

## **PRESS RELEASE**

**(For immediate release)**

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### **“The Legal Services Commission unlawfully denies access to justice”**

**R (Southwark Law Centre) and R (Dennis) –v- Legal Services Commission [2007] EWHC 1715 (Admin.)**

In the High Court today, Mr. Justice Collins ruled that the Legal Services Commission (LSC) acted unlawfully in their interpretation of what “rent payable” means when assessing eligibility for public funding (legal aid)<sup>1</sup>.

The cases concerned tenants (Ms L, and Ms D) who were facing eviction from their homes because they had not paid their rent (due to various financial and personal difficulties). The tenants sought advice from Southwark Law Centre, and Traymans Solicitors, respectively. The solicitor in each case considered that the tenant had a good case to go to court to try to prevent eviction.

Because time was short, each solicitor carried out an emergency assessment of the tenant’s means, and as the tenants appeared to be eligible, emergency public funding (legal aid) was granted under powers devolved to solicitors by the LSC. In each case, prompt action at court prevented the evictions going ahead, and the tenants kept their homes.

When the LSC was asked to confirm the grant of legal aid, the LSC refused to do so on the grounds that the tenants were not financially eligible, because their respective ‘disposable incomes’ were too high.

The LSC took the view that only rent actually paid should be deducted from gross income, rather than rent payable, to reach the ‘disposable income’.

As both tenants had been paying no or very little rent, no or very little rent was deducted from their gross incomes, leaving the incomes of both tenants outside the financial limit to be eligible for legal aid.

This action by the LSC meant that the tenants were personally liable to pay their legal costs.

Tenants who face eviction for rent arrears are in this predicament because they have not paid their full rent. The LSC’s position would deny many such tenants legal aid for representation in court to help them avoid losing their homes. Whether rent

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<sup>1</sup> under Regulation 24 of the Community Legal Service (Financial) Regulations 2000 (as amended)

actually paid, or rent payable, should be deducted in assessing income for emergency legal aid is therefore a matter of very wide public significance.

Southwark Law Centre and Traymans independently applied for a judicial review of the LSC's decision. They asked the High Court to decide whether the LSC had acted lawfully. Because the cases were so similar, they were heard together.

**Karen Taube** solicitor of Traymans, who acted for Ms D comments:

"This case concerned a single parent, with 2 of her 3 children (one aged 7 years) still living with her at home. She had not been paying her rent for several months because of health related problems and family difficulties. She arranged to borrow money from her mother to pay off her arrears before the court hearing of the possession proceedings against her. If she had not done so, the Judge would have had no option but to make a possession order against her, and she would have been evicted.

Ms. D therefore had a good defence to the proceedings. As the case was to be heard within a week, I granted her emergency legal aid. She was not on income support or job seekers allowance, so I had to assess her means. I deducted the rent she should have been paying from her gross income to reach her disposable income, because this is what I thought "rent payable" in the relevant part of the Regulations meant. The LSC took a different view. It was important to challenge their decision, not only for Ms. D's sake, but also for the sake of all other tenants who might be in a similar position and at risk of losing their homes.

This is a very welcome decision by Mr. Justice Collins. Because of the LSC's refusal to confirm my client's emergency legal aid, I have not been able to grant emergency legal aid to tenants in similar trouble. We now have certainty, and I will be able to help these vulnerable clients to avoid eviction."

Ms. D, a secretary (retired because of ill-health), aged 46 comments:

"Before I went to Traymans, I felt I had no one to turn to. There has to be some kind of support system for someone like me. I might have lost my home and been in a terrible situation, and I didn't even understand the process of what was happening. If people like me, who can't understand what is happening to them can't get legal help, they will be penalized."

For further information contact **Karen Taube** at Traymans Solicitors, 189 Stoke Newington High Street London N16 0LH (020 7249 9980, [karentaube@traymans.co.uk](mailto:karentaube@traymans.co.uk)) and **Rebekah Carrier** at Southwark Law Centre (020 7635 4647; 07951 586 599(m) [Rebekah.carrier@southwarklawcentre.org.uk](mailto:Rebekah.carrier@southwarklawcentre.org.uk))