

LITIGATING THE CUTS:
RECENT CASES & CURRENT THEMES
(with a bit of PLP history thrown in)

Louise Whitfield
Pierce Glynn
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PLP's cuts litigation: history, context
and breaking new ground

- **R (Barry) v Gloucestershire County Council** [1997] UKHL 58:
 - How it all began: cuts to home care
 - Resources and rollercoaster litigation
- PLP's voluntary sector cuts cases in 2004 & 2005:
 - **R (Capenhurst) v Leicester City Council** [2004] EWHC 2124 (Admin) – fairness and consultation
 - **R (Keating) v Cardiff Local Health Board** [2005] EWCA Civ 847 – all sorts in the mix but decided on statutory construction



EQUALITY DUTIES:
PLP SETS THE SCENE

- **R (Chavda) v L B Harrow** [2007] EWHC 3064 (Admin)
 - Disability equality duty: decision-makers need materials
 - Factual forerunner of **R (W) v Birmingham** [2011] EWHC 1147 (Admin) and **R (JM) v Isle of Wight Council** [2011] EWHC 2911 (Admin)
- **R (Kaur & Shah) v L B Ealing** [2008] EWHC 2062 (Admin)
 - Race equality duty: community cohesion vs. positive duty to take steps
 - Relied on re timing of duty (formative stage)
- **R (Domb) v Hammersmith & Fulham** [2009] EWCA Civ 941
 - “the object of this exercise was the sacrifice of free home care on the altar of a council tax reduction for which there was no legal requirement”



RECENT CASES: TOPIC AREAS (winners and losers)

- Reductions in care services: Birmingham (W), Manchester (L), Lancashire (L), Isle of Wight (W)
- Closing libraries: Brent (L), Isle of Wight (L - delay), Glos & Somerset (W), *more to come*
- Removing funding from voluntary sector organisations: London Councils (W), Birmingham (W), Lambeth (L)
- Building schools: Luton BC etc (W)
- Tuition fees: Hurley & Moore (won on argument but lost on relief)
- The entire UK budget: Fawcett Society (L but lots of publicity)
- Legal aid cuts: lost on permission but won in Parliament

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LEGAL ARGUMENTS

- Public sector equality duty dominates
- Consultation: still popular but increasingly overlapping with PSED
- Rationality and the super-Wednesbury test, e.g. *R (Smith) v MOD* [1996] QB 517 (CA): extreme deference to macro-economic decision-making
- Case-specific processes:
 - Was it the right decision-maker?
 - Failure to follow policy
 - Statutory duties (e.g. s.7 Public Libraries & Museums Act 1964)

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PUBLIC SECTOR EQUALITY DUTY: THE CURRENT GROUND OF CHOICE

- Cuts hit the protected groups and PSED is hard for public authorities to get right (or is it?)
- Duty must still be met despite limited resources
- Even more important in “these straitened times” that decisions made fairly and with due regard: *R (Hajrula) v London Councils* [2011] EWHC 448 (Admin)
- Does procedural success mean substantive change? *Lessons from early cuts cases.*
- Is the tide turning? Or why are claimants losing?

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DON'T OTHER GROUNDS COUNT? BSF: A CASE STUDY

- *R (Luton BC & Others) v SoS Education* [2011] EWHC 217 (Admin)
- Ran five arguments, won on two
- **Wins:** (1) failure to consult so unfair as to amount to abuse of power; (2) no regard to PSED
- **Losses:** (1) rationality; (2) fettering discretion; (3) substantive legitimate expectation

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WHERE ARE WE NOW AND WHERE ARE WE GOING?

- *R (Bailey) v L B Brent* [2011] EWCA Civ 1568: meeting PSED at formative stage; not typical; didn't tackle standard for court's review of compliance with s.149
- Cases to look out for:
 - *R (Greenwich Law Centre) v Greenwich LBC* [2011] EWHC 3463 in Court of Appeal (heard in March)
 - *R (KM) v Cambs County Council* [2011] EWCA Civ 682 – resources allocation case heard in Supreme Court in February 2012
 - More library cases (heard in March)
 - Advice services in Newham (permission granted)
 - Implementation of legal aid cuts (e.g. re-run of PLP's case on mandatory telephone gateway for community care)
 - Somebody running and winning on something other than PSED (or consultation)?

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