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**Call us on 0207 791 9800**

**Updates from DLS**

* Disability Law Service is campaigning to abolish non-residential care charges for Disabled adults in England. We believe that in any just society, Disabled adults should not be charged to live a full and independent life and that charging is a barrier to their independent living. **We have now conducted 2 surveys and 2 focus groups of Disabled adults in England and hope to be in a position to publish all of our research by the end of this year.**
* We have changed how we operate our Community Care and Housing helplines and legal aid service. [**Please click here for more information.**](https://dls.org.uk/comm-care-and-housing/)

**AUTUMN 2022 QUARTERLY NEWSLETTER**

Welcome to Disability Law Service’s – also known as DLS – quarterly newsletter.

Disability Law Service is a user-led Disabled Persons’ Organisation which provides a free and vital service covering the areas of housing, community care, employment and welfare benefits to some 4,000 Disabled people each year. With almost half of people in poverty in the UK being a Disabled person or living in a household with a Disabled person, our free service improves access to justice and the protection of legal rights for Disabled people over the course of many years.

This issue contains updates from DLS, successful outcomes we've achieved for our clients and key developments in the sector.

**Get Involved**

You can make a vital contribution to the work we do at DLS by [volunteering](https://dls.org.uk/get-involved/volunteer/), [donating](https://dls.org.uk/donate/), or by [receiving training from us.](https://dls.org.uk/legal-training-dls/)

**A Success Story from the Community Care Team**

We opened a case for a client with both a mental health and physical health impairment in June 2021. This client had two main issues: 1) regarding their care and support, and 2) regarding annual leave.

**Care and Support**

When we took on the case, the client was receiving 10 hours of care and support a week via direct payments under s117 of the Mental Health Act 1983. It had been discussed that the client should receive a further 11 hours of care and support under the Care Act 2014, but this had never been processed. The local authority claimed this was because the client and their family refused to have a financial assessment. The client and their family denied this and the local authority failed to provide credible evidence to support their position. The client and their family agreed to a financial assessment.

From our review of the case, it did not appear clear how the local authority had determined how many hours should be provided under s117 and how many should be provided under the Care Act 2014. We wrote to the local authority repeatedly to ask for clarity on this point. After a long period of negotiation with the local authority, it agreed to re-assess this and determined our client should receive 95% of their care – approximately 20 hours – under s117, and 5% - approximately 1 hour – under the Care Act 2014.

When the local authority completed a financial assessment for the approximate 1 hour per week, it was determined the client should not pay any contribution towards their care. The local authority agreed to backdate the client’s direct payments to March 2020 when it initially agreed to increase our client’s care and support to 12.5 hours per week, and then to 21 hours per week in November 2020 when this was originally agreed.

The local authority apologised to our client and their family for the time it took to review the care and support hours. As an acknowledgement for the stress and time, the local authority paid an *ex gratia* payment of £300 to the client and their family.

**Annual Leave**

Our client’s personal assistant was their sister. When our client’s sister was on annual leave, the client’s brother provided care and support. Our client instructed us that their brother had not been paid by the local authority in 2016, 2017, 2018 and 2020. The local authority’s position was that our client and their family had not followed the correct procedure to receive payment for annual leave cover.

After a long period of negotiation, the local authority agreed to pay our client’s brother for the annual leave cover in the years 2016, 2017, 2018 and 2020.

**MS Benefits Advice Service**

In 2019, Disability Law Service and the MS Society partnered to create the MS Benefits Advice Service. Since then, we have provided over 4463 acts of assistance to people living with MS who have benefits query by both phone and email.

We estimate that we have gained over £2,570,000 for people we have helped since 2019 in new benefits claimed and successful appeals.

The service is more in demand than ever, and we have seen requests for benefits advice increase dramatically this year – we gave 1259 acts of assistance in quarters 1 to 3 of this year, compared to 734 in quarters 1 to 3 of last year.

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**MS Benefits Success Story**

Sarah contacted us after receiving her Personal Independence Payment (PIP) review decision. She was disappointed to have been awarded standard rate mobility, despite meeting the criteria for enhanced rate, and came to us for advice on how to challenge the decision.

We advised Sarah to get bespoke medical evidence which states she can walk less than 20 metres due to MS. We advised Sarah to send PIP a Mandatory Reconsideration letter explaining how she meets the criteria for enhanced rate mobility and advised her to refer to her supporting medical evidence in her letter.

