



Practice

Before coming to the Bar, Desmond Rutledge spent ten years in the Advice Sector. In addition to working in Citizens Advice, he became the Social Security Caseworker at the Free Representation Unit.

Public and Administrative Law

Desmond has experience in making Judicial Review applications against the Department of Work and Pensions, local authorities and HM Revenue and Customs in relation to welfare benefit decisions where there is no statutory right of appeal or the delay in processing a claim for benefit or credit is causing severe financial hardship to the claimant.

Housing, Community Care and Asylum Support

Desmond's housing practice includes representing tenants in possession proceedings brought by local authorities and housing associations for rent arrears and his cases often involve complex Housing Benefit issues. Desmond is also instructed in community care cases concerning assessments under s.47 National Health Service and Community Care Act 1990, s.21 National Assistance Act 1948, ss.17 and 20 of the Children 1989 in cases where the client's immigration status is often an issue.

Welfare Benefits

Desmond also provides written advice on complex social security cases under the Legal Help Scheme. He is able to represent claimants before the Upper Tribunal (formerly the Social Security Commissioners) under exceptional funding, as well as representing claimants on appeal in the superior courts.

Notable Cases

Public Law

Secretary of State for Work and Pensions v Payne & Anor [2011] UKSC 60 (14 December 2011) (junior counsel) - Test case on whether the Secretary of State has the power to recoup Social Fund loans and benefit overpayments by deduction from current benefit payments where those debts are listed on a debt relief order ('DRO'). The Supreme Court held that the Secretary of State has no power to recoup such social security debts both when a DRO had been made and on the making of a bankruptcy order, which meant *R v Secretary of State for Social Security, Ex p Taylor and Chapman* [1997] BPIR 505 (HC) was wrongly decided. The Secretary of State's appeal was therefore dismissed.

R (Bozzo) v Social Fund Inspector and ors [2010] EWHC 3571 (Admin) (27 October 2010) - Human Rights challenge to the requirement to be in receipt of a means-tested 'qualifying benefit in order to be eligible for a community care grant from the Social Fund. Mr Bozzo was on a low income but in receipt of contributory-based incapacity benefit. Permission to appeal against [2010] EWHC

Year of Call

2001

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Education

LLB (Hons)

Practice Areas:

Desmond Rutledge is a member of the following Practice Areas:

- Community Care
- Housing
- Mental Health
- Public & Administrative Law
- Welfare Benefits

Publications / Articles

- Welfare Benefit Fraud Resources

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3571 (Admin) refused by Longmore LJ. Click for the Court of Appeal judgement [2011] EWCA Civ 568.

R (S) v Social Security Commissioner and ors [2009] EWHC 2221 (Admin) (3 September 2009) - Housing benefit - Claimant with mild learning disability living in supported housing - test for "exempt accommodation" - care provided by or on behalf of social landlord - Sch.3 para.4 HB/CTB (consequential provisions) Regulations 2006.

R (Hook on the application of) v Secretary of State for Work and Pensions [2007] EWHC 1705 (Admin) (R(IS) 7/07) -(3 July 2007) (junior counsel) -whether notional capital rules disproportionate under Article 8 ECHR.

Housing

Austin v London Borough of Southwark [2010] UKSC 28 (23 June 2010) (junior counsel) on whether a former tenant's right to apply to postpone the date for possession and thus revive a secure tenancy under section 85(2) of the Housing Act 1985 survives death and passes to the estate of the deceased former tenant.

Welfare Benefits

AD v Secretary of State for Work and Pensions [2011] UKUT 307 (AAC) (29 July 2011) - Whether alcohol and drug dependency constitute 'mental condition' - conflict between different UT judges.

DK v Secretary of State for Work and Pensions [2011] UKUT 230 (AAC) (26 May 2011) - Recovery of overpayment - Tribunal procedure - decision to go ahead with hearing in claimant's absence / whether failure to disclose decision was properly made.

CP v Secretary of State for Work and Pensions [2011] UKUT 157 (AAC) (7 April 2011) - Whether compensation to disabled claimant for death of mother when she was a child should be ignored as capital / whether failure to make special provision breached human rights.

