

**R v University of West of England ex parte M 2001**  
**Queen's Bench Division**

RICHARDS J:

(1) In September 1998 the applicant commenced a course at the university of the West of England which leads to the qualification known as the Diploma in Social Work ('DipSW'). The DipSW is described by the Central Council for Education and Training in Social Work as 'the professional social work qualification for social workers in all settings'. The course is a 2-year course with academic modules and training modules, the latter involving a placement with an appropriate agency. Soon after the applicant commenced the course, Devon County Council's social services department ('Devon') expressed grave concern to the university about her suitability to be a social worker. This led to a decision by the university to remove her from the DipSW course and transfer her to a course leading to a qualification known as the Diploma in Health and Community Studies, which contains all the academic modules of the DipSW course but not the placement modules. The original decision was taken on 14 December 1998 but the university agreed to a rehearing after the applicant commenced legal proceedings to challenge the decision. On 22 September 1999, following the rehearing, the university re-affirmed the original decision.

(2) The applicant now challenges the decision of 22 September 1999. She strongly disputes the points of concern raised by Devon, though properly recognising that these proceedings are not the place to resolve that dispute. In any event she contends that the decision reached by the university in reliance on them was in breach of natural justice, outside the powers of the university, based on irrelevant considerations and unreasonable.

(3) It is common ground that the university is amenable to judicial review. It is one of the new universities brought into being by the Education Reform Act 1988, the status of which has been examined recently by the Court of Appeal in *Clark v The University of Lincolnshire and Humberside* [2000] ELR 345.

The facts

(4) It is helpful to begin with an account of what the applicant says about her family history. Almost immediately after the birth of her son in August 1982, her relationship with the father broke down and she raised the child as a single parent. The separation was violent and acrimonious and the applicant had to obtain a non-molestation order against the father. A social worker became involved. The father made numerous complaints about the applicant's ability to care for the child, but the allegations were found to be unsubstantiated. When the child was less than a year old he was found by the father to have an injury and was diagnosed as having a hairline fracture of the skull. The applicant's account was that the previous week the child had lifted up a protective stair gate and had fallen two or three steps while momentarily out of sight, but did not appear at the time to have sustained injury. The medical opinion was that the injury was consistent with an accidental fall.

(5) Following that incident and as a result of the father's continuing complaints (though eventually acknowledged to be unfounded), the child was placed on the

Wiltshire and Avon child protection register. He remained on the register until 1987, when the father stopped having contact with him.

(6) In August 1989 the applicant was involved in a serious road traffic accident, which resulted in her being hospitalised for 5 months. Between then and 1991 she was frequently re-admitted to hospital for operations. Unfortunately the operations were not wholly successful and in 1991 her leg had to be amputated. She was fitted with a prosthesis in 1993. While the applicant was in hospital her child had several different sets of foster-parents and was expelled from his school. On her discharge the applicant was confined to a wheelchair and had difficulty in coping with the child, who had become very disturbed. But she worked closely with the authorities on the preparation of a statement of special educational needs, which led to a residential placement for the child.

(7) In September 1993 the child moved school and the applicant was allocated local authority accommodation. The child did not adjust to the move and became aggressive. His aggression was directed against the applicant (who at that point was still confined to a wheelchair) and against staff at the new school. As a result of that behaviour the applicant involved social services and, with the support of the school, requested that the child be accommodated. Three foster placements broke down because of the child's behaviour. During this period the child was receiving counselling and care therapy and was seeing educational psychologists. The applicant attended family therapy but discontinued it in January 1994 because in her view it was too infrequent, there was no clear agenda and the child's behaviour appeared to be improving.

