

Shelter

Legal Aid, Sentencing and Punishment of Offenders Bill *Briefing for Lords Committee*

Occupation of the Home

Amendment

In Schedule 1, para 28, sub-para (10), page 132, line 5, for “and” substitute “or”

This amendment enables people to obtain advice where their right to occupy their home has been terminated for reasons entirely beyond their control and for which they bear no responsibility.

The bill, as it is currently worded, removes entitlement to legal aid funded advice from people who are regarded as ‘trespassers in law’, even if they were perfectly lawful occupiers when they first moved into the premises, and may indeed have been living there lawfully for many years. The policy intention of this clause seems to be to exclude squatters from legally aided advice. However, a consequence of the wording is to exclude unfairly others who unknowingly may be counted as trespassers and who may need legal advice.

The term ‘trespasser’ is not synonymous with ‘squatter’. ‘Squatter’ denotes someone who enters upon premises which s/he has no lawful right to occupy and remains there. A ‘trespasser’ is someone who *currently* has no right in law to occupy their accommodation. In other words, a squatter is and has been a trespasser from day one of their occupation. But other people may have become trespassers, often without knowing it, when circumstances change.

This change of status occurs in very common situations such as the following examples:

- A person takes a tenancy from a landlord. Unknown to her, the landlord is himself a tenant, and the landlord’s own tenancy agreement prohibits him from sub-letting. The sub-tenant is a lawful occupier until the head landlord terminates the landlord’s tenancy, and then she becomes a trespasser.
- An elderly mother or father dies, leaving an adult son or daughter who may have lived in the property all their lives. Unless that person succeeds to the tenancy (which only happens in a limited number of cases), they will become a trespasser following their parent’s death and the landlord could take steps to evict them.

- Where there is a joint tenancy, and the relationship breaks down, the partner who leaves the home will normally wish to terminate the joint tenancy by serving a notice on the landlord. In doing so, they terminate the entire tenancy, and the person who is left behind, often after many years of occupation, finds themselves a trespasser in their own home.
- A person takes a tenancy from a landlord. Unknown to her, the landlord has a mortgage on the property, and he does not have his lender's permission to let the property. The landlord defaults on the mortgage and the lender obtains a possession order. The occupier becomes a trespasser. If the lender takes possession action against him, he has the right to ask for a two months' period of grace.¹ But the lender is not obliged to obtain a possession order in order to evict the occupier.
- A person is a lodger in someone else's home and their landlord is himself a tenant. The landlord gives up his tenancy and moves out, leaving the lodger behind as a trespasser.

The occupiers in these scenarios have been granted a tenancy, have paid their rent and have been good tenants, but find themselves facing eviction as trespassers. They are very much in need of good legal advice as to their position. In certain exceptional cases, they may have a defence to a possession claim based on public law or on the principle of proportionality. In other cases, they will need advice as to any other remedies they may have (such as a claim against the landlord) and as to any rights to rehousing or applying to their local authority as homeless. But they would be excluded from such advice under this clause as it stands, and if they have a potential defence, they may never get to know about it unless they seek advice at an early stage.

The different varieties of trespasser serve as a stark illustration of the complexity of housing and tenancy law. Occupancy rights are often not what they seem, and are not easily understandable to non-specialists. The Supreme Court², quoting the European Court of Human Rights, has recently upheld the need for the legal system to put in place appropriate safeguards where something as serious as eviction is concerned:

“The loss of one's home is the most extreme form of interference with the right to respect for the home... Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal..., notwithstanding that, under domestic law, his right of occupation has come to an end.”

This is exactly the position of the occupiers in the above case examples. The legal system cannot provide appropriate safeguards if such individuals cannot receive legal advice. Shelter believes that legal aid should be available to ensure that low income tenants can receive advice on their occupancy rights. This amendment would ensure that people are not unfairly denied advice in situations where their home is about to be taken away from them.

¹ Under the Mortgage Repossession (Protection of Tenants etc) Act 2010.

² In *Manchester City Council v Pinnock* [2010] UKSC 45

What the amendment does

The Bill excludes all of the above occupiers from advice because of the simple word “and”. Sub-paragraph (10) is difficult to understand because it contains a triple negative, but its effect is to exclude any occupier where there are no grounds for arguing (a) that the individual is not a trespasser; and (b) that he did not enter as a trespasser. Condition (b) does not exclude the occupiers in the above situations, because there are grounds for arguing that they did not enter as trespassers. But condition (a) does exclude them, because in law they have become trespassers. Individuals are eligible for advice only if they do not fall foul of both conditions. By the simply expedient of changing “and” to “or”, the conditions become alternatives, so it is enough to qualify for advice that an occupier satisfies condition (b) alone, i.e., there are grounds for arguing that they did not enter as a trespasser. On the other hand, ‘true’ squatters will remain excluded because they entered as trespassers and remain trespassers.

Law Centre case study

A mother and her adult son approached a Law Centre after an extended battle with the local authority that sought to evict them from their family home on the grounds that they were trespassers. They had been in protracted correspondence with the authority since the woman was bereaved of both her parents within two months of each other. Both clients – with two younger children - had moved back in to the property to care for the original tenants when they were still alive. Now that the parents were dead, the council argued that the clients were trespassers.

The authority had a policy on discretionary rights to succession for families in some circumstances. Under this policy, the clients would have been entitled to a property of the same size as their family home. However, the council did not want to allow them to stay in there. The younger client worked for a contractor and the employer wrote to point out that, as he didn’t drive, his employment would be jeopardised if he had to move to an area where his team could not pick him up to go to the day’s work site. Given these circumstances the clients had a strong case to stay in their family home. However, despite having tried the authority’s internal complaints process, their local councillor and the Local Government Ombudsman, they were having little success in persuading the local authority of the merits of their case.

Fortunately, they qualified for free legal help and saw a housing adviser at the Law Centre. The Law Centre helped the clients to identify further evidence that helped to back up their case. They negotiated with the local authority’s solicitors that court proceedings should be adjourned to allow the authority to look at further representations in relation to the human rights issues and the disability equality duty. The circuit judge approved the adjournment, recognising the benefits of the parties attempting to settle the matter outside of the court with appropriate legal advice.

As a result of the Law Centre’s intervention, the authority agreed to a solution where they withdrew the court claim and agreed to a new tenancy agreement. This was of immense relief to the clients; and also benefited the authority by avoiding a loss of rent and the costs of eviction; and also saved public money by keeping the case out of court. This would not have been possible without legal aid funding.

Please support our amendment to help ensure that people are able to obtain advice where their right to occupy their home has been terminated for reasons entirely beyond their control and for which they bear no responsibility.

Further information

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