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## **Disabled man's legal battle forces Government to see sense...**

A case held at the High Court on 3rd July 2007 could force a severely disabled 50 year old man to lose his house, his relationship and his carer. However, despite the court's negative decision, the solicitor involved says that this landmark case should pave the way for a more common sense approach to future decisions concerning social security and benefit issues.

Kevin Harper of Kingsfords Solicitors, Ashford, acted in the case which concerned the rights and welfare of Stephen Hook from Barming in Kent. Stephen, who injured his back 15 years ago while working as an NHS porter, was fighting to restore means tested benefits which were stopped by the Department for Work and Pensions in 2005 when his girlfriend, Lorna Hunte, moved in with him.

Mr Hook was represented by Stephen Knaffler barrister in Court. Stephen, who cannot work and is classified as severely disabled, needs regular care throughout both the day and night. Before meeting Lorna he had coped alone, relying on his daughters. As his relationship with Lorna developed it seemed natural that she would move in to his Kent house and take on the role of primary carer. However, neither Stephen nor Lorna were prepared for the financial implications of their decision.

Before Lorna moved in with Stephen and his 13-year old daughter, he had been receiving £178.52 each week in standard allowances (disability benefit, child tax credit, child benefit and carers allowance) together with a mobility allowance to fund his adapted car. He also received means tested benefits of £202.35 and had his rent of £96.15 paid each week. However, these means tested benefits and rent payments were stopped when Stephen informed the Department of Lorna's decision to move in with him.

The Department for Work and Pensions based their decision to stop the couple's means tested benefits on the fact that Lorna had received £47,000 from the sale of a property, albeit sometime before she had met Stephen. The Department claimed that this money was part of her resources and that as she had now become part of Stephen's family they no longer qualified for means tested benefits.

Both Lorna and Stephen were amazed at this reaction as the money had been spent before the couple ever knew each other existed and was clearly no longer available.

Lorna, 57, does not work as she cares for Stephen and, as a result, the couple now owe nearly £10,000 in rent arrears and are also behind with council tax and utility payments. The couple took their case to the High Court but it was dismissed. In this instance the judge said that even though the money had dissipated before co-habitation, it could be taken in to account.

For Stephen and Lorna the outlook is bleak; it has been suggested that if they cease co-habiting, the benefits will be restored, but both are understandably reluctant to be forced to take this route. Their only hope is that either Kent County Council or the Benefits Agency will assist in finding a sensible solution.

## **Legal Advance**

While the outcome of this case has not proved successful for Stephen Hook, the premise on which it has been fought has huge repercussions for future legal decisions on social security and benefits issues.

The argument followed the route taken in **R (Huang) V the Secretary of State for the Home Department** heard at the House of Lords earlier this year. This landmark case proved decisive in how human rights impacts upon immigration law. It acknowledged that human rights issues had not been debated at length by Parliament and so should be open to a degree of interpretation, enabling them to impact on the ultimate court decision.

This decision directly impacted **R (Hook) V Department for Work and Pensions** as it was argued that the principles in the R(Huang) should also apply to social security legislation. The case of **Anufrijeva V Southwark LBC** in 2004 also proved important.

"The human rights aspects of social security legislation have been discussed in Parliament, but not to such an extent whereby all issues have been covered, as is the case with housing legislation. Because of this we asked the court to recognise that Stephen Hook's case represented an exceptional circumstance where it would be permissible to take into account the Human Rights Act and so dis-apply the rules to gain a just result.

"In this case that would have been to allow Stephen Hook and Lorna Hunte to remain co-habiting in the same house, with Lorna providing the care. This would have been a just result for both the family and the state - evicting Hook from his house and removing Hunte as the carer would undoubtedly be a more expensive option and require increased social security funding and intervention," explained Kevin Harper.

"Although the case was dismissed, the Commissioner said that social security legislation, when applied by the Benefits Agency, because it is subordinate rather than primary legislation, can now be interpreted in such a fashion to take into account the consequences of any given decision. It must also consider whether these consequences are justified and proportionate, given the interpretation of Parliament when considering the effect of the implementation of the rules upon the claimant."

This is the first time that the Court has agreed that the Human Rights Act should be taken into consideration when applying social security legislation and will enable future rulings to be flexible rather than rigidly applied.

"This is not only going to allow many people to bring forward arguments that would previously have been discounted, but it will also help to apply common sense, money

saving decisions," concluded Kevin Harper. "I hope the government takes this opportunity to apply rules in a more pragmatic fashion rather than a punitive one from now on."

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