



LEGAL SERVICES AGENCY

Newsletter
March 2014

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FIRST NEWSLETTER FOR 2014

Dear Friend,

This is the first full scale newsletter since autumn 2013. An enormous amount has happened, some of which you may be aware of, some not.

All in all, a period of hard, sometimes tough, work by LSA's staff with much achieved. This, however, is within an increasingly harsh environment for many of the clients for whom we care.

For more regular updates, follow us on twitter and check out our blog:

[@LSALawcentre](#)

www.lsalawcentre.wordpress.com

Sincerely,
Paul Brown
Principal Solicitor/Chief Executive

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Novel case for mortgage borrower under the Consumer Credit Act

One of LSA's clients at our Inverclyde Housing Rights Project was defending an action raised by a **second** secured lender for repossession.

The second secured loan had fallen into arrears. At the date proceedings were raised, the client owed the lender in excess of £25,000. The client's difficulties had been caused by running up a high level of unsecured debt and prioritising this over payments to the second secured lender.

By the time the client sought advice from LSA, she had paid off her unsecured creditors, leaving only her main mortgage and second secured loan. Offers of repayment were made to the pursuers which were rejected.

LSA, on behalf of the client, submitted an application in terms of Section 129 of the Consumer Credit Act 1974 requesting that the court make a "time order". Such an order allows the court to provide for the rate of payment by a debtor to a creditor that the court, "having regard to the means of the debtor or hirer and any surety, considers reasonable". The test is justice. Significantly, under Section 136 of the Consumer Credit Act 1974, the court also had the power to include "such provision as it considers just for amending any

agreement or security". The court can therefore amend any term of the credit agreement when granting a time order.



The court, after hearing on the time order application, decided it was just to grant the application.

The time order provided that the client was to make payment to the pursuers at a higher rate of payment but that no interest or charges were to be applied on the arrears and penalty charges that had accrued to date. This totaled the overwhelming majority of the sums owed to the pursuers and will save the client (defender) a considerable amount of money given that the variable interest rate was most recently 13.69%.

Time orders can only be applied in respect of unsecured debts and secured debts that are regulated by the Consumer Credit Act 1974. Main mortgages are exempt from regulation under the 1974 Act.

This case represents a significant new weapon in the armoury of mortgage advisors. Contact LSA's Inverclyde Housing Rights Project for further information.

LSA Successful in novel case settled out of court for a transgender client

In a recent case, a transgender client of Legal Services Agency received damages from a Public Authority. The Authority had failed to take account of the gender in which the client presented themselves, insisting that they use facilities for the gender they were no longer comfortable with, as well as the name and pronoun.

Lindsey Reynolds, the solicitor in LSA's Mental Health Legal Representation Project commented:

"This case shows that Public Authorities must respect the dignity of everybody, including transgender people. Public Authorities should recognise the importance of having a robust transgender policy and ensuring all staff received appropriate training."



LSA Test Case on Deprivation of Liberty and Powers of Attorney

LSA encourages the use of Powers of Attorney, in particular, for the elderly and those diagnosed with mental ill health. They provide a great way of planning for the future. A Welfare Power of Attorney allows a person to appoint someone they trust to make decisions in the future about their medical, personal and social needs if they become unable to do so themselves. However, LSA feels the law in this area lacks safeguards in regard to the issue of deprivation of liberty.

In our view, an attorney authorising the placement of the person they are looking after in a locked residential environment or nursing home against their wishes is contrary to the

European Convention on Human Rights. We are not alone in this view and we await the Scottish Law Commission's Report on Deprivation of Liberty with great anticipation.

LSA has recently acted to safeguard one of our clients and has commenced a test case on the issue about whether or not a Welfare Power of Attorney can exercise their role as attorney by depriving someone of their liberty within a locked environment. The incarceration was contrary to the wishes of our client, who was released after an order of the Court of Session for **interim liberation**.

Karen McGill, Partner within LSA's Mental Health Legal

Representation Project commented:

"The practice over the years of welfare attorneys in some circumstances depriving someone of their liberty lacks the human rights' protections and proper means of review of challenge by a Court. The time has passed whereby this practice without proper safeguards can continue".

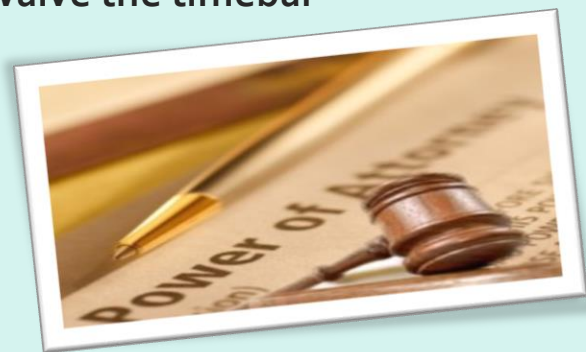
Watch this space for further developments as matters progress.

PS See further on about our leaflet.

