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# KENT LAW CLINIC: OVERCOMING THE CHALLENGES OF COVID AND LOCKDOWNS

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## A look back at life in the Law Clinic during 2020/21



### The Kent Law Clinic team:

- Graham Tegg, Clinic Director
- Rhea Ball, Clinic Coordinator
- Amanda Banfield, Clinic Coordinator
- Philippa Bruce, Clinic Solicitor
- Vivien Gambling, Clinic Solicitor
- Tony Pullen, Employment Law Adviser
- Elaine Sherratt, Clinic Solicitor
- Dr Richard Warren, Immigration Law Adviser
- Sheona York, Clinic Solicitor

### The Kent Law Clinic vision

Kent Law Clinic is founded upon a vision of university staff and law students working with local clients, using the law to help people achieve a just outcome to legal issues such as:

- keeping access to grandchildren
- getting compensation for being sacked from work
- getting the benefits people are entitled to
- being allowed to stay in the UK.

Being involved in assisting clients with live legal disputes deepens students' understanding of the law and helps students to consider wider issues and to

evaluate the law's role in our society. The Clinic is a dynamic place in which to welcome those clients in comfortable confidential interview spaces, and welcome students in a well-resourced Clinic office, where they meet each other and the Clinic supervisors, where cases are progressed and fruitful discussions take place.

The Clinic also works to create a wider sense of place, of being linked to the local community, of working with groups of clients who work in the same workplace or live in the same village, or who have been referred by the same local advice centre or refugee community organisation. The Clinic is part of what still remains of a basic network of public legal services.



**In spring 2020, Covid struck.** From the beginning of April 2020, the Clinic office along with the rest of the University campus was locked shut. Students were asked to leave campus where they could, and were to be taught online for the remainder of the academic year. For the wider University this was a huge and difficult operation. But for the Clinic, as for any community-based legal service, the effects were sharper.

Clients experiencing harassment, suffering discrimination at work, needing to renew their visas, could not simply wait until the Covid restrictions were ended. And court and tribunal deadlines were not relaxed because of Covid. Original documents and signed witness statements had to be obtained from clients and processed in a world where offices were locked shut and only essential travel was permitted. As in every solicitor's office, the Clinic supervisors had immediately to use ingenuity and imagination – and also rely on their own mobiles and laptops - to resolve these problems. Here are just a couple of examples of problems we had to overcome:

- Solicitors and students had to act as IT trainers – by phone! to a group of older claimants forced to use laptops and smartphones for the first time ever, in an employment tribunal hearing!
- Occasionally it was necessary to meet clients in a car park on campus to hand over important documents

In the Clinic, it was clear that we had quickly to work out, plan and implement how to operate in a virtual world. Clients who needed assistance from the Clinic needed a way of contacting us even though the office was not staffed. Students who might never be able to visit the campus (or even travel to the UK) had to be able to meet their supervisors and their clients, and read and work on clients' documents. Supervisors had to be able to meet students, individually and in groups, for the formal and informal discussions and feedback which make working in the Clinic so valuable for them. And all this had to be arranged in a few weeks before the beginning of the autumn term.

### **Keeping the Clinic open for clients, students and staff...**



We rapidly implemented many changes to our practical ways of working to adapt to these new circumstances. This included adopting a new secure web-based case management system enabling students living anywhere in the world to access and work on relevant papers. We had to move to an online system for receiving new enquiries, while ensuring that there was still a means of contact and attention to those clients without access to IT.



Clinic coordinators Rhea Ball and Amanda Banfield agreed that the new system has vastly improved the information we receive from clients, helping us to assist more quickly and, for those clients the Clinic cannot help, to refer in a more targeted way to other sources of advice.

“It was exciting to find a new way of doing things - Covid provided an impetus for us to make much-needed changes.”

*Rhea Ball*

Most meetings with clients and students had to take place using Zoom. While far from ideal, this worked better than we expected for the majority of clients. For some, it was easier in not having to travel and to pay costs of travelling from other parts of Kent, say, Dartford or Chatham. Some clients needed the help of Clinic staff or had to ask their teenage children to help navigate the technology.

After more than a year of having to operate the Clinic mostly online, it is hard to assess its impact, especially since many other local services moved to restricted and online-only ways of operating, or even shut down altogether. But clients have been able to reach the Clinic, and we have been able to continue to provide advice and vital legal help to people in need.

## Ongoing support from pro bono lawyers

*The Clinic was still able to draw on the invaluable support of experienced pro bono lawyers from outside the University*



## **The Clinic's weekly evening advice sessions**

Besides the advice and casework carried out by the Clinic's solicitors and caseworkers, we have for many years depended on a generous community of local solicitors and barristers to provide a weekly evening advice service. Local lawyers offer their free time after work on Mondays to advise members of the public (living or working in Kent) in need of legal help. Typically, there would be two or three lawyers each providing advice to three or four people in different areas of law. The sessions had previously taken place in the Clinic building on campus; students would attend, take notes, and come into the Clinic the next day to report back on the advice that was given.

Covid changed all that. **But, despite the pandemic, we have managed in every week during term time to deliver free legal advice via Zoom to members of the public at our evening advice sessions.** Students have attended all those sessions and experienced the law in action. Notably, a third of all enquiries into the Clinic since September 2020 have related to family law issues. Our evening advice sessions have featured a family law adviser in all but two weeks of term. Advice has been given on a range of problems including cohabitation disputes, applications under the Children Act 1989 for child arrangement orders, a change of surname, discharge of a Special Guardianship Order and even an appeal because domestic abuse had not properly been considered by the Court. These cases are often complex and the clients have no other means of accessing legal advice before attending court.

