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Austerity rules: access to justice,  
disability and balancing rights

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# Road Map

- Access to Justice – equality and human rights challenges
- Disability and austerity
- Sexual orientation and religion – balancing rights

# Access to Justice

- R (on the application of UNISON) (Claimant) v Lord Chancellor (Defendant) & Equality and Human Rights Commission(Intervener) [2015] EWCA Civ 935
- IS (By The Official Solicitor As Litigation Friend) v (1) Director Of Legal Aid Casework (2) Lord Chancellor [2015] EWHC 1965
- R (on the application of The Public Law Project) (Claimant) v Secretary of State for Justice (Defendant) & Office of The Children's Commissioner (Intervener) [2015] 2 All ER 689,

# Disability and Austerity

- UNCRPD – in particular Article 19
- *Stuart Bracking and Ors v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345
- *R (on the application of Aspinall, formerly Bracking and Ors) v Secretary of State for Work and Pensions* [2014] EWHC 4134

## Disability and austerity

- R (on the application of Sumpter) v Secretary of State for Work and Pensions [2014] EWHC 2434 – PIP
- Complaint to UN Committee: reference G/SO 214/48 GBR (GEN)
- UNCRPD Committee?
- House of Lords Committee on Disability and Equality Act 2010 – reporting March 2016

# Disability and proportionality

- Akerman-Livingstone v Aster Communities Limited [2015] 2 WLR 721 (SC)
- Disabled man – severe mental health issues
- Owed a duty to house, was made several offers but refused because of disability related reasons
- Claimant sought eviction order
- Defended on the basis of his disability, s.15
- Court considered interaction between s.15 defence, proportionality and Human Rights Act 1998 defence under Article 8

# Proportionality test

- different approach to s.15 than under Articles 8/14:
- burden on landlord (s.136)
- (i) Is the objective sufficiently important to justify limiting a fundamental right?
- (ii) Is the measure rationally connected to the objective?
- (iii) Are the means chose no more than is necessary to accomplish the objective?
- (iv) Is the eviction proportionate in the wider sense, or put another way, do the ends justify the means?
- Take into account the duty to make reasonable adjustments when considering (iii)

## Balancing rights: sexual orientation and religion and belief

Preddy and Hall v Bull [2013] 1 WLR 3741:  
discrimination “on grounds” of sexual orientation  
in refusing a double bed to a gay couple in a civil  
partnership (2 holding indirect rather than direct)

Hale LJ – Dublin comments – perhaps  
accommodate? - followed by.....



# Balancing rights: sexual orientation and religion and belief

Doogan and anor v Greater Glasgow and Clyde Health Board [2015] 2 WLR 126 - (employment case, though in civil courts!)

Claim of judicial review brought by midwives in respect of the outcome of their grievance. Objected to their potential duties – they objected to abortion on religious grounds and relied on s4(1) Abortion Act 1967: right to conscientious objection so as not to “participate” in treatment

Question for the court – what constituted “participation”?

Determined on the basis of “making the best sense... of what the section actually says” [27] and not the arguments as to broad or narrow interpretation of s.4

Held: treatment included administration of drugs to induce labour and all connected nursing care but not ordinary nursing and pastoral care or administrative/managerial tasks

# Balancing rights: sexual orientation and religion and belief

Doogan and anor v Greater Glasgow and Clyde Health Board [2015] 2 WLR 126 -

Reasonable adjustments?

Hale : “Even if not protected by the conscience clause in section 4; the petitioners may still claim that either under the Human Rights Act or under the Equality Act, their employers should have made reasonable adjustments to the requirements of the job in order to cater for their religious beliefs. This will, to some extent at least, depend on issues of practicability which are much better suited to resolution in...employment tribunal proceedings.” [24]

# Balancing rights: sexual orientation and religion and belief

Lee v Ashers Baking Ltd and Ors 19/05/15, County Court Northern Ireland  
CAKE!!



# Balancing rights: sexual orientation and religion and belief

- Claim for both sexual orientation and political belief discrimination
- Found in favour of Claimant
- Both sexual orientation and religion “highly protected” rights under the ECHR
- t]he law in Northern Ireland prohibits the defendants from acting as they did and, in relation to the requirement to balance competing interests, I find that the extent to which the 2006 Regulations and/or the 1998 Order limit the manifestation of the defendant’s religious beliefs, those limitations are necessary in a democratic society and are a proportionate means of achieving the legitimate aim which is the protection of the rights and freedoms of the plaintiff. I am satisfied that this does not give rise to any incompatibility between the rights of the defendants under Article 9 and the rights of the plaintiff under the 2006 Regulations and/or the 1998 Order. To do otherwise would be to allow a religious belief to dictate what the law is. That is a matter for the Assembly”

# QUESTIONS/DISCUSSION

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