

ZOE LEVENTHAL KC



MAIN AREAS OF PRACTICE:

Discrimination and Equality
Environmental Law
EU Law
Local Government Law
Public Law

Called to the Bar 2002

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SOCIAL SECURITY / WELFARE BENEFITS CASES

- Court of Appeal gives judgment in Article 14 ECHR disability discrimination case (*Stevenson v Secretary of State for Work and Pensions* [2017] EWCA Civ 2123).
- The 'benefit cap' litigation on the compatibility of the Government's welfare policy with Art 14 ECHR (*JS v SSWP* [2015] UKSC 16; [2015] 1 W.L.R. 1449, acting for CPAG with Richard Drabble KC).
- As sole counsel successfully challenging delays in the Personal Independence Payment scheme on behalf of Z2K, the intervener (*C & W v SSWP* [2015] EWHC 1607 (Admin)).
- Acting for the Appellant in her challenge to the right to reside for A8 nationals under EU law and Art 8 ECHR: *Mirga v SSWP* [2016] UKSC 1 (led by Richard Drabble KC, instructed by PLP).
- Appearing jointly with James Eadie KC for the SSWP in the post-*Reilly & Wilson* litigation regarding the legality at common law and under Art 6/A1P1 ECHR of retrospective legislation validating the quashed 'work for your benefit' JSA regulations (*Reilly & Hewstone; TJ & others v SSWP* [2016] EWCA Civ 413).
- *JK v SSHD* [2017] EWCA Civ 433 (reduction of asylum support for children and whether in accordance with Art 24 CFR and Art 3 UNCRG) (led by Stephen Knafler KC).
- As sole counsel successfully challenging various aspects of the Employment & Support Allowance scheme: under the Equality Act 2010 in *MM & DM v SSWP* litigation (advising Mind and others); the DWP's process of "scrutiny" for ESA transfers/reassessments (*SSWP -v-RD and RW* [2015] UKUT 0235 (AAC)) and reliance on physiotherapists as WCA assessors (*F & T v SSWP* [2014] UKUT 547 AAC (3 judge panel)).
- As sole counsel for the SSWP in the CA (and in the UT) defending a number of Art 14 disability discrimination challenges e.g. *Mahmoudi v SSWP* [2014] EWCA Civ 284 (housing benefit/ meaning of "adaptions"), *CL v SSWP* [2015] UKUT 259 AAC (support for mortgage interest in income support) and *PL v SSWP* (forthcoming disability discrimination in JSA).

- As sole counsel in the CA for the SSWP on the correct approach to “disregarding” incomereplacement benefits for the purposes of entitlement to means tested benefits (*Lloyd v Lewisham and SSWP* [2013] EWCA Civ 923; [2013] H.L.R. 48).
- As sole counsel in *Chandler v CSA* [2007] EWCA Civ 1211; [2008] 1 WLR 734, the leading case on the distinction between income and capital under the Child Support Act 1991.

HEALTH (INCLUDING MENTAL HEALTH), MENTAL CAPACITY AND COMMUNITY CARE CASES

- *National Aids Trust v NHS England & LGA* [2016] EWCA Civ 1100; [2017] 1 W.L.R. 1477 – acting for the successful claimant establishing that NHS England had the power under the NHS Act 2006 (as amended) to commission a “gamechanging” HIV preventative drug.
- *NHS Acute Trust v C* [2016] EWCOP 17; (2016) 152 B.M.L.R. 193 (C-section on woman with bipolar disorder).
- *M v N* [2015] EWCOP 76; (2015) 18 C.C.L. Rep. 603 – leading case on withdrawal of treatment for a person in a minimally conscious state.