Sometimes the advice can be straightforward, but the impact can still be significant. Clinic Solicitor Philippa Bruce, family law specialist, recalls advice given to one person at a session in the Autumn term about an impending hearing. The client had been notified of an application by a third party to be joined to the proceedings she had initiated. She had obtained an Occupation Order under the Family Law Act 1996 to allow her to continue to occupy the former matrimonial home. An application had been made by a third party to join the proceedings so that they could apply for the Occupation Order to be discharged. The client was clearly terrified that this person would be allowed to join the proceedings. The legal advisor was able to give some robust advice which reassured the client and enabled her to re-focus on more significant issues she needed to address. The Clinic received an email from her after the hearing which stated that the advice had been 'spot on'. Sometimes, it is true that a little advice can take a case a long way.

Our advice sessions also cover employment law, consumer and contract law, wills and trusts, education and civil litigation.

**Being able to offer regular sessions with experts in family, employment and other areas of law is a vital service the Clinic offers to our community. It is a huge achievement that we have managed to continue to do this during a global health emergency. It is testament to the generosity and skill of our volunteer legal advisers and the determination of the Clinic team to make it work.**

The Clinic greatly values the efforts of the local legal volunteers who provide this service. We also know – from keeping in contact with KLS alumni – that involvement in Clinic activities as students at Kent has inspired practitioners graduating from Kent but now working in private practice, to volunteer to work with local advice services across the UK – and internationally.

In the UK there are now few sources of free or affordable advice to people on low or modest earnings since heavy restrictions to legal aid in were implemented in 2013. Significant cuts to funding to free legal advice centres occurred both before and after that date. This legal volunteer contribution is more important than ever in these difficult times. ([See our list of volunteer legal advisers.](#))

## Pro bono legal representation in hearings

*The clinic has benefited from the generous contributions of pro bono legal experts*



We would like to highlight the very special contribution made by counsel who have been prepared to provide free legal representation to clients of the clinic who cannot afford legal fees. We refer here to two cases undertaken in the year of lockdown to show what can be achieved.

**Stephanie Painter of Pump Court Chambers** agreed to act pro bono in the Employment Tribunal case of Stuart Cummings -v- London United Busways Ltd. In a disability discrimination case prepared over two years by students of the Clinic and employment solicitor Elaine Sherratt, Stephanie represented in the hearing into issues of liability.

[See a report written by student caseworker Erin McKee about the legal issues and the stunning victory.](#)

**Richard Honey QC and Jonathan Welch of Francis Taylor Buildings** agreed to act pro bono in a judicial review of a planning decision made by Thanet District Council. Parents of children at a special school for autistic children attending from a wide area of East Kent were concerned about insensitive plans to locate a housing development immediately next to the school, without adequately addressing issues of privacy for the children, traffic control, air pollution, and local environmental issues. Despite their objections to the development, the local planning authority delegated the decision to be made by an officer, whereas their policies indicated that the decision should be taken at a committee meeting where democratically elected councillors should have made the decision. The lack of transparency and accountability in decision making was particularly serious in this case because Thanet District Council had a financial interest in the land and in it being developed. They owned a 50% stake in the land through their involvement in a joint corporate venture with Kent County Council, under which they had purchased the land for development.

[See a report written by Richard Honey, \(a long-standing supporter and legal volunteer at the Kent Law Clinic\) about the legal issues in the case.](#)

## **Lawyers acting pro bono gain funding to boost free legal advice services**

# THE ACCESS TO JUSTICE FOUNDATION



We would like to highlight the further contribution to access to justice which the efforts of Richard Honey, Jonathan Welch and students and solicitors of the Kent Law Clinic were able to make in the planning case.

All of the lawyers and student caseworkers involved contributed their time and effort without charge. Our client was a lone parent of very modest means who would not have been able to bring the case without free legal representation.

We were able to achieve protection against the risk that the client would be exposed to a huge legal bill in this case if she were to fight and lose the case, by applying to the court for an order limiting her exposure to paying the costs of the other side if she lost to just £1500. Under the same principle (based on the Aarhus Convention, an



international convention relating to environmental law challenges, which has been applied into domestic law by the Civil Procedure Rules) the rules limited the exposure to costs of Thanet District Council to £30,000 in the event that they lost the case.

As our client won the case, the Council would normally be ordered to pay costs of the lawyers engaged. But because counsel and the clinic acted pro bono the capped costs of £30,000 are payable to the Access to Justice Foundation (ATJF)<sup>1</sup>.

[The ATJF has since become a major grant funder of posts in free legal advice services across the UK. Read more about it on the ATJF website.](#)

“There is nothing more satisfying than winning a case where the pro bono efforts of the clinic and expert counsel have been given for free in a worthwhile cause, and where the client would not have been able to mount the case without that help. But I have learned that you can go one better on those occasions when everything goes your way. Our efforts also gained a contribution of £30000 which will really count to funding free legal advice services in a CAB or Law Centre somewhere in the UK”.

*Elaine Sherratt, Clinic Solicitor*

## Access to courts and tribunals under Covid



Although academics might speak about ‘the courts’, or ‘the tribunal system’, the reality is that each type of court, and each separate Tribunal chamber, has considerable autonomy. Slowly, creakingly, the various courts and tribunals started

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<sup>1</sup> Section 194 Legal Services Act 2008

to introduce different Covid-related adjustments. These ranged from introducing very sophisticated requirements for trial bundles, which had to be filed and served online, electronically indexed with hyperlinks to important sections, to simply not processing applications 'because of Covid'. The courts which introduced more sophisticated online processes have, on the whole, not taken account of the probably non-computer-literate applicant, leaving their representative to act as IT consultant to their client, as well as lawyer.

