



The equality impacts of welfare reform

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Overview

- How are we challenging the inequality impacts of welfare reform?
- How will we challenge in future?
- Key issues to look out for.

TP & AR v Secretary of State for Work and Pensions



Reform:

Abolition of the Severe Disability Premium and the Enhanced Disability Premium

Trigger:

A move across local authority boundaries

Loss:

Circa £170 per month, no transitional protection until July 2019



The Claimants

- TP diagnosed with stage 4 cancer
- Moved out of Hammersmith for approximately 3 weeks before treatment began

- AR suffers with bi-polar
- 'Bedroom Tax' resulted in move from Middlesbrough to Hartlepool



Launch of a Judicial Review

- Objective:

For the Court to find the Decision/underlying legislation unlawful

- Time limits:

Must be issued within 3 months of the Decision

- Procedure:

Send a pre-action protocol letter setting out the facts and grounds

Defendant has 14 days to respond



Approach

- Is this case a judicial review?
- Do the circumstances/unfairness shock you?
 - i. Measure 'targeted' at the severely disabled
 - ii. Significant drop in income
- Possible unlawful discrimination under the Human Rights Act?



Legal Grounds

1. Public Sector Equality Duty (or PSED) – s149 of the Equality Act 2010

1. Abolition of the SDP/EDP – Art 14 with Art 8/A1P1 European Convention on Human Rights (“ECHR”)

1. Lack of transitional protection or ‘top ups’ until July 2019 - Art 14 with A1P1 ECHR

2. Irrationality



Permission to proceed?

- **Granted:**

Grounds 2 and 3

- **Refused:**

Grounds 1 and 4

- **Renewed:**

Refusal of ground 1 (PSED) – to be heard at ‘rolled-up’ hearing

- **Expedition:**

Case involves important point of law and particular circumstances of the claimants



Permission stage - final hearing

To do:

1. Evidence
2. Detailed grounds
3. Hearing bundle
4. Skeleton arguments
5. Interventions



Evidence in TP and AR

- Case studies demonstrate:
 1. Variety of circumstances
 2. Impact on individuals / society at large
- Witness statements from organisations with field experience highlight:
 1. Their experience of the policy and how it has manifested itself
 2. Opportunity to address issues raised in the case
- Volume
 - Too much is as problematic as too little



The Final Hearing

- You can't choose the judge!
- Judges dislike complex legislation
Social security legislation is complex
- Lord Justice Lewis...



Success?

- Possibly - top up payments may be provided to natural migrants
- Judgment expected by August



Upcoming Litigation

- **Self-employed earnings and the minimum-income floor**
Discrimination contrary to Article 14 with A1P1 and/or Article 8
- **Irrational UC assessment periods**



Key Issues – future strategic litigation

- Narrow and focused points
- Human Rights Act:
 - Does it discriminate against a particular group – Article 14?
 - Does it affect a person's private and/or family life – Article 8?
- *Questions?*