



Desmond Rutledge

YEAR OF CALL: 2001



Desmond's main area of practice is welfare benefits. He provides representation before the Upper Tribunal (Administrative Appeals Chamber) and the higher courts, including judicial review proceedings, where this is the appropriate remedy.

Desmond also accepts instructions defending possession claims for rent arrears as well as homelessness appeals, particularly where there are underlying benefit issues or questions on eligibility due to the client's immigration status.

Desmond currently writes regularly for the [Social Welfare Updates blog](#).

If you would like to get in touch with Desmond please contact the clerking team:

contactmyclerks@gclaw.co.uk | [+44 \(0\)20 7993 7600](tel:+442079937600)

WELFARE BENEFITS LAW

Desmond has an in-depth knowledge of social security law and is instructed in appeals to the Upper Tribunal

and the higher courts, as well as in public law challenges against the DWP by way of judicial review in the High Court.

NOTABLE CASES

Court of Justice finds that self-employed women have maternity rights

C-544/18 HMRC v Daknėviciute, held that self-employed EEA nationals are entitled to a right of residence and entitled to welfare benefits (such as child benefit, tax credits, homelessness assistance, social housing and other related benefits) during their maternity leave.

Court of Appeal clarifies the approach to be taken when restricting the amount of housing benefit payable to claimants renting rooms in a women's refuge

Birmingham City Council v SS and SA (Roshni intervening) [2016] EWCA Civ 1211) [2017] AACR 8

The two claimants (SS and SA) were victims of domestic violence, residing at a women's refuge provided by a small charity, Roshni, who had to raise the rent it was charging, following the loss of public funding which had previously been used to subsidise the rent. Birmingham City Council decided to reduce the eligible rent on the basis that the rent being charged was "unreasonably high" by comparison with the rent charged by other women's refuges in the local area. The Upper Tribunal set the reduction aside. The Court of Appeal allowed the local authority's appeal and remitted the case back to the Upper Tribunal.

Court of Appeal rules that a Zambrano carer was entitled to income support prior to the amendments of the habitual residence test on 8 November 2012

Sanneh v Secretary of State for Work and Pensions and Others [2015] EWCA Civ 49, [2016] QB 455

A Zambrano carer has a positive right to reside as soon as the conditions in C-34/09 Zambrano v Office national de l'emploi are satisfied. Consequently, Ms Sanneh had been entitled to claim income support in June 2011 as this was prior to the amendments to the habitual residence test made on 8 November 2012.

Upper Tribunal extends the scope of the pregnancy right to reside under Saint Prix

Secretary of State for Work and Pensions & Ors v SFF & Ors [2015] UKUT 502 (AAC) [2016] AACR 16

The decision involved three linked appeals for claims for income support, housing benefit and council tax benefit by EU female citizens who were not on maternity leave pursuant to a contract with an existing employer. The decision established that female EU citizens may expect to retain 'worker' status for a period of up to 52 weeks when off work, rather than the 26 weeks contended for by the Secretary of State. During this period, they are able to access welfare benefits with a right of residence condition.

Housing benefit rules discriminated against disabled claimants in breach of article 14 of the ECHR under the *Thlimmenos* principle

Burnip and Ors v Birmingham City Council & Anor [2012] EWCA Civ 629

[2013] AACR 7

Two of the applicants had severe disabilities and were assessed as needing overnight carers to stay in a separate bedroom in their flats. The two daughters of the applicant in the third case had severe disabilities, making it inappropriate for them to share a bedroom. The Court of Appeal held that the statutory criteria for calculating housing benefit for tenants in the private rented sector based on an entitlement to a one-bedroom rate discriminated against the severely disabled, and there was no justification, in the applicants' case, for continuation of the single bedroom rule.

Tribunal has jurisdiction to consider whether habitual residence established from date after the decision under appeal under the advanced awards provisions

Secretary of State for Work and Pensions v Bhakta [2006] EWCA Civ 65 (reported as R(IS) 7/06)

A tribunal has the power to consider whether a claimant has become habitually resident within three months of the date of claim, using the advance award rules. The Court held that these rules may apply to cases in which a claimant has a settled intention to reside in the UK, and where the only issue is as to the length of period of actual residence necessary to establish habitual residence.

NB: The effect of the decision was subsequently reversed by legislation.