(8) Problems with the child continued through 1994 and 1995, including an incident which resulted in the family being asked to leave the hotel at which they were staying while on holiday in 1995. The applicant found that she could not cope with the child's disruptive behaviour and asked that he be accommodated. In May 1995 the child was placed on the child protection register under the category of emotional abuse. It is clear from a letter dated 17 May 1995 from Devon to the applicant that the applicant interpreted this as personal criticism of her. She was assured that there was no question of attributing guilt or blame. The case conference had taken the view that the repeated breakdowns that had resulted from the child's demanding behaviour were showing no signs of ending; and it was this pattern of breakdown that was causing continuing distress and damage to the child and indeed the applicant, with no apparent way out.

(9) In the subsequent child protection review in November 1995 the child's name was removed from the register. He had continued periods of home visits and returned to the applicant's care in about August 1997. By October 1997, however, his behaviour had again deteriorated and the applicant took the view that she could not continue with him at home.

(10) Between April 1997 and August 1998 the applicant herself worked for Devon as an enabler at a community services centre, working with vulnerable people. In March 1998 she applied for the DipSW course. She started the course, as I have already indicated, in September 1998. When Devon learned that she was on the course, it raised concerns about her suitability for the course. Those concerns were raised as a

matter of duty based on guidelines outlined by the Central Council for Education and Training in Social Work. Devon wrote to the university on 7 October 1998, enclosing a lengthy summary of its involvement with the applicant (with much more detail than I have given above on the basis of the applicant's own account). Reference was made to the placing of the child on the child protection register in 1983 and again in 1995. It was said that more recent concerns had been in relation to the child's behavioural difficulties and the applicant's ability to cope, and that at present Devon continued to see the child's welfare being continually undermined by the applicant.

(11) The university invited and received representations from the applicant on the matters raised by Devon. The university then invited Devon to give an overall judgment on the applicant's fitness to train as a social worker, asking consideration to be given to the following matters raised by the applicant:

(i) Child care social workers were aware she was working as a Community Enabler with vulnerable people and her line manager was informed by Ms Maddock that her son was in a school for emotionally disturbed children.

(ii) Ms Maddock asked her then social worker ... if it would be a problem to apply to be a social worker and he replied he would get back to her if that was a problem.

(iii) She feels there is no proof of emotional neglect but only of a disabled single parent struggling to bring up a son traumatised by her road accident.

(iv) Her son was placed on the at risk register in 1995 primarily as a mechanism to access resources towards his accommodation.'

(12) Devon's director of social services replied by letter of 6 November 1998, setting out his staff's joint comments on those matters and their 'grave concern' that the applicant was training to be a social worker. He went on:

'The points to be made are as follows-

There are concerns centering on the extreme emotional difficulties experienced by her son - difficulties that have needed substantive involvement from Social Services and other agencies.

The Department's view is that Ms Maddock has not acknowledged her own responsibility and part played in her son's difficulties.

There is significant evidence that Ms Maddock has not worked in partnership with the Local Authority in her son's best interest. The most recent concern is that Ms Maddock has involved her son in her situation at UWE. This has led her son to be very angry with the Social Services staff, blaming them for the position she finds herself in.

In conclusion, Devon Social Services are expressing serious concern to the University of the West of England about Ms Maddock's suitability to undertake a DipSW Programme at this stage in her life.'

(13) The university took the view that the issues raised by Devon raised significant doubt as to the applicant's suitability for social work and whether it would be possible to find a placement for her. A number of agencies were contacted, given details of the case on an anonymised basis and asked whether they would accept such a student. The assistant director (Children and Families) of Bristol Social Services Department, the university's main partner in the provision of placements on the course, said that he would not provide a placement. The Assistant Director of the National Children's Home (South West) expressed grave concerns about offering a placement and thought it unlikely that the Home would offer one if a formal request were made. The assistant director of Children's Services at South Gloucestershire Social Services said that he would not consider the student to be suitable and would not offer a placement.

(14) On 14 December 1999 the university held a meeting with the applicant to explain the position to her. It was then decided that there was no likelihood that the university would be able to offer a placement to her and, since the placement was a critical part of the DipSW course, it was impossible for her to remain on the course. The applicant was transferred to the course for the Diploma in Health and Community Studies.

