



GARDEN COURT CHAMBERS

# Desmond Rutledge

YEAR OF CALL: 2001



Desmond's main area of expertise is in welfare benefits, which is rooted in his work as an advice worker before he came to the Bar. He provides representation to claimants before tribunals and the higher courts.

Desmond is also a member of the housing team, with special interest in homelessness and defending possession proceedings. His practice includes challenging negative homelessness decisions involving issues relating to suitability, intentionally, non-priority or ineligibility based on immigration status. Desmond also covers rights of succession cases.

Desmond is ranked for community care in the Legal 500, 2024.

"Desmond is extremely accessible and dedicated to ensuring that the client is fully engaged."

If you would like to get in touch with Desmond please contact the clerking team:

[contactmyclerks@gclaw.co.uk](mailto:contactmyclerks@gclaw.co.uk) | +44 (0)20 7993 7600

## WELFARE BENEFITS LAW

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Desmond has an in-depth knowledge of social security law and is instructed in appeals to the Upper Tribunal and the higher courts, as well as in public law challenges against the DWP by way of judicial review in the High Court.

### NOTABLE CASES

#### **Commissioners for His Majesty's Revenue and Customs v Arrbab** [\[2024\] EWCA Civ 16](#)

Tax Credits - Whether statutory instrument ultra vires insofar as making HMRC the effective gatekeeper of an appeal to the First-tier Tribunal.

#### **HM v Secretary of State for Work and Pensions (BB); MK v Secretary of State for Work and Pensions (BB)** [\[2023\] UKUT 15 \(AAC\)](#)

Bereavement payment/allowance – Whether the requirement that a person who, with no eligible children, makes a claim for bereavement payment and/or for bereavement allowance must have been married or in a civil partnership to be eligible, is a breach of Article 14 ECHR as it impacts more on women than on men.

#### **SH v London Borough of Southwark** [\[2023\] UKUT 198 \(AAC\)](#)

Housing Benefit – Entitlement where a claimant has been required to move into temporary accommodation by reason of essential repairs - Regulation 7(4) - the correct test - evaluation should take account of the claimant's individual characteristics which can include impairment or vulnerability due to ill health

#### **Harrington v Secretary of State for Work and Pensions** [\[2023\] 1 WLR 3473](#)

DLA - Disabled child's right to sickness benefit in the UK under Regulation (EC) 883/2004 where one parent is residing in the UK and the other is working in Belgium.

**His Majesty's Revenue & Customs v The Secretary of State for Work and Pensions and SA (TC)**  
**[2023] 1 WLR 2707**

Tax Credits – F-tT’s jurisdiction to consider issues concerning entitlement to universal credit from an HMRC decision to end entitlement to tax credits when the claimant claims universal credit and receives a stop notice.

**Waltham Forest LBC v PO (HB) [2022] UKUT 58 (AAC)**

Housing Benefit - Application of the exemption from the bedroom tax for a foster parent accepting placements from the local authority. Decision also considers meaning of the term “approved foster parent” and the application of non-dependant deductions where the foster parent is accepting intermittent placements.

**MOC v Secretary of State for Work and Pensions [2022] EWCA Civ 1**

DLA - Court of Appeal rules that suspension of Disability Living Allowance after 28 days in hospital did not breach a severely disabled adult’s rights under article 14 ECHR.

**ZD v London Borough of Hillingdon (HB) [2021] UKUT 305 (AAC)**

Housing Benefit - Claimant who moved into property after tenant went to prison - Whether claimant was “a person who has to make payments if [she] is to continue to live in the home” within meaning of reg 8(1)(c) of Housing Benefit Regulations 2006.

**ED v Secretary of State for Work and Pensions [2020] UKUT 352 (AAC)**

JSA, IS and ESA - Whether awards of benefits made to a claimant who was using a fictitious identity to gain asylum, and later British Citizenship, can be lawfully revised and recovered as overpayments, notwithstanding that the claimant was not "a person subject to immigration control".

**(C 544/18) HM Revenue and Customs v Henrika Dakneviute**

Child Benefit – Right to reside – Whether the protection to pregnant workers under Saint Prix v SSWP (Case C-507/12) applies, by analogy, to the self-employed.

**DC v London Borough of Bromley (HB) [2018] UKUT 416 (AAC)**

Housing Benefit - Separated husband and wife who had legally binding agreement giving exclusive use of rooms within dwelling entitled to 'one bedroom self-contained accommodation' rate.

**MM v Secretary of State for Work and Pensions (ESA) [2017] UKUT 437 (AAC)**

Income-related ESA – Right to reside - The EU doctrine of proportionality post-Mirga v SSWP in the case of a young disabled adult who was reliant on others for care and support.