Some courts started hearing most cases by telephone. A big problem with telephone hearings is that the representative cannot speak privately to their client to take their instructions on a specific point, without both the client and the representative having an extra phone each. And these cases were very difficult to manage if an interpreter was needed. Plus, the sheer effort of sitting and speaking through a telephone, or taking part in video hearings, was found to be far more tiring than attending a face to face hearing.

**The Immigration and Asylum Chamber** took the opportunity to introduce new practice directions effectively forcing the Home Office to reconsider cases before a hearing, primarily to reduce the number of appeals going to a hearing, but also serving to impose some discipline on the Home Office as institutional adversary. But at the same time, all new immigration appeals must be started on a new online platform MyHMCTS, on which, when starting a new appeal, there is no facility for uploading any evidence or arguments, thus removing any early pressure on the Home Office to look at the case and review it. And, controversially, Clinic supervisors have now to advise our clients whether to accept a telephone or video hearing in which the question of the client's credibility is harder to establish: or wait possibly a further year for a face to face hearing.

**For the County Court**, on the other hand, the Covid restrictions and ensuing shortage of staff seems to have exacerbated an already dire state of affairs in which, as one local Court official said, 'only cases involving children are getting listed'. This has meant that other cases including less urgent family proceedings, and civil disputes of all types including people seeking to recover compensation for wrongdoings, or for money owed to them, are waiting many months for any type of hearing. Some of our clients' trial dates have been adjourned twice in the last 18 months, due to 'no judge being available'.

Covid has also exposed and exacerbated the collapse of Tribunal administration in **the Employment Tribunal (ET) and Employment Appeal Tribunal**. Clinic Employment Law Adviser Tony Pullen recounts a case in which a previous client of his, who was sacked from an HR job, is now being sued by another worker from the same company who is blaming her for their employment problems which arose after our client had been sacked. The ET has held SIX preliminary hearings, without any of the six judges considering what would appear a simple question – can someone be liable for what their company does after they have been sacked? And for one of the hearings the tribunal failed to inform the Clinic of a hearing, leaving Tony to appear at the last minute from a van in a Scottish camp site.

**The Social Entitlement Chamber**, which hears cases about welfare benefits, moved to a system of all hearings taking place on the telephone. Some of our clients appealing decisions in relation to disability benefits have had to make the difficult decision whether or not to have their appeal dealt with at a telephone hearing, which they did not feel comfortable about, or ask for a face-to-face hearing, which could mean waiting for another year or so for their appeal to be heard.

Clinic Solicitor Vivien Gambling had reason to complain to the court's tribunal service when, despite providing her and her client's details in advance as required, the tribunal clerk failed to join her in to the hearing, which took place without her. It being a telephone hearing, our client did not realise that Vivien was not there in the conference call! This could have been disastrous but fortunately in this case it seemed that the Tribunal had decided that our client's appeal should succeed, and awarded her the relevant benefit.

## Facing up to our legal opponents...

*The Clinic's clients faced a wide variety of legal opponents, each of whom responded to Covid in different ways*



In several areas of law focused on by the Clinic, the legal opponent is an institution, such as the Home Office or the Department of Work and Pensions (DWP), or a large employer such as the NHS or a big care home consortium or bus company. Sometimes the opponent is an all-too-visible individual, such as the client's ex-wife or ex-husband, or a landlord.

The Clinic's experience over the last year is that the **Home Office** has done very little indeed to help people in the face of Covid, whether in terms of substantive legal changes or any relaxation of procedural requirements – though some changes were beneficial. For a while, unlawfully-present migrants and asylum-seekers did not have to report in person to an immigration office. And applicants have finally been allowed

to upload all supporting documents rather than posting the originals, and some applicants have not been required to redo their biometric enrolment, saving expensive journeys to expensive outsourced application centres.

The **DWP** came under significant pressure over the five-week wait for the first payment of Universal Credit, and Universal Credit itself was increased by £20 per week – at the time of writing that increase is due to be withdrawn very soon. But for both these institutional defendants, it could be argued that Covid is being used to explain and justify delays and inefficiencies which really are a long-standing effect of austerity. For Clinic clients, the decision-making is still as poor, and application processes are taking longer.

The Clinic's **employment cases** have shown that Covid has not led to any more caring or sympathetic approach by employers to workers with disabilities. And big employers such as the Health Service have been resolute in using new procedure rules and provisions for claiming costs against appellants to make it even more difficult for them to take what should be a straightforward unfair dismissal claim.

**Where the legal opponent is an individual**, it is arguable that the effects of Covid have been to exacerbate the deterioration of the justice system, for either party. The whole point of the 'small claim' procedure was to provide costs-free and above all quick access to justice. The whole point of all the procedures dealing with harassment, whether in the family or from a landlord, is to provide quick relief, in a court setting where the person suffering the harassment may feel supported. The Clinic's experience is that this is being lost.

## **Student volunteers**



*As well as working 'almost as normal' with students formally enrolled in the clinical module, we were still able to provide ways in which other students could get involved in the Clinic*



The restrictions imposed by the pandemic presented new challenges to the Clinic's ability to offer opportunities for co-curricular students to participate in the Clinic's legal work. However, student enthusiasm to get involved remained high and via Zoom we embarked upon a new initiative - **specialist discussion groups**.

Some of these, such as Richard Warren's immigration group, Vivien Gambling's and Graham Tegg's PIP group and Philippa Bruce's family law group, enabled wider groups of students to see details of real enquiries and cases, and offered the chance to carry out legal research and in some cases draft advice or application letters for clients. Elaine Sherratt and Tony Pullen drew their Clinical Option students into discussions on new leading employment cases and how they might impact on particular Clinic clients.

