH

Judges in the Administrative Court do sound off, from time to time. Let us know if you hear anything particularly piquant. Here is Mr Justice Munby:

“it is a depressing feature of life in the Administrative Court...-- that there are too many local authorities, particularly in London, who for a variety of reasons, largely because they do not have the resources, simply adopt a policy of doing nothing, whatever the law requires, until they receive an application for judicial review. In that way they manage their case load, because most of their clients, customers as they nowadays call them, do not have the moral, mental resources to go for judicial review and adopting a policy of doing nothing until the writ hits them automatically cuts the case load by 90 per cent.”

He also observed that in one case before him the local authority did not send anyone to sit behind counsel, because its entire legal department had walked out the previous day!

SEMINARS & EVENTS

The Inaugural Hardwicke Building Social Housing Conference took place in London on Tuesday 28th April 2009. Supported by Inside Housing, the Conference aimed to address topical legal and political issues. Grant Shapps MP, Conservative Shadow Housing Minister, gave the keynote address. Other speakers included Kerry Bretherton, Alastair Redpath-Stephens and Dean Underwood of Hardwicke Building; Naomi Good of Lewis Silkin; Daniel Skinner of Batchelors; John Gallagher of Shelter, and Kate Davies of Notting Hill Housing. If you’d like to receive the papers from the conference, please contact Louise Poppelwell below.

We regularly host lively seminars focussed on a range of Public Law matters. For further information please contact Marketing Manager Louise Poppelwell on louise.poppelwell@hardwicke.co.uk

This edition of the Public Law Newsletter was edited by Divisional Head, Barbara Hewson.

The members of Hardwicke Building’s Public Law division have specialist skills and experience in a range of public law matters including social housing, education and human rights.

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Deborah Hay	1991	Alastair Redpath-Stevens	1998	Robin Jacobs	2006
Kerry Bretherton	1992	Andrew Lane	1999	Laura Tweedy	2007
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