



Statement

16 December 2010

Civil legal aid granted in Supreme Court cases where there is wider public interest

On 15 December 2010, the Supreme Court issued a decision in the case *Principal Reporter (Respondent) v K (Appellant) and others (Scotland)*.

This case concerned the rights of unmarried fathers to take part in children's hearings under Part II of the Children (Scotland) Act 1995. It raised two distinct issues. The first concerned the kind of order made in the sheriff court which would be competent to give a father the right to take part in the children's hearing. The second concerned the compatibility of the present scheme with the rights of the father (and indeed the child) under the European Convention on Human Rights.

Legal aid was granted to the successful appellant. Legal aid was made available as the issue raised a matter of wider public interest where a decision by the Supreme Court would clarify the points at issue not only for the benefit of the applicant but also all family law practitioners, reporters and the lower courts. In this case, the wider public interest argument made in the application for civil legal aid was compelling and a key factor supporting the grant of civil legal aid.

The decision by the Supreme Court clarifying the rights of relevant persons is welcomed.

There has also been recent media coverage of the case of *Royal Bank of Scotland plc v Wilson [2010] UKSC 50*.

This significant case also proceeded to the Supreme Court with legal aid funding. The issue of wider public interest was a significant factor in the grant given the potential significance for all such cases raised in the Scottish courts.

This appeal raised questions as to the proper construction of provisions of the Conveyancing and Feudal Reform (Scotland) Act 1970 which establish and regulate the form of security over heritable property. In particular, the appeal addressed the circumstances in which a creditor is entitled to eject the debtor from the property over which the security was granted.

In this case the bank had applied for an order to eject the couples from their homes. Under section 5 of the Heritable Securities (Scotland) Act 1894 (section 5), however, a creditor can only do so if the proprietor has failed to repay the sum in question "after formal requisition". The sheriff declined to grant an order for ejection, on the basis that the bank had not made a formal requisition for payment. The bank appealed to the Court of Session. An Extra Division held that a certificate of default which the bank had lodged in court, in accordance with section 24(2), constituted such formal requisition. The couples appealed to the Supreme Court. The Supreme Court stated that, contrary to the standard practice of most secured lenders in Scotland, a calling-up notice is required if a lender wishes to repossess on the basis of mortgage arrears.

Ends

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Notes for editors

Legal aid is help towards the costs of legal advice and representation, for those who qualify, paid for out of public funds. It is designed to help individuals on low and modest incomes gain access to the legal system. There are two main types of legal assistance: advice and assistance and legal aid. Together these are called legal assistance. Legal aid may be free, or someone may have to pay towards the cost of their case, for example through paying a contribution or from the money or property that they win or keep as a result of their legal action. Legal aid is accessed through a solicitor. Unlike most public expenditure, the legal aid fund is not cash limited. The Scottish Government will provide the Board with the funds required to meet the cost of cases which have been granted.