(15) It is unnecessary to deal with the subsequent legal correspondence and proceedings. It suffices to say that the university agreed to a rehearing of the matter. The applicant was invited to attend a hearing on 22 September 1999 to enable her to comment fully on the correspondence between the university and Devon. Prior to the hearing, written representations were submitted on her behalf by her solicitors. At the hearing the applicant challenged the accuracy of Devon's views, as she had done throughout.

(16) The university's decision was communicated by letter dated 24 September 1999:

'The Deputy Vice-Chancellor does not feel that the further representations which you were able to make to us at the meeting change the position. He has reaffirmed the decision made in December 1998 ... that you may not be registered on the DipHE in Social Work since it will not be possible to find suitable placements for you at present and you will not be able to meet the professional assessment requirements for the programme. He has confirmed that you may continue to study other academic modules which do not require placements. If you are able to effect a change in Devon Social Services' assessment of your suitability for social work training, the University will consider re-instating you onto the DipHE Social Work, dependent on your success in the appropriate academic modules and our assessment of the likelihood of finding suitable placements.'

(17) In the light of the rehearing and further decision, the original legal proceedings were not pursued. But the new decision is challenged separately in the present proceedings.

Breach of natural justice

(18) The first submission advanced by Miss Bretherton on behalf of the applicant is that the decision was taken in breach of natural justice. I gave permission for the Form 86A to be amended to include this issue. It is said that the university's evidence in

these proceedings discloses for the first time that the university made oral inquiries of a number of agencies as to whether a placement would be offered in the circumstances explained to those agencies. The applicant was not previously aware of such inquiries. She ought to have been given an opportunity to comment on them before the decision was taken.

(19) That contention faces an insuperable evidential obstacle. In his witness statement for the university, Dr Wookey states that at the meeting with the applicant on 14 December 1998 which led to the first decision:

'I told Helen Maddock that I was not in a position to judge whether [Devon's] report was right or wrong. All I could do was look at the University's position in the light of what had been said. I told her that because we had a duty to reveal to the placements what had been said by Devon. We had contacted placement agencies who said a placement would not be possible.'

The applicant's counsel tells me on instructions that the applicant disputes that she was told that the university had contacted placement agencies. The fact is, however, that the applicant has had ample time to file evidence in rebuttal but has not done so. This court must proceed on the basis of the evidence before it. Moreover there is no reason whatsoever to doubt the accuracy of the university's evidence on the point. It is plain that the inability to place the applicant was the university's primary concern and that it had contacted a number of agencies on the issue. It makes perfect sense that the position would have been explained to the applicant at the meeting. Since the applicant did not request particulars of those contacts, either at the meeting or in subsequent correspondence relating to the decision or in connection with the rehearing, she cannot now complain of a lack of opportunity to make comments on them.

(20) Even if there had been a failure to tell the applicant about the university's contacts with placement agencies, I do not think that her case on natural justice could succeed. That is because I do not see how comments from the applicant on that issue could have affected the decision. According to Miss Bretherton, the applicant would have pointed out that the placement agencies had not been given the full picture. They had been shown the correspondence and reports from Devon but had not been shown the applicant's representations. The university would have been asked to show them those representations to see whether they affected the agencies' views as to the possibility of a placement. The difficulty about that is that must have been clear to all that the applicant was disputing the correctness of Devon's assessment and that Devon had adhered to its position after considering the applicant's representations. The attitude of the other agencies towards a placement for the applicant was based on the position adopted by Devon, whose staff had been directly involved with the applicant and her child; and so long as Devon adhered to that position, it would be wholly unrealistic to believe that other agencies might have been swayed by the applicant's representations to grant her a placement.

(21) This ground of challenge therefore fails.

Ultra vires

(22) The second main submission for the applicant is that the university acted outside its powers in removing her from the DipSW course.

(23) Regulation E4.1 of the university's academic regulations provides:

'In accordance with the Articles of Government the Academic Board shall establish procedures for the expulsion of students for an unsatisfactory standard of work or other academic reasons.'