The weekly Clinic Meeting remained the heart of the Clinic. Students came together to hear one another present legal issues they had come across from attending an advice session, and to discuss new enquiries that at first glance did not appear to fit in to any obvious category of law. We also used the Clinic Meeting to provide a space in which students could discuss legal issues raising wider political questions, such as the Supreme Court case dealing with the deprivation of citizenship from Shamima Begum.

## **A student's experience...**

Eccles, a Stage 3 law student based in Hong Kong, worked with Clinic Solicitor Sheona York on an appeal against refusal of a visa for three teenage siblings of a young refugee living in Kent. The Clinic had already successfully obtained a visa for their mother, now also living in Kent.

Through a series of Zoom meetings and interpreting provided by our young client, plus access to the mother's previous appeal papers, Eccles obtained enough information to use as a base for a witness statement of the mother – who spoke no English and was distressed and tearful in every interview.

Eccles then drafted the statement, covering her life in Eritrea, the disappearance of her husband into forced military service, the flight of her three elder sons and now her terrible anxiety about the fate of the three younger children. She fully approved the statement, and she thanked Eccles profusely. He in turn was moved by the client and his work showed he had learned a lot from that experience. [*The Home Office eventually withdrew the refusals, and visas will be granted*].

## Experiences and case examples from different areas of law

### Welfare benefits: PIP appeals

*Graham Tegg and Vivien Gambling*



**We regularly represent clients in appeals in the Social Entitlement Tribunal, including appeals against refusals to award PIP (Personal Independence Payment). PIP is a benefit paid by the state to a person with long term ill health or disability.**

Whether a person qualifies for the benefit depends upon a detailed assessment of the impact of their disability on their ordinary daily living activities including their mobility.

The DWP's decision making on PIP claims is noted for being inconsistent. The contracted-out process of conducting medical assessments for the DWP has long been controversial. The unreliability of decisions is borne out by the rate of success for claimants who bring appeals – which at 80% dwarfs even the immigration appeal success rate. If a person's claim is refused, they can firstly ask the DWP to review the decision and can then challenge the review decision by making an appeal to the Tribunal.

During the last year we have helped several clients win their appeals. In pre-Covid times PIP appeals would almost always take place at face-to-face hearings. We would attend with our client. Since March 2020 all our clients' PIP appeal hearings have been conducted by way of lengthy telephone conference calls – one such hearing lasted two-and-a-half hours albeit with a short break. This presents extra



difficulties for our clients and for us being geographically remote from each other, each beaming in from home. Clients need much reassurance and encouragement and some clients have found the experience of being asked very personal questions over the telephone by the three-person Tribunal panel extremely difficult.

Despite the difficulties, most of our clients' appeals have resulted in negative decisions being overturned by the Tribunal, which makes a huge impact on our clients' lives. In one case following a partially successful appeal we noticed an error in the Tribunal's judgment; we lodged an application for permission to appeal to the Upper Tribunal; this led to our client receiving PIP at the enhanced (higher) rate as opposed to the standard rate.

## Housing

*Vivien Gambling*



**We receive a wide variety of housing-related enquiries; this includes from people facing the threat of eviction (sometimes threats of unlawful eviction), people living in properties suffering from dampness or other disrepair issues, and disputes regarding tenancy deposits or terms of tenancy agreements.**

Features of lockdown have included the government's decision in March 2020 to ban or put on hold eviction of most tenants (there are some exceptions); the ban on most evictions was extended a few times up to 31 May 2021. Since the pandemic we have received fewer enquiries from people where the landlord has failed to repair. It seems unlikely that such problems aren't as common as before, rather that people are less inclined to press these issues during lockdown.



Clinic option students have worked on a variety of housing cases including a case involving elderly clients who chose to move into accommodation run by a charity, having been led to believe that they would be able to live there for the rest of their lives, yet within a couple of years, or in one case within months of moving in, were told by the charity, their landlord, that it had decided to “close the house” and they were asked to leave. Students have explored potential challenges to the landlord’s claim for possession, as we anticipate that our clients will need further help when the ban on most evictions ended.

### **Defending clients from unmeritorious claims**

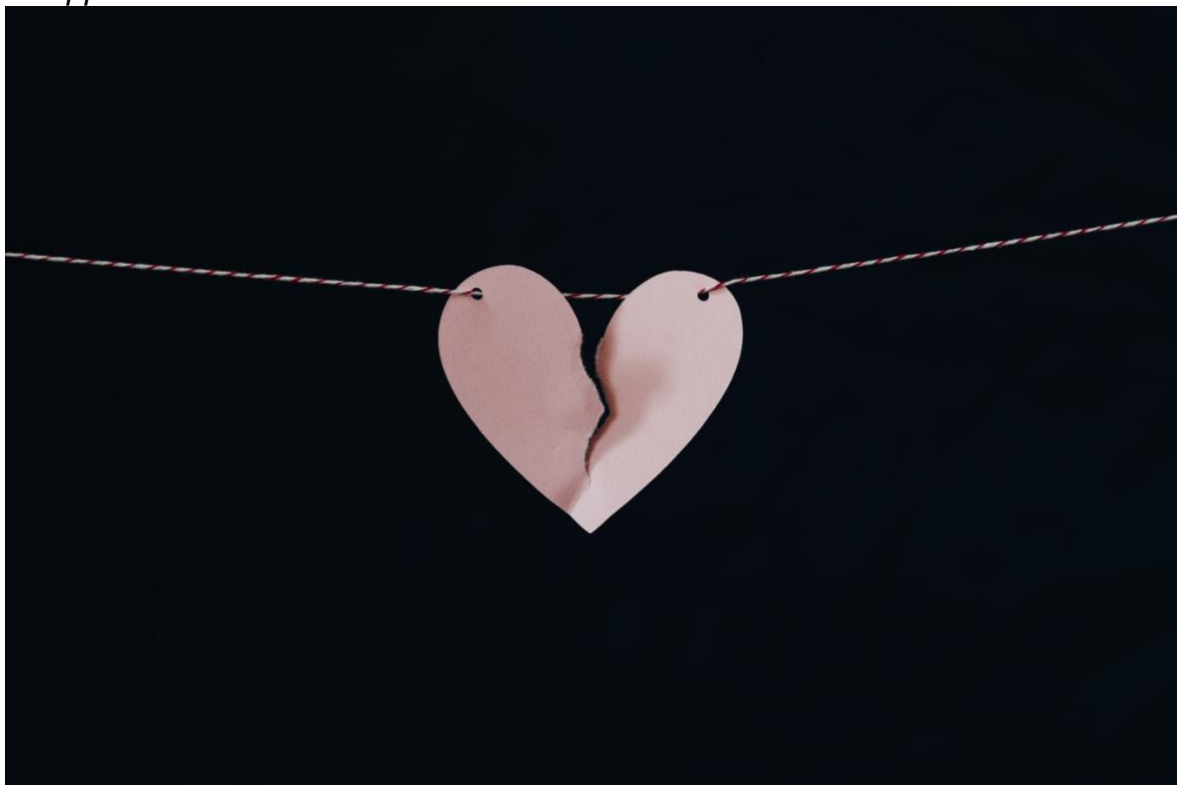
It can be extremely stressful to be involved in legal proceedings, particularly in situations where our clients are at the receiving end of claims without legal merit, yet a lot of work is required to fend off such claims and the court process can be lengthy.