Scott v Secretary of State for Work and Pensions [2011] EWCA Civ 103 (21 January 2011) (junior counsel) - on whether a Benedictine nun was excluded from any entitlement to state pension credit under the rule that she was a member of a religious order and was fully maintained by her order.

CH/872/2009 - SD v Newcastle City Council [2010] UKUT 306 (AAC) (17 August 2010) - Housing Benefit - Overpayment decision valid, but legally ineffective if not notified to the claimant - Anufrijeva considered.

Sandhu v Secretary of State for Work and Pensions [2010] EWCA Civ 962 (10 June 2010) - Disability Living Allowance - Higher rate of the mobility component for a claimant who could only walk with the aid of crutches - Court's power to re-make a decision. The Department of Work and Pensions has issued new guidance (Memo DMG 47/10) in light of the case, reminding decision-makers to take into account the case-law on the use of crutches and 'weight bearing'.

CH/3670/2008 LB Waltham Forest v TM [2009] UKUT 96 (AAC) (1 June 2009) - Housing Benefit - Whether notional capital vests in a trustee in bankruptcy.

CH/1895/ 2008 [2008] UKHT 26 (AAC) (01 December 2008) - Housing Benefit -



"dwelling" may consist of two different tenancies on different premises if it is being used as one dwelling.

CJSA/2663/2006 (14 June 2007) Jobseeker's Allowance - Exemption for full-time students during summer vacation - whether discriminatory against lone parents - Article 14 and A1P1 ECHR.

Secretary of State for Work and Pensions v Bhakta [2006] EWCA Civ 65 (15 February 2006) - Income Support - Habitual residence test and the use of the advanced awards provisions.

Other cases of Interest

Desmond is currently instructed in the following test cases:

R(Sanneh) v Secretary for Work and Pensions & anor (CO/8540/2011) - EU law - application of *Ruiz Zambrano v Office national de l'emploi* Case C-34/09 [2011] All ER (EC) to welfare benefits and whether the Secretary of State should be ordered to make interim payments pending the outcome of a statutory appeal.

Tengove v Walsall Metropolitan Borough Council and anor (C3/2011/1724) - Human rights law - article 14 (non-discrimination) - failure of housing benefit rules to differentiate in favour of disabled claimant - additional room needed for employed carer

Wirral (MBC) v Salisbury Independent Living (C3/2011/1470) - Housing benefit - landlord providing counselling and other support services - whether such a landlord is a "person affected by the decision" which therefore has a right of appeal

Publications

Desmond is a contributor to *Housing Law Handbook*, (Cottle ed, 2009, 1st ed) and *Macdonald's Immigration Law and Practice* (Macdonald and Toal, 2010, 8th ed). He is a co-author of the annual housing benefit update in *Legal Action* and has written articles for the *Advisor*. He has been the Digest Editor of the *Journal of Social Security Law* (Sweet and Maxwell) since 2001.

Articles

Welfare Benefits and Judicial Review - training notes from a presentation given at the Annual Conference of the National Association of Welfare Rights Advisors (2011)

Protective cost orders and claims under the HRA - LAG May 2009 p 36-37

Housing benefit overpayments: Part one: -'Official error' - *Advisor* 133 p.11-14 May/June 2009

Housing benefit overpayments: Part two - the 'reasonably realise' test - *Advisor* 134 p.10-14 Jul/Aug 2009

Acquiring and retaining the status of a worker and the habitual residence test (2009) 16 *Journal of Social Security Law* - D96-D103

Backdating for good cause - *Advisor* 113 Jan/Feb 2006, 9



Living Together Appeals Revisited - recent case law on the cohabitation test -
Adviser 81, Sept/Oct 2000

Training and Seminars

Desmond has provided training on a range of subjects within social welfare law and has been a guest speaker at the Housing Law Practitioners' Association, the Social Security Law Practitioners' Association, Legal Action and events organised by the Public Law Project and the National Association of Welfare Rights Advisors..

Professional Memberships

- Chair of the Social Security Law Practitioners' Association
- Legal Action Group
- Child Poverty Action Group

Pro Bono/Community Work

Desmond is a regular speaker on social security at the Free Representation Unit's training days.

Profile updated January 2012.