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Structures for Public Interest Law and Litigation in Northern Ireland

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Introduction

There are several organisations working in the area of public interest law and litigation in Northern Ireland. The Children's Law Centre has a small team of lawyers. The Committee on the Administration of Justice (CAJ) and Housing Rights Service, both voluntary sector organisations, each employ a solicitor. Statutory organisations such as the Equality Commission and the Human Rights Commission have legal departments and they are interested in strategic legal work. Individual solicitor firms have particular interests and pursue strategic cases. Thompson and McClure, for example, represent a number of unions and therefore have a particular interest in employment law. The availability of legal aid in Northern Ireland facilitates cases being taken by solicitors in private practice. Judicial review of public body decision making has developed significantly over the past twenty or so years. A number of these cases had a strategic impact and the majority of the applicants will have been in receipt of legal aid to cover their costs and protect them from adverse costs. This paper will, however, concentrate on Law Centre (Northern Ireland), where I work. It is hoped that this paper will provide some insight into our experience of working in the area of public interest law and litigation.

Law Centre Northern Ireland

Law Centre (NI) is a regional organisation aiming to provide a service to the whole of Northern Ireland. It has an office in Belfast and an office in Derry. At present it has a staff of around forty people (numbers are fluctuating due to recruitment at present). A number of people work part-time. Our staff consists of legal advisers, trainers, publications staff, policy officers and support and management staff.

The aim of Law Centre (NI) is to promote social justice and provide special legal support to advice given organisations and disadvantaged individuals. We offer a service in five areas of law: social security, immigration, community care, mental health and employment. Mental health law is a new service which will be delivered from August 2006.

Over the years, the Law Centre has developed what might be called a "model" for how it works. This model envisages it working as a second tier agency in conjunction with first tier advice agencies throughout Northern Ireland. The effective operation of the model relies on the Law Centre retaining strong links with the advice sector. It has at present over eighty advice centre members and around five hundred other members. Organisations can join the Law Centre for a fee of around £50 per year and they elect a Management Committee from the membership. The benefits of membership include access to a telephone advice line, information publications, training at reduced fees, membership of

practitioners groups and a referral service for clients. From the Law Centre's perspective, the existence of strong first tier advice sector frees up its legal advisers to operate at the second tier, i.e. where the advice or representation requires specialist knowledge or a lawyer's involvement. When there is a gap in first tier advice services this has an impact on demand for a service from Law Centre (NI). This has a consequent impact on our ability to work at a strategic level.

Good links with member agencies also ensure that Law Centre staff remain in touch with difficulties faced by client groups and allow us to respond where possible. We are able to use our networks to seek out test cases. We are able to use the expertise of member agencies to assist, for example, on understanding aspects of our clients' experiences. We are also able to work closely with them on policy.

Communication

Clearly communication between Law Centre staff and member agencies is vital if the model is to work effectively. Law Centre services are structured around facilitating communication. We have a publications department who design and produce information written by our legal advisers and other staff. We produce a quarterly social welfare law journal called 'Frontline' and we have an online 'Encyclopaedia of Rights' covering social security and community care law. We produce information briefings, for example, on tax credits and immigration and marriage. We also produce a casework bulletin outlining ongoing strategic cases. Some of this information is sent by email to our members and other material is posted.

The Law Centre also sees training as an important way of both developing advisers' knowledge and encouraging law centre staff to maintain contact with advisers across the region. An accredited 'Welfare Rights Adviser Programme' runs in both Belfast and Derry and is our ten week course for new advisers. We find that this is a good way of establishing links for people new to the field at an early stage. We also deliver one day courses throughout the year at three levels: foundation, intermediate and advanced. Most of these courses are delivered by Law Centre legal advisers and cover our core areas of work. We also source training for our own staff and others working at an advanced level, such as barristers used by the Law Centre. An example of this is the recent course which was run by the Law Centre but tutored by Nuala Mole, Director of the AIRE (Advice on Individual Rights in Europe) Centre in London.

Quarterly practitioner group meetings also help to maintain communication. These allow the Law Centre staff to keep up to date with issues being dealt with by advisers in member agencies and vice versa. They also bring together member agencies working in different areas but on similar issues to share ideas and practice with each other. We operate an immigration practitioner group, a community care practitioner forum, a social security practitioner forum and a migrant workers practitioner forum.

Day to day communication on particular cases or issues is through our telephone advice line which operates 9.30 am to 1.00 pm daily. Advisers can get legal advice over the phone and support in dealing with their own cases. If a case requires a lawyer's intervention then it can be referred on to us. We do find that our advice line is used by individual clients as well as member advisers and this can lead to overload at times.

Cases are selected according to a strategic case selection policy. This has been developed over the last few years and will be reviewed annually from now on. This policy sets out six factors which are taken into account including whether to accept a case. These are: staff workload; strategic importance of case; merits of case; availability of other advice and representation services; the financial means of the client and the timing of referral. Thereafter within each subject, areas which are of priority are set out, for example, testing provisions of new legislation due to be implemented in a particular year, particular human rights law arguments and development of new remedies. The legal advisers within the Law Centre are aware of the importance of strategic casework and this is reflected in individual objectives for each year. A number of our government funders also require us to report on public interest cases taken.