In one case we helped our clients apply to the court to set aside a judgment for over £30,000 obtained by their former landlord without our clients’ knowledge (they had not received the court claim, having moved to a new address, and became aware of the judgment by chance). In January 2021, after representations we made to the court, the claim against our clients for £30,000 was struck out at a case management hearing on the basis that the claim was without merit.

More recently we settled a case for a client whose landlord had sued our client for two months’ rent, despite the fact that in respect of the second month’s rent the landlord had re-let the property and received rent from a new tenant.

### **Family law**

*Philippa Bruce*



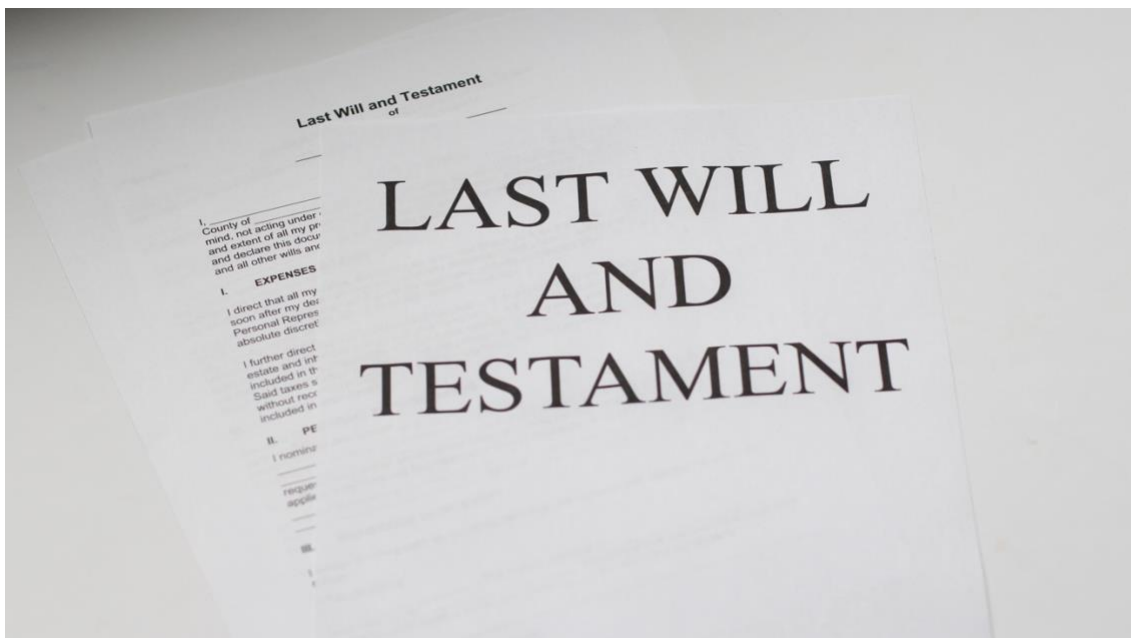
**The family justice system is under significant strain and free legal advice for litigants in person is in very short supply.**

This is shown by the numbers of family law enquiries received by the Clinic - far more than in any other legal area. There has been an increase in the numbers of people needing advice about their entitlement to a share in property following a separation. Despite owning a property, modest incomes and high mortgages and childcare costs mean many individuals cannot afford to pay for a solicitor. They are therefore left to navigate legal proceedings on their own. Legal advice at our evening advice sessions is often the only support they can access.

Family cases often take a long time to resolve, especially when they involve disputes about children, because of delays caused by waiting for Court reports and hearing dates.

Even when they do resolve, cases tend to come back at a later date as new issues arise, or communication breaks down again. This has most definitely been the reality for family law casework in the Clinic this year. At the beginning of 2021, Philippa and a team of students started work again on a complex children case which had concluded in August 2020, but had now returned due to new allegations of physical and emotional harm to the child. So far, in total, the Clinic has represented this client at nine hearings (three in person, one via video link and five by telephone) with more still to come as sadly the case is now unlikely to conclude before 2022.