IMMIGRATION, ASYLUM AND DETENTION CASES

- *JK v SSHD* [2017] EWCA Civ 433 (whether reduction of children’s asylum support rates breaches Art 24 CFR and Art 3 UNCRC, led by Stephen Knafler KC for JK).
- *Ojo v SSHD* [2015] EWCA Civ 1301 (whether a period of 5 years “continuous residence” can be aggregated at EU law, sole counsel for SSHD).
- *ZSS v SSHD* [2015] EWCA Civ 1137 (judgment pending): acting for the SSHD (led by Robin Tam KC) in two test cases regarding the correct approach to detaining aged disputed minors.
- *Diallo v SSHD* [2014] EWHC (unreported) – Guinean national released from detention at interim relief hearing following longstanding difficulties with obtaining Emergency Travel Document (acting for the claimant instructed by Deighton Pierce Glynn).
- *Asif v SSHD* [2015] EWHC 1007 (Admin) – acting for the SSHD in a case in which the Admin Court gave important guidance as to limited circumstances in which claims should remain on foot following fresh decisions (applying *Bhatti* and others) and on relief from sanctions applying *Mitchell*.
- *Shah* [2014] EWHC 3337 (Admin) (acting for the SSHD, legacy case post-*Geraldo*).

REGULATORY, OMBUDSMEN AND EDUCATION

- *Rapp v PHSO* [2015] EWHC 1344 (Admin): acting for the Parliamentary Ombudsman successfully defending a challenge to

her findings of maladministration in the regulation of NVQ qualifications by Ofqual.

- *Cruelty Free International v SSHD* [2015] EWHC 3631 (Admin): acting as sole counsel for the Claimant challenging the lawfulness of the licensing regime for animal experiments at Imperial College London.
- *Wright v Secretary of State for Education & Skills* [2009] UKHL 3 acting for the Secretary of State on the compatibility of the scheme for listing under the Care Standards Act 2000 for those working with vulnerable adults and children with Arts 6/8.

LOCAL GOVERNMENT LAW

- Allotments: *Moore and others v SSCLG* [2014] EWHC 3592 (Admin) – acting for the SSCLG in respect of a local authority application for consent under the Allotments Act 1925 for a major health scheme in Watford.
- Advising London local authorities as to the legality of the Mayor's approach to viability reviews for affordable housing.
- Advising various local authorities on their new public health duties under the Health and Social Care Act 2012.
- Obtaining planning and highway injunctions for the City of London Corporation, with David Forsdick KC in 'Occupy' St Paul's: *Samede v City of London Corporation* [2012] EWCA Civ 160.
- Council tax valuation (*Domblides v Listing Officer* [2008] EWHC 3271 (Admin)), housing benefit, discretionary housing payments and local welfare schemes.

OTHER SIGNIFICANT PUBLIC LAW CASES

- *R (Rights of Women) v Lord Chancellor* [2016] EWCA Civ 91; [2016] 1 W.L.R. 2543– acting for the successful claimant in its challenge to vires of the legal aid evidence requirements for victims of domestic violence in family law proceedings, with Nathalie Lieven KC instructed by the Public Law Project.
- Advising the Davies Commission throughout their review of airport expansion covering a broad range of consultation and other issues including apparent bias (e.g. *Sanders v Airports Commission* [2013] EWHC 375).
- Appearing for the Secretary of State in *Turner v SSCLG* [2015] EWCA Civ 582 (with Dan Kolinsky KC) successfully defending allegations of apparent bias in the planning system in the context of the proposed redevelopment of the Shell Centre on the Southbank.
- Appearing for Brian Haw in his challenge to the legality of the Serious Organised Crime and Police Act 2005 criminalising protests within the vicinity of Parliament Square (*Haw v SSHD* [2006] QB 780, led by Richard Drabble KC instructed by Bindmans).