**Birmingham City Council v SS and SA (Roshni intervening) [2016] EWCA Civ 1211 [2017] AACR 8**

Housing Benefit – “Unreasonably high” cap for private sector rents under the pre-1996 rules – The determination must not limit the comparators to unsubsidised charities. The case concerned the level of rent charged by a women’s refuge.

**GN v Sevenoaks Borough Council (HB) [2016] UKUT 271 (AAC)**

A person does not ‘own’ a property which is under a restraint order forbidding sale.

**Secretary of State for Work and Pensions v SFF, ADR v Secretary of State for Work and Pensions & CS v London Borough of Barnet & Secretary of State for Work and Pensions [2015] UKUT 502 (AAC) [2016] AACR 16**

IS, HB and CTB – effect of CJEU judgment in *Saint Prix v SSWP* (Case C-507/12) - Decision established that ‘a reasonable period’ off work can be for 52 weeks.

**Sanneh v Secretary of State for Work and Pensions and Others [2015] EWCA Civ 49 [2015] AACR 18**

Income Support – A Zambrano carer was entitled to Income Support as she was not a person subject to immigration control prior to the amendments of the habitual residence test for certain benefits on 8 November 2012, which excluded Zambrano carers.

**Blakesley v Secretary of State for Work and Pensions [2015] EWCA Civ 141 [2015] AACR 17**

Income Support – Whether the abolition of the back-dating rule for refugees is contrary to Article 23 of Geneva Convention or Article 28 of Council Directive 2004/83/EC.

**Burnip v Birmingham City Council and another, Trengove v Walsall Metropolitan Council and another, Gorry v Wiltshire Council and others [2012] EWCA Civ 629 [2013] AACR 7**

Housing benefit – The Court of Appeal held that the statutory criteria for calculating housing benefit for tenants in the private rented sector based on an entitlement to a one-bedroom rate discriminated against the severely disabled under the Thlimmenos principle.

**Scott v Secretary of State for Work and Pensions [2011] EWCA Civ 103 [2011] AACR 23**

State pension credit – Meaning of “members of a religious order fully maintained by their order”.

**CIS/3891/2007 [2009] UKUT 17 (AAC)**

Income Support – Right to reside - Whether a claimant who had not been in work in the UK but had been detained under the Mental Health Act 1983 had a right to reside for benefit purposes.

### **CH/1895/ 2008 [2008] UKUT 26 (AAC)**

Housing Benefit – Occupation of the home, two homes and temporary absence - “dwelling” may consist of two different tenancies on different premises if it is being used as one dwelling.

### **CA/2574/2007 (16 June 2008)**

Attendance allowance – Whether talking constitutes attention where it helps prevent a deterioration in the claimant’s mental health.

### **CJSA/2663/2006 (14 June 2007)**

Jobseeker’s Allowance – Exemption for full-time students during summer vacation – whether discriminatory against lone parents -references to partner not compliant with ECHR. Remedy achieved by reading regulation so that the references to a claimant’s partner are deleted.

### **Secretary of State for Work and Pensions v Bhakta [2006] EWCA Civ 65**

A tribunal has the power to consider whether a claimant has become habitually resident within three months of the date of claim using the advance claim rules. NB: The effect of the decision was subsequently reversed by legislation.

## **ADMINISTRATIVE AND PUBLIC LAW**

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Desmond accepts instructions in welfare benefits cases against the DWP, HMRC or local authorities by way of judicial review in the High Court where there is no right of right of appeal, or the statutory appeal route is not a suitable or effective remedy - e.g. because the clamant is at risk of losing their home.

### **NOTABLE CASES**

#### **Failure to extend the £20 a week Covid uplift to legacy benefits discriminatory under ECHR**

*R (T & Ors) v Secretary of State for Work and Pensions* [2022] EWHC 351 (Admin), [2021] 4 WLR 92

An article 14 ECHR challenge to the DWP’s decision not to extend the £20 Covid uplift for Universal Credit to those on Legacy Benefits when a greater proportion of disabled persons were in receipt of Legacy Benefits. For media reports see BBC News, '[Universal credit: Judge rejects £20 uplift court challenge](#)' (An application for permission to appeal is pending before the Court of Appeal CA-2020-000604).

#### **Challenge to DWP’s policy of cold-calling disabled people prior to their PIP appeal being heard**

*R (K) v Secretary of State for Work and Pensions* CO/4263/2020

Desmond was part of the legal team instructed by the PLP representing K challenging the DWP’s practice of

pressuring disabled benefits claimants into accepting less than they are legally entitled to when PIP appeals are revised by the decision maker prior to an appeal being heard by a tribunal. The claim was settled at the court door on 13 July 2021, when the DWP agreed a consent order to alter their official guidance, including the need to contact the formal representative rather than discuss the PIP award with the claimant. See media reports: '[DWP policy of cold-calling disabled people over benefit claims to end](#)' (Guardian, 14 July 2021) and '[DWP admits wrongly putting pressure on disabled people to accept low benefit offers](#)' (Independent, 14 July 2021).