**Two Inheritance Act claims: disputes following death**  
*Vivien Gambling*



**Although advice on wills and probate does not form a big part of our work, the Clinic is able to provide advice regarding wills and probate through our evening advice sessions, thanks to our amazing local solicitors and barristers willing to provide their expertise for our clients. It is not unusual for people to**

**die without having made a Will, in which case the Intestacy Rules determine what happens to any money or other property they owned.**

The Inheritance (Provision for Family and Dependents) Act 1975 enables limited categories of people to apply to the court for 'reasonable financial provision' from the estate of someone who has died.

We currently represent young people in two separate cases involving Inheritance Act claims. The first case went to a two-day contested trial in October 2020, which took place as a video hearing – a challenging experience. Our clients, three grandchildren who had been brought up by their grandmother, were successful in their claims. Each was awarded a lump sum payment which will support them in further education, training and in one case will assist the young person to pay debts which accumulated when all three grandchildren were left without financial support.

We also represent a child in his teens whose father died unexpectedly after a short illness. His mother, who had separated from the child's father when our client was very young, describes how his father's death has had a huge emotional impact upon our young client as well as impacting on his ability to continue with hobbies that his father supported financially and otherwise. Clinic students helped with the first meeting with our client's mother and students drafted the Letter of Claim to the Executor's solicitors. We hope to be able to secure some financial provision from his father's estate to support our client at least for the time when he is continuing further education and training.

## **Employment law in a time of lockdown**

*Tony Pullen and Elaine Sherratt*



**The Clinic's employment cases concern people who have been sacked from their jobs, or discriminated against, or denied their proper pay or conditions because of a dispute about their contract or even whether they are 'employed' or self-employed.**

The lockdown forced the Clinic and our students to take everything online – posing extra difficulties in this area of law with strict court procedures and well-funded, well-resourced and litigious employers.

It has not been without its challenges – trying to decipher a photograph of a contract sent from a client's mobile because they have no other way of getting it to us being one such example. On another occasion we underwent a one-day judicial mediation on behalf of four rather elderly clients, teaching one how to use email for the first time and another how to use his phone to dial-in to join a video conference.

On yet another occasion we had to deal with the spectacle of our opponent pulling faces at our client in close-up on her camera during the video tribunal hearing and calling our client “the spawn of the devil” when she was giving her evidence. It was all that the two students attending as notetakers could do to suppress a fit of the giggles!

It has also been challenging for our students, without access to paper files in a dedicated Clinic office, but having to peruse, assess and manage large volumes of clients' documents on our new case management system. Many documents must be carefully read and analysed to progress a case. Opportunities for spontaneous discussions with the solicitors have been a little reduced, and the opportunities for students to initiate telephone calls to clients or opponents can't be as readily engineered because of the need to maintain client confidentiality.

But there have been some positives. For example, it has been easier to get a team of students to work on a case together via Zoom, sharing access to essential documents, collaborating in discussing the issues co-authoring some aspects of the casework preparation.

**But despite all these trials and tribulations the Clinic has had some great successes in this year of lockdown:**

- At an online judicial mediation appointment, we were able to settle the case of the four “casual” security staff dismissed for no good reason whose employer denied that they were employees and had the right to claim unfair dismissal. In each case the claim was settled for a sum not far short of a year's pay
- In another case, involving a client who worked in a very responsible position as a marriage registrar, a similar issue of casual employment status arose. Despite her having worked for 14 years, the employer strenuously argued that she was at all times a casual employee and did not have sufficient continuous service to bring her unfair dismissal claim. However, just before the hearing (the case having been postponed twice earlier because of the pandemic), the respondent agreed to a settlement amounting to a year and half's pay



- We have taken up a number of disability discrimination claims this year – all raising complaints of a failure to make reasonable adjustments. It is a common feature of these kinds of complaints that the employer disputes that the employee has a disability. At a hearing we successfully argued for a young worker in a fast-food chain that his prolapsed disc condition, which caused him a degree of restriction to his mobility, was a disability and certain reasonable adjustments were therefore required. Subsequently, our client achieved a very good settlement of his case, and had the confidence to go out and find a better job with a different employer who was willing to make the workplace adjustments that he needed
- In another case – heard by video conference – we successfully argued that a bus driver who had suffered depression for ten years was disabled and therefore could rely on the right in section 20 of the Equality Act 2010 to reasonable adjustments. The case then proceeded to a two-day hearing in relation to issues of liability which was heard in April this year. Stephanie Painter, counsel from Pump Court chambers agreed to act pro bono for our client. Several student members of the Clinic’s “Bus Team” attended. Student caseworker Erin McKee writes about the victory in this case, in which our client’s concerns were fully vindicated. You can read the outcome here: [Cummins v London United Busways \[2021\] – Clinical: The Kent Law Clinic Blog](#)
- In yet another case (not an employment one, but instead involving the sphere of services offered by associations), our client is a long-standing member of his local golf club who suffers restricted mobility. Because of his disabilities he has far less access to the course than able-bodied members. We are currently in negotiation with the Club’s solicitors about what adjustments can be made to get him playing golf again. Students have been involved in attending the negotiating meeting and other meetings with our client along with one of his supporters at the club.

During the pandemic the employment tribunal system has struggled to cope with hearings and there have been severe delays in processing claims. Claimants who would normally expect to have their cases heard within a year are finding it is taking much longer because the tribunals have not holding full trial hearings until very recently. We have two cases that are not due to be heard until nearly three years after the dismissal.

The enquiries we have had this year have started to include issues brought about by the pandemic. These include a worker who felt he had to leave his employment in a care setting because of concerns about a lack of Covid-19 protective measures. He is claiming constructive unfair dismissal on the basis of the employer being breach of the implied term that employers need to provide a safe system of work. In another case a delivery driver was not provided with PPE and had worries about having to pick up parcels which have been in customers’ homes. The employer treats its delivery drivers as self-employed and appears not to have addresses Covid-related health and safety measures at all.