(24) Academic Procedure E4a, established pursuant to that regulation, deals with the expulsion of students for academic reasons. Paragraph 1 contains relevant definitions:

"Expulsion for unsatisfactory standard of work" means the requirement for a student to leave the programme because of failure of assessments in accordance with the programme assessment regulations. "Expulsion for other academic reasons" means the requirement to leave because of non-compliance with programme requirements such as failure to attend satisfactorily or professional unsuitability.'

(25) Paragraph 2 deals with unsatisfactory standard of work. Paragraphs 3-5 deal with other academic reasons. Paragraph 4 confers power to require a student to leave a programme:

'If a dean considers that a student's participation in the programme has been of such a nature as to render it unlikely that the student could fulfil the academic or professional assessment requirements ...'

Although some of the language used in the decision letters appears to be drawn from that provision, it is common ground that it does not provide a basis for expulsion in this case, because the matters in issue do not arise out of the nature of the applicant's participation in the programme. I also note, however, that it is common ground that the university would be able to rely on that provision if the applicant remained on the course but were unable to obtain a placement. It would follow from that circumstance that the applicant's participation in the programme had been of such a nature as to render it unlikely that she could fulfil the professional assessment requirements.

(26) It is stated in the university's evidence that the relevant provision in this case was para 5, which reads:

'Where a student is found to have been admitted on the basis of an application incorrect in a material particular or has acquired a status which renders continuation on the programme (or the specific award route) inappropriate, the dean may submit a request to the Vice-Chancellor, via the Registrar (Academic), to require the student to leave the programme (or specific award route) ...'

(27) At one point the university appeared to be minded to rely on the first part of para 5, namely that the application for the course was incorrect in a material particular. The point was not, however, pursued in that way before me by Mr Robertson on behalf of the university. In my judgment he was right not to pursue it. I am satisfied that the circumstances do not cast doubt on the correctness of the applicant's application for the course. The application form did not require her to disclose the matters that Devon

subsequently brought to the university's attention, and nothing said on the form or in connection with her application misrepresented the true position. Whether the form ought to contain a question about involvement with the social services or other agencies (otherwise than by way of work experience, which the form does cover) is a matter that the university may wish to consider in the light of its experience in this case.

(28) Thus the issue comes down to whether the second limb of para 5 was an adequate basis for the university's decision in this case - whether it was open to the university to hold that the applicant 'has acquired a status which renders continuation on the programme ... inappropriate'.

(29) Miss Bretherton submits that those words should be given their ordinary meaning and are to be construed as referring only to the acquisition of a status after commencement of the programme, rather than to the emergence of information about matters that occurred before commencement. Mr Robertson points out that the relationship between the university and a student is in part contractual and he submits that the provisions should be interpreted in a like way to a contract. In any event they should not be given an overly restrictive construction and should be construed in the light of the underlying purpose of empowering the university to remove from a course those students who are professionally unsuited to the course. The words 'has acquired a status' are not limited to the acquisition of a status after commencement of the programme but are apt to include acquisition of a status before commencement, in circumstances where information about that status comes to the attention of the university after commencement. Alternatively the information that came to the attention of the university caused her then to acquire the status of a person unsuitable for placement.

(30) I agree with Mr Robertson's submission that I should not adopt an overly restrictive construction of para 5 and that I should construe it in the light of the underlying policy. That does not, however, warrant a distortion of the language of the provision. It is more a matter of giving the words a sensible meaning in their context. The underlying policy, so far as material, is evident most clearly from the definitions in para 1. It is that the university should have the power to require a person to leave a course for which the person is professionally unsuitable. That ties in very closely with the admission requirements laid down by the Central Council for Education and Training in Social Work. They include a requirement that the person is in the opinion of the programme provider 'suitable to become a professional social worker'. If the circumstances concerning the applicant had come to the attention of the university before her acceptance onto the course, they would undoubtedly have caused the university to reject her as unsuitable for the very same reasons as have now been relied on as the basis for removing her from the course. One would expect there to be a corresponding power to remove a person from a course if the circumstances that render him or her unsuitable come to light after commencement of the programme. It seems to me that para 5, although not expressed as satisfactorily as it might have been, is intended to achieve that result and is apt to achieve it in this case. Subject to the separate argument as to irrationality, the circumstances relating to the applicant can properly be regarded as giving her a 'status' which renders continuation on the programme inappropriate. 'Status' can and should be given a broad meaning. I do not think that it should be limited, as suggested by Miss Bretherton, to matters such as