EUROPEAN LAW

- *Mirga v SSWP* (Aire Centre intervening) [2015] UKSC (judgment pending), acting for the Appellant in her challenge to the compatibility of the right to reside in domestic social security law for A8 nationals with EU law relying on Art 21 TFEU, Art 7 of the Citizenship Directive and the Charter (as well as Art 8 ECHR) (led by Richard Drabble KC).
- *Ojo v SSHD* [2015] EWCA (forthcoming): acting as sole counsel for the SSHD in an appeal concerning the extent to which permanent rights of residence for family members of EEA nationals accrue despite breaks in the relevant status of the family member during the 5 year continuous period of residence required under the Citizenship Directive / regulation 15 of the EEA Regulations and as to the applicability of the CJEU case *Dias* C-325/09.
- Acting for the Claimant in *Bowen-West v SSCLG* [2012] EWCA 321; [2012] Env LR 22, one of the leading cases on the meaning of indirect, secondary and cumulative effects under the EIA Directive (led by Richard Drabble KC, instructed by Richard Buxton).
- As sole counsel successfully defending a claim in the UT/CA that national insurance credits should be “exportable” to Gibraltar under Regulation 1408/71/EC under EU law: *BP v HMRC* (CPC/3150/2011) (permission to appeal to the CA refused).

PLANNING LAW

- *Turner v SSCLG* [2015] EWCA Civ 582: acting for the Secretary of State (led by Dan Kolinsky KC) successfully defending the inspector’s decision to grant planning permission at the Shell centre against allegations of apparent bias (among other issues).
- Acting for the Airports Commission as ongoing legal advisors throughout their process in relation to a variety of aviation / environmental and process issues.
- Acting for the Secretary of State in a s 288 challenge concerning a major recycling and energy recovery facility in the Green belt in Hertfordshire: *Veolia v SSCLG* [2015] EWHC 91 (Admin).
- Appearing successfully for the landowner at a rare planning inquiry into an alteration order under s 102 TCPA and obtaining costs against the council for unreasonable behaviour.
- As sole counsel for the SSCLG in the Court of Appeal regarding the application of the NPPF to mobile homes in the Greenbelt: *Lloyd v SSCLG* [2014] EWCA Civ 839 [2014] J.P.L. 1247.
- Allotments: *Moore and others v SSCLG* [2014] EWHC 3592 (Admin) – sole counsel for the SSCLG in respect of a local authority application for consent under the Allotments Act 1925 for a major regeneration project at Watford General Hospital.
- Advising London local authorities as to the legality of the Mayor’s approach to viability for affordable housing decisions in planning when exercising his recovered jurisdiction.
- Acting successfully for Oxford City Council defending its decision to list Oxford FC stadium as an Asset of Community Value.

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- Obtaining planning and highway injunctions for the City of London Corporation, with David Forsdick KC in 'Occupy' St Paul's: *Samede v City of London Corporation* [2012] EWCA Civ 160.

CPO: Zoë also has expertise in this area, regularly appearing in the Upper Tribunal (Lands Chamber) and Court of Appeal on compensation and related valuation issues for bodies such as the DfT, Highways Agency and Environment Agency (e.g. *Moto Hospitality Ltd v Secretary of State for Transport* [2007] EWCA Civ 76; [2008] 1 WLR 2822, the leading case on compensation under s 10 CPA 1965).

Highways/rights of way: Zoë regularly advises the DfT and the Highways Agency on a broad range of issues and has experience of acting for landowners and local authorities in rights of way inquiries.

ENVIRONMENTAL LAW

- Advising the Davies Commission on Airport Expansion for the duration of its process (with Dan Kolinsky KC) on all environmental / aviation issues arising (including successfully defending its process against allegations of apparent bias in *Sanders v Airports Commission* [2013] EWHC 3754 (Admin)).
- Acting for the claimant in *Bowen-West v SSCLG* [2012] EWCA 321; [2012] Env LR 22, one of the leading cases on the meaning of "indirect, secondary and cumulative effects" under the EIA Directive and the scope of a project.
- Successfully defending Oxford City Council's EIA screening process (inter alia) in respect of major redevelopment at Oxford University (the Blavatnik School of Government): *Freud v Oxford CC* [2013] EWHC 4613 (Admin).
- Acting for the Campaign for Better Transport in respect of its successful challenge to cuts for local authority bus funding and in respect of a challenge by Porsche to the proposals for emissions related congestion charging in London
- Successfully resisting the grant of planning permission for residential development in Newington Green on environmental grounds related to a series of TPO trees.