A further case that we have recently taken on involves a young employee who had her weekly working hours cut from 35 to 10 hours a week. She was dismissed for being in breach of contract after she sought to take up part-time employment with another employer to make up her reduced hours and pay. A claim of unfair dismissal has been lodged in which two interesting aspects of contract law are in issue - the enforceability of covenants in restraint of trade (“restrictive covenants”) and the right of the employer to place somebody on short-time working.

We have three cases running involving rights to the national minimum wage. Students involved in these cases have been keenly following the very important Supreme Court decisions in Uber BV -v- Aslam and Royal Mencap Society -v- Tomlinson-Blake, handed down in February and March this year. They know that they will have to consider how the principles from these cases apply to our clients, who were respectively care workers and catering workers.

### **Immigration law in lockdown: The Clinic’s work during Covid**

*Dr Richard Warren and Sheona York*



**The Clinic’s immigration cases concern refugees and people settled here wishing their family members to join them, people who have no visa and who wish to regularise their status, and people previously refused asylum who may have a new claim because things have changed in their country, as in Afghanistan.**

The year 2020 began with Clinic success in three immigration appeals against Home Office decisions refusing entry clearance, all heard in January 2020. However, the advance of Covid threatened to interfere with family reunion even in these successful

cases. Only through intervention of the family's MP was a Syrian refugee's husband shoehorned into the last flight out of Egypt before flight restrictions were introduced in April 2020. For our other two clients, the usual delays in issuing visas to those who win appeals combined with disruption from the pandemic to delay their arrivals until December 2020.

### **The impact of lockdown on immigration rights and Home Office procedures**

Covid restrictions led to sudden and dramatic changes affecting how the immigration system operates. Most overseas visa processing centres shut down. This not only delayed the physical issue of visas to people like our successful clients. Refugees who made contact with family members found that they could not make visa applications for them.

The government agreed to extend the visas of some temporary residents who were unable to leave the UK because of Covid. But people on 'routes to settlement' who wished to remain in the UK still needed to make in-time applications for further leave to remain, paying the full visa application fee (£1,033) and immigration health surcharge (£1,560). Having to pay the immigration health surcharge felt particularly unjust to our clients working in the NHS and care sectors, on the front line and risking infection. Three separate health care worker Clinic clients either caught Covid or a family member did, all suffering quite badly. The Home Office belatedly introduced a scheme for health workers to apply for a rebate of the surcharge – but some of our clients have still not received this, months after their applications.



### **The impact of lockdown on the Clinic's work with clients and students**



Working remotely with immigration clients has not been easy. Many of our clients, living on 'no recourse to public funds' or unlawfully present, are very hard up, and do not always have adequate IT or broadband to use Zoom effectively. Providing and copying original documents has proved very difficult for many clients. As lockdown was imposed the Clinic was acting for several people with British partners or children, currently on five or 10-year 'routes to settlement', needing to make a fresh visa application every two-and-a-half years in order to retain lawful residence. Failure to apply in time, or making a small mistake in providing documents, catapults them straight into the 'hostile environment' – loss of the right to work, right to rent, right to access healthcare, potential loss of driving licence, closure of bank account.

But for some clients with no English and no IT skills at all, casework has been extremely fraught, and even well-established migrants can be caught out. A shocking case concerned an NHS worker, ten years resident in the UK, who became unlawfully resident simply because he filled in the wrong visa form. The Home Office dealt commendably quickly with his belatedly correct application, but the gap in his lawful residence will affect his rights for at least the next 10 years. It was interesting to see the students' reaction to such an outcome.

### **Disproportionate impact of Covid on our client groups**

Many Clinic clients are key workers – NHS staff, healthcare assistants and carers who have been working directly with those affected by the coronavirus, as well as security operatives and taxi drivers. In-country applicants for family visas often found themselves furloughed or out of work, unable to survive on a regime of 'no recourse to public funds' (NRPF) nor satisfy the requirement to earn over £18,600 pa to support a family visa. Surviving on 'no recourse to public funds' became extremely difficult. On 25/3/20 *The Independent* published a short note on these issues from Sheona York: [Under the Home Office's hostile environment, surviving coronavirus is a luxury reserved for UK citizens](#)





### **The new academic year, the new wave of Covid, the new lockdown**

With the September 2020 term came a range of new cases, again all conducted remotely, as Covid restrictions were reimposed almost immediately after the new term started. We have assisted Eritrean refugees to make applications for family reunion on behalf of their minor siblings currently residing in precarious situations in Sudan and Ethiopia. The sibling in Sudan was refused by the Home Office, but we have just won that case on appeal. For the siblings in Ethiopia, our relentless applications to the tribunal for expedition bore fruit, and in the face of the stern judge's forthright Directions, the Home Office conceded the case and will grant visas. In that case the young Eritrean refugee client, working hard and supporting his mother and 3 siblings, clearly enjoyed his contacts with the several students who worked on the case, and empathy and understanding won out over the barriers imposed by Covid.

Graham and Sheona managed to prepare a complicated application to the EU Settled Status scheme on 29 June 2021, the very last day for sending applications, for a woman with two children who have an EU citizen father. This relied on very quick work including Graham's presentation of the subtle and complex ways in which EU free movement law interacts with the developing law on rights arising from EU citizenship – which may still assist this family even though Britain has left the EU. The Home Office EU Settled Status scheme [EUSS] has been a success arguably comparable to the vaccine development and roll-out, confirming the rights of residence of over five million people in only two years. But with a huge surge of applications just before the 30 June deadline, and the many who will be making late applications, our client may not know for some time whether she has been successful or not.