Sarah called us up to thank us for all our help as she was awarded the enhanced rate mobility without having to go through a tribunal appeal.

**Recent Developments in Employment Law**

There was a recent interesting decision in the employment tribunal relating to hot desking. In the case of *Ms A Baker v House of Commons Commission* (Case Number: 2200145/2019), a tribunal found that a House of Commons Commission Data Manager was treated unfavourably and discriminated against after asking colleagues not to use her desk that had been adapted to her health needs.

In 2005 Mrs Baker was diagnosed with a musculoskeletal condition and the Parliamentary Health and Wellbeing team recommended she use specialist equipment, including an orthopaedic chair, specialist keyboard, mouse, and a reading/writing slope to help with her condition and minimise any pain.

Following a period of sickness absence in 2018, Mrs Baker noticed all her equipment – including her desk, chair and workstation – had been completely altered or moved. Mrs Baker claimed it was then difficult to readjust her equipment back to how it was previously.

When Mrs Baker raised the issue with her manager she was told that reserving her desk was not practicable and there were “fewer than 0.8 desks per person”. He said that she could request assistance to readjust her equipment but that it was not practicable to reserve her space for a whole month (the period in which she was on sick leave). However, on 6th September 2018, an occupational health report recommended: *‘Mrs Baker needs to have her own dedicated workstation that is set up correctly, and that adjusting the chair is quite challenging given her shoulder injury and restricted movement’*.

Later that month, Mrs Baker was on annual leave for one day to attend a medical appointment and left a ‘polite’ note on her desk reminding colleagues that it should not be used for hot-desking. However, when she returned she found that someone had adjusted her chair. After Mrs Baker placed the note on her desk she was summoned to a disciplinary meeting for being ‘unreasonable’. The House of Commons Commission told the Tribunal that this disciplinary allegation was not pursued, although the Tribunal found that Mrs Baker had been distressed by it.

The Employment Tribunal found that managers at the House of Commons Commission had failed to make a reasonable adjustment in preventing Mrs Baker’s desk from being used by others while she was not there. The Tribunal held that, while they appreciate keeping the desk reserved was not practical in the long term, it was reasonable in the short term given that Mrs Baker would have had to readjust her equipment every time it was altered. The Tribunal also concluded that Mrs Baker was victimised and discriminated against by the House of Commons Commission when it commenced disciplinary action against her for leaving the polite note on her desk asking staff to refrain from using her workspace/equipment as a hot desk.

**Developments in Community Care**

The Welsh Government is seeking opinions on proposed changes to legislation on social care and NHS continuing healthcare. The main areas of consultation are:

1. Eliminating profit from the care of children looked after
2. Introducing direct payments for continuing healthcare
3. Extending mandatory reporting of children and adults at risk
4. Amendments to regulation of service providers, responsible individuals and the social care workforce, including extending the definition of social care worker to include childcare and play workers.

The consultation ends on 7th November 2022.

You can find out more and respond to the consultation via the following link: [Proposed changes to legislation on social care and continuing health care | GOV.WALES](https://gov.wales/proposed-changes-legislation-social-care-and-continuing-health-care?fbclid=IwAR253SJX3FeHru_CGSEWzWWoSVJ22i-15uLb50qvTc0O6h-8Vh5I6NsgQlY#respond-block).

**Developments in Welfare Benefits**

With the cost-of-living crisis we are all currently facing, you may be able to get a payment to help with the cost of living, if you’re getting certain benefits and tax credits. If you are entitled, you will be paid automatically in the account, you currently receive your benefits in. You do not need to apply.

You could get up to three different types of payment depending on your circumstances on a particular date or during a particular period:

1. A cost-of-living payment if you get a qualifying low-income benefit or tax credits
2. A disability cost of living payment if you get a qualifying disability benefit (£150)
3. A pensioner cost of living payment, if you’re entitled to a Winter Fuel Payment for winter 2022 to 2023.

If you think you should have the £326 and £150 payment, but cannot see it in your bank, building society or credit union, you can report a missing cost of living payment. You can report it here <https://secure.dwp.gov.uk/report-a-missing-cost-of-living-payment/welcome> . A full guide on the cost of living will be available soon on the Disability Law Service.