



Welcome to the Thirty Nine Essex Street Public Law Newsletter!

The Public Law Group at Thirty Nine Essex Street has expertise at all levels and consists of 10 QCs and 39 Juniors. We have established a leading reputation in the field of administrative and public law, and members undertake all aspects of judicial review and public law work for both Claimants and Defendants. Work includes human rights and civil liberties, professional regulation, education, local government, health, mental health, community care, housing and housing associations, prisons, procurement, immigration, VAT and Customs & Excise.

We are able to provide a comprehensive service of advice and assistance to local government and have been appointed to the legal panels of a range of local authorities following competitive tender processes.

Recent cases



Jenni Richards
**Savage v South Essex Partnership NHS
Foundation Trust**
[2008] UKHL 74

Jenni Richards acted for the Claimant in this landmark House of Lords case on the scope of article 2 of the European Convention on Human Rights. Their Lordships ruled that the right to life enshrined in article 2 imposed an operational obligation on medical authorities to do all that could reasonably be expected of them to prevent a patient detained in a mental hospital who was known to be at a real and immediate risk of committing suicide from doing so. Carol Savage was a patient held under the Mental Health Act 1983 who absconded from the hospital where she was detained and threw herself under a train in July 2004. Her daughter, Anna Savage, brought a claim under article 2 of the

ECHR, claiming that the hospital knew or ought to have known that her mother posed a real and immediate risk of suicide and failed to take reasonable steps to prevent her death.

The House of Lords dismissed the appeal by the defendant, South Essex Partnership NHS Foundation Trust, from the Court of Appeal [2008] 1 WLR 1667 who allowed an appeal by the claimant from the decision of Mrs Justice Swift giving summary judgment for the defendant.



Eleanor Grey
R (Harrison) v Secretary of State for Health;
R (Garnham) v Secretary of State for Health
[2009] EWHC 574 (Admin)

Eleanor Grey appeared for the Secretary of State in this judicial review of the refusal of the Secretary of State for Health to permit PCTs to make direct payments to individuals



in receipt of healthcare services. The claimants had been receiving direct payments in respect of their community care needs from their local authority social services departments, and wished to make similar arrangements for their healthcare needs. The community care direct payments had enabled them to recruit their own carers and there was good evidence that they had benefited from this arrangement. Despite this, Silber J held that there was no power under the NHS Act 2006 for the Secretary of State to provide cash payments in lieu of services. The court held that the core principles underlying the NHS were that it was a publicly provided and publicly organized service and that medical treatment was to be separated from the administration of cash benefits. The court also rejected the claimants' argument that the refusal to make such payments was discriminatory, and contravened their rights under Article 8 and Article 14 ECHR. The court noted that the Secretary of State was seeking legislative powers to enable the NHS to pilot the use of direct payments for healthcare needs in the future.



Peter Mant
Public Inquiry into the September 2005 Outbreak of E.coli O157 in South Wales

Peter Mant was instructed as junior counsel for the Food Standards Agency in the Public Inquiry into the September 2005 Outbreak of E.coli O157 in South Wales. The outbreak was the largest ever in Wales and the second largest to date in the UK. A total of 157 cases were identified; most cases were school

children. Thirty-one people were admitted to hospital and one child, Mason Jones, tragically died. The Inquiry found that the outbreak occurred because of food hygiene failures at the premises of J.E. Tudor & Sons Ltd, a catering butcher that supplied raw and cooked meat to schools. The Inquiry made various recommendations, in particular emphasizing the importance of Hazard Awareness and Critical Control Points (HACCP) as a means of preventing infection.



Justine Thornton
Powell v SoS for the Environment, Food and Rural Affairs
[2009] EWHC 643 (Admin)

Justine Thornton represented the applicants who had applied to quash the Secretary of State's decision confirming a footpath modification order under the Wildlife and Countryside Act 1981, which would have resulted in a public footpath running through the back garden of a newly built property jointly owned by P. P had agreed with the builders of the property that they would continue their objection to the proposed footpath pending P's purchase of the property, but this did not happen. P sought to adjourn the public inquiry to enable the case against the footpath to be prepared, but this was refused by the planning inspector. The applicants successfully challenged this decision, the court holding that procedural fairness required that P be able to take part in the inquiry.



Victoria Butler-Cole
D County Council v EH
[2009] EWHC 784 (Fam)

Victoria Butler-Cole represented the county council in this 'best interests' case concerning an elderly lady with dementia whom the council's social work team considered needed to be moved to residential care for her own safety. The application was opposed by the Official Solicitor, relying on expert evidence that it was in EH's interests to remain living at home as long as possible to preserve her independence, autonomy and mental wellbeing. The court concluded that, contrary to the expert evidence, it was in EH's best interests to move to residential care before any further decline in her mental functioning occurred, notwithstanding that this posed a risk of depression and would amount to a deprivation of EH's liberty under Article 5 ECHR.

Alex Ruck Keene appeared for the interested party, the local authority employing the Approved Mental Health Practitioner, in this habeas corpus application. Burton J found that the nearest relative's statement to the AMHP that he disagreed with detention under s3 Mental Health Act 1983 was sufficient to amount to the notification of an objection under s11; it was unaffected, in the absence of any clear evidence of a change of mind, by the failure to state an objection in a subsequent conversation. Burton J gave guidance as to the meaning of the test in s.11(4)(a). He found that the test that the Court must apply is whether on the basis of the facts the AMHP could reasonably conclude that there was an objection. If a nearest relative did not express his objection in a form which could reasonably be said to amount to notice, then there would be no notice of an objection upon which the AMHP must act.



Richard Harwood
R (Bard Campaign) v SoS for the Environment, Food and Rural Affairs
[2009] EWHC 308

Richard Harwood appeared for claimants in their challenge to the Secretary of State on the basis that there had been a failure to consult properly in respect of plans for new eco-towns. The court held that consultation had been adequate and was continuing, and that there had been no final determination of which towns would be on the shortlist.



Alexander Ruck Keene
M v East London NHS Foundation Trust
CO/1065/2009



Nicola Greaney
D County Council v LS
[2009] EWHC 123 (Fam)

Nicola Greaney appeared for the Official Solicitor on behalf of LS in this 'best interests' case. The county council sought declarations as to residence, care and contact, and capacity to marry and have sexual relations in respect of a 38 year old woman with learning difficulties. Wood J considered the test for capacity to consent to sexual relations and its application to LS, who had historically been subjected to sexual abuse and whose fiancé may not himself have had capacity to consent to sexual relations. The expert evidence was that LS had capacity to consent, but that this might diminish depending on the circumstances of her care and her prevailing relationships. Wood J also expressed the view, contrary to that expressed in previous cases, that there had been in recent times a 'philosophical and practical shift towards ensuring as great a degree of independence in living arrangements as is possible'.

Chambers news

- Richard Wald and Judith Ayling appointed to B Panel for Treasury solicitors.
- Lisa Giovannetti appointed to A Panel.
- Stephen Tromans QC and Charles Manzoni QC appointed Queen's Counsel.
- 39 Essex Street have opened an Office in Manchester at 82 King Street.
- Jenni Richards successfully defended the first judicial review to be issued in the Manchester Administrative Court and Richard Harwood successfully appeared in the first planning judicial review case.



The Public Law Team

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