See also:

- [Kent Law Clinic academics respond to Home Office consultation on 'New Plan for Immigration'](#) – a post on the Clinic blog with comments from Richard and Sheona
- [Refugee Law Initiative](#) blog including posts titled:
  - [The New Plan for Immigration: Empty Measures Against Modern Slavery](#)
  - [The New Plan for Immigration: Blaming the Wrong People Leads to Proposing the Wrong Solutions to the Wrong Problems](#)
  - [“Enforcement” and “Returns”: The forlorn hope of Home Secretaries down the years, revived in the New Plan for Immigration](#)

But whatever the law says, the Clinic and our students will continue to assist as many clients as we can, to achieve leave to remain in the UK and the right to live with their families.

## **A former Clinic student's story: Claire Splawn, now working at Asylum Aid**

I was first attracted to Kent for its Law Clinic and its approach to teaching law. Kent described itself as having a 'critical approach to law' where students were encouraged to ask questions of existing legal systems, not just understand how they operate and this approach was distinct to other universities I had applied to. I was also drawn to the work of the Law Clinic, as I wanted practical experience on cases and Kent was one of only 5 or 6 universities at the time that operated a Law Clinic with the opportunity for students to gain hands-on experience of casework.

I was involved in the Clinic for all three years of my undergraduate degree. In my second year, as part of the Clinic module I worked on a case for an atheist asylum seeker from Afghanistan. Together with Sheona York, we prepared an application arguing that atheism was as strongly held a religious belief as belief in a recognised religion, and that this placed the client at risk of persecution under the Refugee Convention ground of religion, if he were returned to Afghanistan. The case was successful and garnered national and international news coverage, believed to be the first of its kind in the UK. The case and my experience at the Clinic was invaluable and sparked a fascination with immigration and asylum law, which I continue to work in now. To date, the "Afghan Atheist Case" is still my most discussed topic at job interviews.



CLAIRE PICTURED IN A 2014 EDITION OF 'THE REPORTER', THE KENT LAW SCHOL NEWSLETTER

After graduating, I obtained an internship in Jerusalem, Israel with an NGO and moved there for a year where I interviewed organisations and individuals in the West Bank and Gaza. I produced and copy-edited shadow reports to the UN Security Council on Palestinian political, women's and children's rights under Hamas and the Palestinian Authority. On return I got a job in an immigration firm in Leeds (note to students: getting this job was my first successful application after 25 rejections) where I accredited as a Senior Caseworker and managed a legal aid caseload of initial asylum and trafficking claims and appeals to the First-Tier and Upper Immigration Tribunals. I worked with victims of torture, human trafficking and domestic violence, attended Tribunal with my clients and worked closely with counsel and country, medical and nationality law experts in the hopes of obtaining leave to remain in the UK for those at risk of persecution in their home countries.

I arrived at Asylum Aid in October 2019, after taking a year out of immigration to try something different – an in-house paralegal role at a medical defence organisation – and discovering that I desperately missed immigration and asylum work. I initially obtained a role as a statelessness caseworker within Asylum Aid's Statelessness Pro Bono Project – a collaboration between Asylum Aid and 12 corporate law firms in London - and eight months later, the role of coordinator became available and was offered to me. I now manage the project partnerships with corporate firms, monitor incoming referrals, provide training and undertake active casework, preparing applications for leave to remain in the UK for stateless people under Part 14 of the Immigration Rules. It is challenging, exhilarating, and some of the most fascinating work I have ever done.



## Conclusions for the future ...



The Clinic is a complex combination of vision, space and place, combining a public service to Kent-based clients with a unique educational experience for students. The impact of Covid restrictions placed immense pressure on every aspect of this. Limited online access risked excluding clients who needed urgent and detailed assistance. Managing formal and informal procedures between clients and opponents was often deeply frustrating. Confining all conversations to telephone and Zoom tended to preclude the kind of casual, accidental enthusiasm and inspiration which can only come from unstructured personal contact. But clients managed to contact us! Students were able to work on their cases! Empathy and sympathy, intellectual understanding, complex assistance to clients and constructive feedback to students were all achieved even during the strictest lockdown conditions.

For the coming academic year we are delighted to be able to return to the Clinic office and redevelop our vibrant Clinic working atmosphere. But we are also determined to keep and develop the ideas and procedures which did work during lockdown, so as to enhance the service and education opportunities the Clinic provides.

## List of legal advisers 2020-2021:

<b>Sarah Finnis</b>	Family	Girlings
<b>Francis Wildman</b>	Employment	YourLaw
<b>Amanda Wilson</b>	Family	Girlings



<b>Louise Duckett</b>	Family	Stilwell and Singleton
<b>Carmel Sunley</b>	Employment	Sunley Sols Ltd
<b>Emma Palmer</b>	Family	Whitehead Monckton
<b>Nicole Jennings</b>	Family	Beckett Chambers
<b>Gemma Duckworth</b>	Family	Robinson Allfree
<b>Charlotte Nock</b>	Wills	Girlings
<b>Alison Cook</b>	Family	SpainWilliams
<b>Christian Frixou</b>	Employment	Judge Sykes Frixou
<b>Amanda Okill</b>	Employment	Furley Page LLP
<b>James Matthews</b>	L&T, Civil	Tassells Solicitors
<b>Richard Honey</b>	Planning	Francis Taylor Building
<b>Stuart Snow</b>	Family, Civil	Stour Chambers
<b>Rosie Eastwood</b>	Family	Furley Page LLP
<b>Ian Chivers</b>	Civil	Stilwell and Singleton
<b>Philippa Bruce</b>	Family	KLC
<b>Tony Pullen</b>	Employment	KLC
<b>Elaine Sherratt</b>	Employment	KLC