

Beck Fitzgerald

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Public Law Project

Family Law Update

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What we are covering today

Two important issues

- Changes to the means test
- The potential reshaping of our treatment of domestic abuse within the family justice system.

An excellent example of cross disciplinary working to bring effective change

Whilst we always attend collaborate working with the MOJ sometimes strategic litigation is necessary.

Working together with ROW / PLP and BHB we identified two test cases to challenge 'trapped' and 'imaginary' capital issues.

Both cases brought with the support of the Law Society through an adverse costs' indemnity.

GR v DLAC [2020] EWHC 3140 (Admin)

- GR's situation
- Others in GRs situation

The litigation

'Trapped' capital

R (oao GR) v DLAC [2020] EWHC 3140 (Admin)

- The issues in dispute
- The key arguments
- The key caselaw
- The outcome – judgment in favour of the Claimant.

'Imaginary' capital

R (oao RH) v DLAC (Unreported)

- The additional arguments made
- The outcome – settlement in favour of the Claimant.

Removal of the mortgage cap



Actual
equity

How the rule change affects home owners
with a low income and a mortgage



Mortgage

Legal aid rules before
28 January 2021
(with 'mortgage cap')



Value for
legal aid
purposes

Legal aid rules after
28 January 2021
(without 'mortgage cap')



Amending regulations now in force:

- [The Civil Legal Aid \(Financial Resources and Payment for Services\) \(Amendment\) Regulations 2020](#)
- Reflected in updated LAA Means guidance (January 2021)
<https://www.gov.uk/guidance/civil-legal-aid-means-testing>
- The recently refused may now be eligible and should re-apply.

When does the DLAC's discretion apply?

LAA Guidance

- Controlled work (p 22), Certificated work (p50):

'It should be exercised in those cases where the Director considers that valuing the asset under Regulation 31(a) or the bespoke rules in Regulations 33-37 would cause a breach of the individual's Convention rights and/or right of access to justice'.

Key principles

- Demonstrate that wealth is inaccessible.
- Focus on the *Gudanaviciene* criteria:
 - Importance of the issues at stake
 - Legal and procedural complexity
 - Capacity of the individual to represent themselves

Delegation in controlled work

Determining eligibility in controlled work

- Page 22: Para 7.1.10:

‘A note of the full reasons for the decision, with any supporting evidence, should be retained on file for audit purposes.’

Points of principle of general importance manual

- Page 23: CLA 59, 22 November 2016, HAL/138352

‘Where a provider exercises discretion as provided for under the relevant Financial Regulations an assessor may only overturn a determination that an individual qualifies for services where the provider’s determination was manifestly unreasonable.’

So what is happening with the means test review? -



Other important family law news...

- Hidden Harm Review

<https://www.gov.uk/government/consultations/assessing-risk-of-harm-to-children-and-parents-in-private-law-children-cases>

- Domestic Abuse Act

Spotlight on Abuse and Linked Appeals Re B–B, Re T, Re H and Re H-N

- The following issues of principle in relation to private law proceedings are being considered by the Court of Appeal :
 - How and when fact-finding hearings should take place;
 - The treatment in the family courts of allegations of marital or partnership rape and in particular whether the family court is bound to analyse factual issues within the context of the criminal law;
 - The treatment of coercive and controlling behaviour in the family courts;
 - How Practice Direction 12J is to be applied, together with Practice Direction 3AA where appropriate;
 - Following a fact finding hearing the proper approach in private law proceedings where:
 - There have been findings of domestic abuse
 - Allegations of domestic abuse have been dismissed.

Reflections pre-judgement

<https://beckfitzgerald.co.uk/beck-fitzgerald-in-the-court-of-appeal/>