

## The Residence Test

### *Effects on Homeless People*

The residence test is due to come in to force on August 4<sup>th</sup> 2014. It will be introduced via Statutory Instrument, pending approval of both Houses of Parliament.

### Summary

#### *What is the issue?*

- The Government is seeking to introduce a residence test that will predetermine who is eligible for legal aid, regardless of personal circumstances.
- The residence test will remove the right to legal aid altogether from anyone who has not been lawfully resident in the UK for at least a year.
- **This means local authorities will be able to abandon those who are fleeing domestic violence, unaccompanied children, and victims of trafficking without legal challenge.**

### Context

#### *Why is Shelter campaigning on this issue?*

As a housing and homelessness charity, we already encounter families who have slept in parks, railway stations or hospitals, or who have even been travelling on night buses to keep warm. Sadly, these changes are likely to make this a more familiar sight. It could also mean more children being separated from their parents as they are taken into social care, or families disappearing into overcrowded, inadequate and transient accommodation.

These changes follow huge cuts made under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 that have restricted civil legal aid, affecting housing, debt and welfare cases, severely reducing the amount of help available to families facing homelessness.

### The impact on Children

#### *How do we protect children now?*

Social services authorities have a duty to protect and accommodate children, with their families, who have no other entitlement to housing or benefits. **This often occurs whilst families wait for their residency applications to be dealt with by the Home Office since they are not allowed to work or claim benefits.** Often it is only legal action that forces local authorities to comply with their duty to protect children from living on the streets.

#### *What are the proposed changes and likely effects?*

The Government intends to remove the right to legal aid altogether from anyone who has not been lawfully resident in the UK for at least a year, even including those fleeing domestic violence, unaccompanied children, and victims of trafficking.

Quite simply, this proposal is likely to leave families with children homeless and with no ability to challenge refusals to help them. **These proposals deprive an entire category of people from access to the courts.** They will increase poverty, exploitation and destitution and are an affront to the rule of law.

Even those who have residency – including British citizens – but cannot demonstrate 12 months' residence, perhaps because they have lost important documents, will also struggle to gain access to legal aid, regardless of their need.

These people are highly susceptible to exploitation by rogue landlords but will have no protection against unlawful eviction, harassment or squalid conditions.

If legal aid is unavailable to people who could not satisfy a test of twelve months' lawful residence and who had been unlawfully denied assistance by the relevant authority, **many families and individuals will be unable to obtain even emergency accommodation, and they will be left to fend for themselves on the streets.**

The inevitable outcome of a residence test for legal aid will be to allow local authorities to adopt unlawful practices. Once authorities realise that solicitors are no longer in a position to take judicial review proceedings in such cases with the help of legal aid, they will be able to turn away homeless applicants without risk of challenge.

The consequences of this change are not only the hardship and misery caused by continuing homelessness for families brought about by unlawful decisions, but also the damage done to public confidence in the rule of law when it becomes widely perceived that there is no accountability for unlawful conduct by authorities.

## Legislation and the residence test

### *How does Shelter help homeless people?*

Every week, Shelter advises families who are facing homelessness, destitution or the possibility of children being taken into local authority care because **authorities are unwilling to comply with their duties under the Housing Act 1996 or the Children Act 1989.** We often need to start judicial review proceedings to ensure that such families have a roof over their head and adequate subsistence.

Many of our clients are not eligible for mainstream assistance under the homelessness legislation (Housing Act 1996) on account of their immigration status. Consequently, when their previous accommodation arrangements break down, **they find themselves homeless and destitute, since they have no recourse to public funds and are not entitled to state benefits.** Often this is compounded by disability, other medical factors and language difficulties.

For those who can't get help from family or friends, their only recourse is to apply to the social services authority for support. Where the household consists of a family with children, they will need to ask the authority to conduct a 'child in need' assessment with a view to providing the family with services under section 17 of the Children Act 1989. Young people on their own will have to apply for accommodation and support under section 20 of the Children Act. For single adults who are "in need of care and attention" because of their medical condition, it will be necessary to ask the authority to provide accommodation under section 21 of the National Assistance Act 1948.

In other cases, our clients will be eligible to apply to the housing authority to perform its mainstream homelessness duties under the Housing Act 1996, but they may have difficulty in proving their eligibility.

Even where a household is quite clearly eligible for assistance under the 1996 Act, in our experience **housing authorities will frequently refuse such assistance at the point of application for spurious reasons such as a lack of specific identification documents or on the basis of a cursory and inadequate enquiry into their circumstances.** The Local Government Ombudsman has had reason to express concern about the prevalence of such 'gatekeeping' practices in certain authorities ([Homelessness: how councils can ensure justice for homeless people](#), July 2011).

Many people have been lawfully resident in the UK for years, but do not presently have the documents in their possession to prove their status. The Legal Aid Agency will require them to produce three kinds of document: evidence of their actual current residence; evidence of their lawful residence; and evidence of residence over a continuous 12 months' period. The essential documents cannot be supplied in some cases because the person's passport and other papers are with the Home Office; or in other cases such as where a household have been illegally evicted by a private landlord and find that their personal papers have been lost or are locked inside their former home. But even where a person can prove their current lawful residence, they will also need to produce evidence of continuous residence over a 12 month period. In an emergency homelessness case this will present serious problems. With many clients, such as young people, or those without paperwork, it will be impossible.

If you are interested in helping Shelter oppose these changes, or for more information, please contact Scott Dawes on 0344 515 2052 or email [Scott\\_Dawes@Shelter.org.uk](mailto:Scott_Dawes@Shelter.org.uk).