Structure supporting strategic litigation

A number of practices and procedures developed in the Law Centre over the last ten years or so have been designed to help and support second tier work. If legal advisers are operating at second tier level then it is much more likely that they will be in position to pursue strategic litigation.

The limitation on the areas of law in which we work is important in allowing us to set up specialist units within the team of legal advisers. This means that people only work on one area of law and are able to develop a specialism. There are mechanisms in place to encourage cross unit working where this is necessary.

We found that it is important to try and keep case loads at a reasonable level. If people are overwhelmed by the demands of casework they will not have the time to read in their area of specialism or attend training. Not every case will be strategic, some become strategic and some lose their public interest importance as the work on the case develops. Up to date knowledge is key to making judgements on the strategic nature of a case.

It is also important when working in a small jurisdiction to keep links with other specialists, for example, lawyers working in London in immigration and asylum law. Access to a good library and information facilities is also, of course, essential for strategic work.

The number of the strategic cases taken by the Law Centre involve challenges to public bodies and as some of them are our funders, the existence of a good relationship is essential. Fortunately, in Northern Ireland, the government funders are fairly relaxed about strategic casework and see it as a part of a system of checks and balances on public administration.

More generally, the existence of a system of legal aid, at least for those on a very low income, enables public interest litigation in courts where it is necessary to employ barristers. The practice of the courts in not allowing adverse costs orders to be pursued against legally aided clients without an order of court is effectively protection from costs for unsuccessful clients.

At present, the Legal Services Commission, which is the legal aid body for Northern Ireland, is consulting on changes to the legal aid system. Its consultation paper shows that it has given consideration to the priorities for funding developed by the Legal Services Commission for England and Wales. This involves giving high priority to social welfare cases. New factors in decision making on whether or not cases should be given legal aid are also to be introduced. One of these factors is the “public interest”. The consultation paper seeks views on whether an advisory panel would be appropriate to advise on decisions about the “public interest”.

Barriers to strategic litigation

All cases taken to test strategic points by Law Centre (NI) are cases taken in the name of an individual client. This is due to our focus on disadvantaged individuals but also is a result of legal aid being available for individuals only. This can mean that clients’ anxieties about risk can prevent a case proceeding. It is also easier for a public body being challenged to settle an individual client’s case and avoid a precedent being set on a more general point.

Of course, strategic litigation involves persuading a judge that the application or appeal should be allowed. Some judges are more open to certain types of argument, e.g. the use of “soft law” than others.

The financial limits for legal aid limit the clients who can litigate in the higher courts to those who are on a very low income. This can prevent strategic litigation in areas such as employment law where most clients are in some form of employment or will be before the case could be completed.

Strategic litigation takes up a lot of time and staff resources. It needs time for reflection, identification of issues, research of the law and communication with members. It needs member agencies to also have time and focus. It requires heavy preparation time for court work and policy follow-on after a judgement has been given. In particular problem faced by those taking strategic cases can be ensuring that the outcome is taken seriously by decision makers and if necessary policy change implemented. This in itself can involve a lot of after case monitoring and it is easy to lose momentum on this once, for an individual client, the situation has been resolved.

Examples

Some examples of strategic litigation taken by the Law Centre are outlined in the PowerPoint presentation.¹

Law Reform

This is an area to which we are hoping to develop over the next few years. We have recently received funding from Atlantic Philanthropies to set up a policy unit. We hope that the new policy staff will be able to liaise closely with our legal advisers and assist us in this aspect of public interest law. We have found that to date policy and law reform work has been ad hoc and given less priority than we would have liked due to a lack of staff time. We have found that we have been able to make some useful inputs to government reviews through sitting on working groups and responding to consultation documents. However, the frustration for us in this area was that we have a specialist knowledge which could have been useful to those working in law reform but we did not have the resources to get involved. We feel that, in some areas we could have a reasonable amount of influence because of the impact of our strategic litigation work.

Community Education

As noted above most of our training focuses on member agencies and therefore we would not be involved in training or education of individuals who are not working as advisers.

We do try to offer student development through a guest lecture arrangement with the University of Ulster and Queen's University in Belfast. We also have ten week summer placements for newly graduated students. We hope to be able to benefit from the research or support skills of the students and also introduce them to public interest law.

We have given occasional talks or question and answer sessions with individuals. These are usually organised through carer groups or migrant work groups.

Conclusion

Hopefully, this paper has explained how Law Centre (NI) works. Key to our attempts to develop public interest law and litigation are strong links with other organisations, effective first tier advice, specialist lawyers, legal aid and protection against costs and policy follow-up to these outcomes.

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¹ Contact FLAC for details of this PowerPoint.