LSA appeal success against decision of the Criminal Injuries Compensation Authority to refuse to waive the timebar

Readers of the last newsletter will have noted the LSA case of "M" v Advocate General for Scotland where we reported that the Criminal Injuries Compensation Authority had accepted that its publicity material on the treatment of disputes concerning the waiver of the Criminal Injuries Compensation Scheme's standard two year time limit was wrong.

The case proceeded to a full hearing and LSA's client won...the full judgement is available. The case is complex. In summary, LSA's client had been the victim of abuse between the ages of 7 and 11. The abuse was reported to the police when she was 36 years old and she thereafter made an application to the Criminal Injuries Compensation Authority for compensation.



The application was turned down twice: at the first instance, at Review and on the papers at Appeal before LSA became involved. When we became involved we realised that no medical records had been lodged, which was done speedily.

However, an application for an Oral Hearing before the Tribunal was refused, thus leaving the original negative decision taken on the papers alone, standing.

(cont.) The effect of this was to entirely exclude the applicant from eligibility for Criminal Injuries Compensation without ever having had the opportunity to be heard in argument in front of the judges.

The Court of Session held that the applicant should indeed have, given her request, been granted an Oral Hearing.

In particular, the court commented that "it was astonishing that there was no direct medical evidence before the judge and that she (the judge) ought to have been put on notice by the statements within the papers that "M" had psychological problems. The judge had the power to seek further information if she thought she required it, or could have set down an Oral Hearing where that could have been explored".

In short, the Court of Session thought that the circumstances of the case were such that a hearing "was called for". As a consequence, a hearing has now been arranged.

In our view, this is a key case, articulating the principle that, in an important matter, victims are entitled to a hearing before an impartial court rather than the matter simply being dealt with on the papers.

In practice, not only will it benefit the client, whose case is now proceeding to an Oral Hearing as to whether the time limit should be waived, but also we suspect many other applicants in similar circumstances.

We will be doing a leaflet!

Glasgow Advice Service Campaigns

LSA has been appointed Campaigns Manager for Glasgow Advice Service ("GAS"). It is a privilege to serve in this capacity, being another way of drawing together the experience of advice and representation organisations in Glasgow to reflect our views based on enormous experience to policy-makers.

The first initiative undertaken very effectively and speedily over Christmas and New Year was to lodge a detailed submission to the Oakley Review on Social Security sanctions.

Over 35 case studies were submitted, which LSA collated together and sent off together with a submission.

A press release summarising our work is on our website.

There is no doubt that social security sanctioning has exacerbated the already difficult situation many social security claimants find themselves in.



LSA submission on Housing (Scotland) Bill

The Housing (Scotland) Bill is a complex proposed enactment currently going through the Scottish Parliament. There is much in it that is thoroughly progressive and promises to help those in housing needs in Scotland. Such proposals include the long overdue abolition of the right to buy.

One proposed change includes improved regulation of the Short Scottish Assured Tenancy regime. These proposed changes have taken on board the views of the court in LSA's test case (South Lanarkshire Council v McKenna).

The improvements to the regime include proposals for the housing provider to give reasons should they propose an eviction from a Short Scottish Secured Tenancy, as well as a requirement to provide a review process should a tenant be aggrieved.

All this is good stuff.

LSA was privileged to be invited to Parliament on 22nd January 2014 to make written and verbal submissions to the committee studying the proposed new law.

We took the opportunity to not only indicate what we supported but also the

proposals that caused us considerable concern.

Those concerns arise from the experience of our work to the effect that, particularly in Glasgow, there is a major crisis of an increase in rough sleeping and fall in availability of temporary accommodation. Apparently this is caused by a lack of availability of permanent housing for people who are in temporary accommodation. In other words, a crisis in allocation of housing has a knock-on effect, resulting in the most vulnerable having nowhere whatsoever to stay.

The Bill, in our view, does not handle these issues in the right way.

It does not enhance the obligations of Registered Social Landlords ("RSLs") to allocate housing to those in the most need. On the contrary, it increases the discretion landlords have not only to allocate but also to evict those it claims are guilty of anti-social behaviour.

It also makes it easier to convert existing Secured Tenancies to Short Scottish Secured Tenancies.

The policy behind the Bill seems to be to use the provision of housing as an increased way of

disciplining people who have a variety of behaviour issues. This is, of course, an understandable objective on the part of housing managers, it risks, however, increasing the "underclass" of homeless people: a proportion of whom, though theoretically entitled to temporary accommodation, do not appear to be able to even get that.

LSA made robust submissions, both verbally and in writing. Copies of both sets of written submissions are on our website.

One aspect of the Bill that has caused widespread concern is the "watering down" of RSLs' obligations to young people. LSA has joined in a campaign with Shelter Scotland, among others, a copy of the letter to the minister is attached.

While we have grave concerns about the policy, the process of engaging with the Parliament and, more closely, with other voluntary organisations (including Govan Law Centre and the Law Society of Scotland, with whom we appeared) has been a positive one that we will build on for the future.