ADMINISTRATIVE AND PUBLIC LAW

Desmond accepts instructions in welfare benefits cases against the DWP, HMRC or local authorities by way of judicial review in the High Court where there is no right of appeal, or the statutory appeal route is not a suitable or effective remedy - e.g. because the claimant is at risk of losing their home.

NOTABLE CASES

Supreme Court rules that DWP does not have the power to recover a debt by deductions from benefit after the making of debt relief order

Secretary of State for Work and Pensions v Payne and another [2011] UKSC 60, [2012] 2 AC 1

Successful 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. The Court ruled that the recovery of social fund loans and benefit overpayments by deduction from benefits was a "remedy in respect of the debt" within the meaning of the Insolvency Act 1986 s.251G(2), so that the

secretary of state was precluded from making such deductions during the one-year "moratorium" period after the making of a debt relief order.

Whether the application of the notional capital rules were disproportionate under Article 8 ECHR

R (Hook) v Secretary of State for Work and Pensions [2007] EWHC 1705 (Admin) (R(IS) 7/07)

The claimant applied to the Administrative Court for judicial review of the Commissioner's refusal of leave. The claimant was severely disabled and in need of substantial care. Ms H came to live with him as his partner and carer. His awards of IS and HB were terminated on the ground that his partner had deprived herself of substantial capital before coming to live with him and that the capital fell to be treated as his notional capital, such that he was left with no IS or HB.

HOUSING LAW

Desmond undertakes housing work in the county court, defending possession proceedings where the rent arrears have been caused by delays in the payment of housing benefit or universal credit. He also undertakes homelessness appeals where there are underlying benefit issues, including cases where EEA nationals have been refused benefits or housing assistance based on the right to reside test.

NOTABLE CASES

Supreme Court rules that a former secure tenant's right to apply to postpone the date of possession, and thus revive the secure tenancy, survived his death and passed to his estate

Austin v London Borough of Southwark [2010] UKSC 28, [2011] 1 AC 355

D had occupied a house under a secure tenancy. An order for possession was made against him in February 1987 after he fell into arrears with his rent. The order provided that it was not to be enforced so long as he paid the arrears. D failed to comply with the terms of the order, so it became enforceable. However, he remained in the premises, paying rent plus amounts towards the arrears, until his death in 2005. Mr Austin had moved in to the property in 2003 to care for D. In 2006, the local authority served a notice to quit on him and issued possession proceedings against him. The Court ruled the fact that the secure tenant had died did not deprive the court of its jurisdiction to exercise the power to postpone the date of possession under a possession order.

BACKGROUND

Before coming to the Bar, Desmond volunteered at Citizens Advice and the Free Representation Unit. He also worked as a caseworker in the Advice Sector (including Citizens Advice, LEAN and Welcare) as well as becoming the Social Security Caseworker at FRU. Desmond joined Garden Court Chambers in 2004 (after completing a 12-month pupillage). He was short-listed for Young Legal Aid Barrister of the Year in 2007 for his work in social security. Desmond has used his welfare rights background to take on test cases in the Upper Tribunal and the higher courts.

PUBLICATIONS

His published work includes: digest editor for the *Journal of Social Security Law* (Sweet & Maxwell) between 2000 and 2011, a co-author of *Housing Benefit Update* (Legal Action Magazine) since 2005. He has also been a contributor to the following books: *Joint Council for the Welfare of Immigrants Handbook* (2006); *Macdonald's Immigration Law and Practice* (Macdonald & Toal) 8th & 9th editions, *Housing Law Handbook*, (Law Society; Cottle ed, 2009,) and *Children's Social Care Law* (LAG Knafler; ed 2018).

Desmond is a regular contributor to the [Garden Court Social Welfare Updates blog](#).

TRAINING AND SEMINARS

Desmond regularly speaks on welfare benefits issues. He has been a speaker at events organised by Child Poverty Action Group, Housing Law Practitioners Association, Legal Action Group, the Public Law Project, the National Association of Welfare Rights Advisers, the Immigration Law Practitioners Association and the AIRE Centre.

EDUCATION

- LLB (Hons), University of Westminster

PROFESSIONAL MEMBERSHIP

- **Legal Action Group (LAG)**
- **Child Poverty Action Group (CPAG)**
- **Administrative Law Bar Association (ALBA)**

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57-60 Lincoln's Inn Fields, London, WC2A 3LJ

Email: info@gclaw.co.uk

Tel: +44 (0)20 7993 7600

DX: 34 Chancery Lane