

Shelter

LEGAL AID – SOCIAL WELFARE LAW

Legal Aid, Sentencing and Punishment of Offenders Bill

Commons 2nd Reading, Wednesday 29th June 2011

The Legal Aid, Sentencing and Punishment of Offenders Bill will impose **devastating cuts on legal aid funding for specialist advice to help people solve their housing, debt and welfare benefits problems** at an early stage so that they less likely to develop into expensive court proceedings. For the sake of saving just £49m, huge knock-on costs will be generated by these cuts.

Despite receiving some 5,000 responses to its recent consultation, the majority of which opposed the changes, the Government is putting forward its original proposals virtually unchanged. Although there have been some minor concessions, overall this part of the bill will have an even more devastating impact than the Government originally predicted with **595,000 cases cut** from the scope of legal aid (as opposed to 502,000 in the original proposals). Legal aid for social welfare issues **only constitutes 5% of the total legal aid budget but is being disproportionately hit, losing over a third of its budget.**

The Government has argued that the UK legal aid system is comparatively expensive in relation to other countries, but this is extremely misleading. As the Justice Select Committee and the Council of Europe have said, when all judicial costs are taken into account England and Wales are about equal to the European average.¹

Shelter is very disappointed that the Government has decided to press ahead with these reforms despite the enormous body of evidence showing that they will leave the most vulnerable people in society completely defenceless and **will end up costing the state more in the long run.**

The reforms will **place significant extra strain on MPs** as more people will come to surgeries seeking help with complex housing and welfare issues. In a survey of MPs conducted by ComRes last year, nearly three quarters (72%) of MPs agreed that housing is one of the top three problems raised by their constituents. There will be far less support available for their case work in the future.

¹ "Council of Europe data on judicial systems across Europe illustrate that when the costs of courts, public prosecution services and legal aid are combined, the budget in England and Wales as a percentage of the GDP per capita is equal to the average." <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmjust/681/68102.htm>

What does the Bill do?

The bill will remove nearly 600,000 cases from the scope of legal aid which as well as cuts to family law and other areas include:

- **Housing:** 52,000 cases will be removed from scope (40% of all cases). We are pleased that the Government has amended its original plans and will now allow people facing illegal eviction to be able to get help (though the nature of that help has been restricted) and continue to fund legal aid for housing matters before possession proceedings are issued.

However, this has been restricted to only those cases where the landlord or lender has sent letters threatening action. This means that legal advisers who identify an arrears problem at an early stage **cannot engage in preventative work** but will have to wait for the situation to become more acute, with all the knock-on costs and adverse human impacts this will entail.

- **Welfare benefits** (including housing benefit): all cases (135,000) will be removed from scope. Where a benefits issue has led to arrears and the threat of possession legal aid will be available to address the possession proceedings, but it will not be available as a preventative measure or to address the underlying benefits problem that led to proceedings. This is happening **alongside radical upheavals to the housing benefit system** at a time when more people are likely to need support through the transition.
- **Debt:** all cases (105,000 or 74%) will be removed from scope except where a person is at immediate risk of losing their home from rent or mortgage arrears. However, as with housing matters, that help is only available at a relatively late stage.

The bill is part of a broader package of reforms to legal aid which includes plans to make obligatory the use of a telephone gateway for certain categories of law (community care, debt, discrimination and special educational needs). This shift away from face-to-face advice, including for vulnerable people who are the least able to access telephone services, is unwelcome. On top of this there are also plans to reduce fees paid to providers and raise eligibility levels for legal aid.

What is Legal Aid for?

It is a fundamental principle of justice and fairness that people should not be excluded from accessing the justice system simply because they cannot afford to pay for legal help. Legal aid funds legal advice and representation to help people understand and protect their basic rights and get a fair hearing. It helps them to access the court process to sort out disputes and to solve problems that may otherwise lead to poverty and social exclusion. **Legal aid is a crucial part of the preventative housing safety net**, providing support to people at times of need so that bad situations do not become disasters.

What will be the consequences of these cuts?

Far from encouraging early resolution of legal problems, these cuts will encourage unnecessary court proceedings as people are denied the legal advice that allows them to resolve problems outside of the courts. The reforms will also increase the number of litigants in person (thereby increasing court time and expense) and for many people they will mean there is no access to resolution of legal problems.

Less opportunity for early intervention

When housing, debt and welfare problems arise, obtaining advice at an early stage can be crucial in resolving them before they escalate. One of the Government's arguments for making these reforms is that legal aid is being used to fund help that is not legal in nature. This is not the case: the system is extremely rigorous and there has to be a legal issue at stake as a first condition for receipt of funding. The belief that problems only become legal in nature once they reach the stage of court proceedings is mistaken and costly.

Early intervention by legal professionals is often highly effective in resolving legal problems before they escalate to crisis point. In terms of welfare benefits, the situation is even worse because all cases will be removed from the scope of legal aid even if they have gone to tribunal.

The viability of the advice sector will be threatened

The removal of so much advice work from the scope of legal aid will destabilise the advice sector and make the current business plans of many providers unworkable. It will not be economically viable for many providers to continue giving advice only in the areas that would remain within the scope of legal aid. The Government's own impact assessments anticipated that **the not-for-profit advice sector would lose around 77% of its funding.** That the cuts to scope are taking place on top of a 10% across-the-board cut in fees means that many providers will be forced to close. This will lead to a widespread loss of expertise and the creation of more advice 'deserts' – whole areas of the country where no legal aid advice is available at all for vulnerable people who need help.

The Ministry of Justice has pointed to alternative sources of advice, such as local authority in-house services and organisations such as Shelter. However, we do not believe this is realistic. **We expect to lose about 45% of our income for legal aid work.** At a time of economic difficulty when voluntary donations to charities have dropped, our income is highly unlikely to increase sufficiently to plug the gap. While we are investing in the growth of our voluntary-funded helpline, we are also facing unprecedented demand for advice services. Given the cuts to local authority funding we highly doubt that local authority in-house advice services would be able to absorb the increased unmet need these proposals would create.

The consequence of this is that **many more people will turn to their local MPs and councillors for help** and there will be much reduced scope to refer these cases on to local advice agencies and solicitors.

The economic case for legal aid

Social welfare law **only uses around 5% of the total legal aid budget** (around £136m of a total £2.1bn pot). It provides extremely good value for money but will be disproportionately hit by the cuts **with a loss of £49m**. Research by Citizens Advice has shown that:

- For every £1 of legal aid expenditure on **housing** advice, the state can save **£2.34**.
- For every £1 of legal aid expenditure on **debt** advice, the state can save **£2.98**.
- For every £1 of legal aid expenditure on **benefits** advice, the state can save **£8.80**.²

Ways forward

We urge the Government to look again at the alternative solutions proposed by the Law Society suggesting savings of £384m which can be made across the justice system instead of cuts to legal aid which will only save £49m.³

Please support Shelter's call for all housing, welfare and debt cases to be brought back into scope to avoid extra costs stacking up for Government further down the line, increased pressure on over-stretched MPs and local authorities and vulnerable people being left to tackle their problems alone.

Further information

Please get in touch with Anne Baxendale by email on anne_baxendale@shelter.org.uk or by telephone on 0844 515 1182.

Shelter is a member of the Justice for All and the Sound off for Justice coalitions which are campaigning against the legal aid reforms.

www.justice-for-all.org.uk

www.soundoffforjustice.org

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² *Towards a business case for legal aid*, Citizens Advice, 2010

³ <http://www.lawsociety.org.uk/influencinglaw/policyinresponse/view=article.law?DOCUMENTID=434634>