Paul Brown (left) speaking at the committee

25:25 Campaign

LSA's AGM and the launch of LSA's "25:25" campaign

The 7th November 2014 is LSA's 25th birthday. Our December 2013 AGM saw the launch of our "25:25" campaign. That is 25 events for 25 years.

The events include a number of activities specifically labelled "25 events for 25 years", some of which have taken place already.

Our new leaflet for tenants on "What to do if you are facing eviction for rent arrears" was published in early January.

It is free and is pocket size. We have already distributed about a third of the print run and we want to get the rest out the door speedily!

The second event is the publication of LSA's Mental Health Legal Representation Projects' leaflet on "Powers of Attorney: planning for the future".

This was launched in January with a free presentation on Powers of Attorney, updating delegates on our work in this area.

Not only do we advise people considering executing a Power of Attorney, we also increasingly tackle problems that have arisen during the currency of them.



Other activities as part of the "25:25" events including a free training event for carers, which went down very well.

Other activities coming up include a new booklet and leaflet on the Criminal Injuries Compensation Scheme. The author, Ewan McPhillimy, commented that "Though much cut, the Criminal Injuries Compensation Scheme is still alive, kicking and complex". A short leaflet will be prepared based on the booklet.

Other publications to look forward to include a leaflet on detention in hospital and an updated leaflet on mortgage arrears.

The "25:25" campaign will culminate in a major conference to celebrate our birthday: around 7th November 2014. The run up to our birthday conference will include an exhibition of artwork stimulated by the "see me" campaign, as well as a new series of photos.

Articles of Association

LSA's AGM also saw the approval of our new Objects as part of our Articles of Association.

LSA's Objects have always been aimed at the promotion of human rights and the tackling of unmet legal need.

We have, however, taken the opportunity caused by the need to consolidate our Memorandum and Articles of Association into one document to summarise more fully our Objects.

Our new Objects highlight our commitment to people with any form of disadvantage by, in particular, specifically mentioning a number of the specific areas of our work.

In summary, our new Objects will hopefully leave nobody in any doubt as to what we do.

A detailed explanation will be published: meantime, the core notions of our Objects remain:

- To relieve those in need by reason of a range of disadvantages, by providing legal advice, assistance and representation to individuals or their relatives or carers who may be affected by such disadvantage.

- To prevent or relieve poverty and to advance human rights and equalities by providing legal services. The advancement of human rights relates in particular to the promotion of the integrity and dignity of the person, whilst the advancement of equalities relates to the prevention of discrimination on the grounds of any of the standard protected characteristics.

- To advance education and to increase knowledge and facilitate access to remedies in regard to legal rights in a large number of fields.

National Standards



Our 25th year began with great news: LSA received formal accreditation to the National Standards for Information and Advice Providers in a large number of areas of work.

The audit process was stringent indeed and we are proud that not only did we pass but we passed without any caveats or limitations.

The audit findings included the following comments:

“There is a good internal

communications culture within the agency and interviews with staff left the auditors with the impression that staff have a clear idea of their purpose and role within the organisation and are well motivated.”

“The manager is very positive and forward thinking and it was apparent during the audit that an open door policy operates for staff to discuss any issues arising. Staff are clear about who to ask and where to look if they require assistance with a matter.”

“There was clear evidence that communication with clients and other agencies is good. Clients are kept informed about what is happening about all stages of their case. There was evidence from both the files and interviews with staff that there is a high level of knowledge regarding the advice topics being audited.”

The Board has congratulated the staff for this great achievement which comes at a time when we are busier than ever before.

Housing and General Court Department Statistics

The Housing and General Court Department’s team came back after the festive break to an almost overwhelmingly busy January.

The team collectively had 235 cases calling January alone. Some of the other vital statistics of the department are:

- Landlord and tenant proof hearings:

36 proof hearings were set down during January.

In four out of five proofs where clients kept in touch with us, they kept their home.

In landlord and tenant cases, no decrees for eviction were granted in cases where we continued to act.

All in all, these figures show the advice, assistance and representation provided by the Department makes a difference.

- In the mortgage court, the Department represented 32 clients. 14 proofs were set down.

Many of our clients are in really difficult situations.

The Department was very pleased (and grateful) to learn that the Scottish Government awarded increased support to, among other things, employ a Trainee Solicitor in Fleming House. This post is being advertised.

Our Inverclyde Housing Rights Project has been overwhelmingly busy. For instance, at Greenock Sheriff Court there were 37 callings in the month.

This busy and successful project has recently been enhanced by the Scottish Legal Aid Board funding permitting us to employ another new Trainee Solicitor, who started in January.



April 2014

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			2	3 Zero-Hours Contracts Seminar	4 Conducting a Civil Proof Seminar	5
6			9	10 Using interpreters with confidence Seminar	11	12
13			16 Social media for Charities Seminar	17	18	19
20			21	22	23	24
27	28 Sherriff Court Practice Seminar	29	30 Client Complaints Essentials Seminar			

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