### **Supreme Court rules that DWP does not have the power to recover a debt by deductions from benefit after the making of debt relief order**

*Secretary of State for Work and Pensions v Payne and another* [2011] UKSC 60, [2012] 2 AC 1

Successful test case on whether the Secretary of State has the power to recoup social fund loans and benefit overpayments by deduction from current benefit payments where those debts are listed on a debt relief order. The Court ruled that the recovery of social fund loans and benefit overpayments by deduction from benefits was a "remedy in respect of the debt" within the meaning of the Insolvency Act 1986 s.251G(2), so that the secretary of state was precluded from making such deductions during the one-year "moratorium" period after the making of a debt relief order.

### **Whether the application of the notional capital rules were disproportionate under Article 8 ECHR**

*R (Hook) v Secretary of State for Work and Pensions* [2007] EWHC 1705 (Admin) (R(IS) 7/07)

The claimant applied to the Administrative Court for judicial review of the Commissioner's refusal of leave. The claimant was severely disabled and in need of substantial care. Ms H came to live with him as his partner and carer. His awards of IS and HB were terminated on the ground that his partner had deprived herself of substantial capital before coming to live with him and that the capital fell to be treated as his notional capital, such that he was left with no IS or HB.

## **HOUSING LAW**

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Desmond undertakes housing work in the county court, defending possession proceedings where the rent arrears have been caused by delays in the payment of housing benefit or universal credit. He also undertakes homelessness appeals where there are underlying benefit issues, including cases where EEA nationals have been refused benefits or housing assistance based on the right to reside test.

## NOTABLE CASES

### **Supreme Court rules that a former secure tenant's right to apply to postpone the date of possession, and thus revive the secure tenancy, survived his death and passed to his estate**

*Austin v London Borough of Southwark* [2010] UKSC 28, [2011] 1 AC 355

D had occupied a house under a secure tenancy. An order for possession was made against him in February 1987 after he fell into arrears with his rent. The order provided that it was not to be enforced so long as he paid the arrears. D failed to comply with the terms of the order, so it became enforceable. However, he remained in the premises, paying rent plus amounts towards the arrears, until his death in 2005. Mr Austin had moved in to the property in 2003 to care for D. In 2006, the local authority served a notice to quit on him and issued possession proceedings against him. The Court ruled the fact that the secure tenant had died did not deprive the court of its jurisdiction to exercise the power to postpone the date of possession under a possession order.

## BACKGROUND

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Before coming to the Bar, Desmond volunteered at Citizens Advice and the Free Representation Unit. He also worked as a caseworker in the Advice Sector (including Citizens Advice, LEAN and Welcare) as well as becoming the Social Security Caseworker at FRU. Desmond joined Garden Court Chambers in 2004 (after completing a 12-month pupillage). He was short-listed for Young Legal Aid Barrister of the Year in 2007 for his work in social security. Desmond has used his welfare rights background to take on test cases in the Upper Tribunal and the higher courts.

## PUBLICATIONS

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His published work includes: digest editor for the *Journal of Social Security Law* (Sweet & Maxwell) between 2000 and 2011, a co-author of *Housing Benefit Update* (Legal Action Magazine) since 2005. He has also been a contributor to the following books: *Joint Council for the Welfare of Immigrants Handbook* (2006); *Macdonald's Immigration Law and Practice* (Macdonald & Toal) 8th & 9th editions, *Housing Law Handbook*, (Law Society; Cottle ed, 2009,) and *Children's Social Care Law* (LAG Knafler; ed 2018).

Desmond is a regular contributor to the [Garden Court Social Welfare Updates blog](#).

## TRAINING AND SEMINARS

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Desmond regularly speaks on welfare benefits issues. He has been a speaker at events organised by Child Poverty Action Group, Housing Law Practitioners Association, Legal Action Group, the Public Law Project, the National Association of Welfare Rights Advisers, the Immigration Law Practitioners Association and the AIRE Centre.

## EDUCATION

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LLB (Hons), University of Westminster

## PROFESSIONAL MEMBERSHIP

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Legal Action Group (LAG)

Child Poverty Action Group (CPAG)

Administrative Law Bar Association (ALBA)

If you would like to get in touch with Desmond please contact the clerking team:

[contactmyclerks@gclaw.co.uk](mailto:contactmyclerks@gclaw.co.uk) | +44 (0)20 7993 7600



57-60 Lincoln's Inn Fields, London, WC2A 3LJ

Email: [info@gclaw.co.uk](mailto:info@gclaw.co.uk)

Tel: +44 (0)20 7993 7600

DX: 34 Chancery Lane