criminal convictions. Although there is some force in the contention that the words 'has acquired' refer only to acquisition of the status after the commencement of the programme, it is not a distortion of language and is more consonant with the underlying policy to construe them as referring to the acquisition of the status at any time; and I so construe them. If necessary I would accept Mr Robertson's alternative submission that a person 'acquires' a status for this purpose at the time when the relevant information comes to the attention of the university.

(31) On that basis I conclude that the university had the power to remove the applicant from the DipSW course. I add that any other conclusion would result in the unsatisfactory position that, although satisfied that it would not be possible to obtain a placement for the applicant, the university would have to keep her on the course and seek a placement for her, having the power to remove her (under para 4) only when she failed to gain such a placement.

(32) I add for completeness that, insofar as Miss Bretherton made it part of her argument that the university lacked the power to disclose to other agencies information of the kind received from Devon, I reject the submission. Such a power is plainly to be implied. It would be absurd if, in relation to a sensitive issue such as the seeking of social work placements for its students, the university were unable to reveal to agencies information that had been received about students from third parties.

#### Irrelevant considerations and irrationality

(33) Under this heading Miss Bretherton submits first that, in taking into account the matters raised by Devon, the university had regard to an irrelevant consideration. That submission depends, as she conceded, on whether the university had the power under Academic Procedure E4a to remove the applicant from her course on the basis of the matters raised by Devon. If it did, as I have held to be the case, then necessarily it was entitled to take those matters into account in reaching its decision.

(34) The final issue is whether the decision was irrational or unreasonable in *Wednesbury* terms, ie whether it was one that no reasonable decision-maker could have reached. Miss Bretherton, whilst acknowledging the high threshold that she has to overcome, submits that the concerns expressed were not of such a nature as reasonably to justify removal from the course. But that submission fails to address the point on which the decision was actually based, namely the university's view that, in the light of Devon's assessment and the reaction of other agencies to it, it would not be possible to find suitable placements for the applicant. On that point too Miss Bretherton has a submission to advance, contending that it was unreasonable of the university to conclude that it would not be possible to find suitable placements in circumstances where the applicant's representations had not been supplied to potential placement providers and there remained a possibility that, if in possession of the full picture, they would offer a placement. That brings me back to an issue considered in relation to the natural justice challenge. The conclusion I reached in that connection was that it would be wholly unrealistic to believe that other agencies might have been swayed by the applicant's representations to grant her a placement. That being so, it was in my view entirely reasonable of the university to proceed as it did on the basis of the reactions it obtained from the agencies concerned.

## Conclusion

(35) For the reasons given in this judgment the application for judicial review is dismissed. In my view the university has acted lawfully and responsibly in this matter. I should put on record that the university has made clear to the applicant, and did so again through counsel in open court, that if she herself is able to persuade an agency to offer her an appropriate placement the university will be willing to reinstate her on the course (subject of course to satisfactory completion of the relevant academic modules, the first year of which has already been completed). For that purpose the applicant will in practice, in my view, need to persuade Devon to modify its assessment of her. But is open to her to approach other agencies and to seek to persuade them that they should not rely on Devon's assessment. It is true that she will be at an additional disadvantage in approaching other agencies when she is not on the DipSW course and the university is not applying on her behalf. That cannot, however, affect my conclusion that the university has acted reasonably and within its powers in removing her from the course and putting itself in a position where it does not have to apply on her behalf.