

Shelter

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

Benefits and the loss of a home

Amendment

In Schedule 1, para 28, page 131 -

After line 7 insert:

“(1A) Services provided to an individual under sub-paragraph (1) shall include services in relation to the entitlement of the individual to welfare benefits relating to housing costs.”

In line 16, after “(1)” insert “(1A)”.

In line 17, for “paragraph 14” substitute “paragraphs 14 and 15”.

This amendment would ensure that, where the loss of the home is threatened due to non-payment of the rent or mortgage, advice and casework can be provided to address an underlying benefits problem causing or contributing to the arrears.

Under Government proposals, all benefits work is to be removed from the scope of legal aid (except for cases that go to judicial review). Shelter and other advice organisations do not accept the argument that because benefits work concerns financial entitlement it should be a lower priority for funding, nor the belief that benefits work is practical rather than legal. As advice providers, we know that benefits matters are routinely both complex and legal, and that addressing an underlying benefits problem is vital in preventing people from losing their home.

At present, legal aid helps to fund support to defend possession proceedings as well as to resolve underlying benefit issues. Although in theory the Government has said that the loss of the home will continue to be prioritised for legal aid funding, in fact the Bill will prevent advisers from resolving benefits problems which lead to eviction proceedings. This is despite the fact that early intervention to resolve benefits issues often prevents these situations from escalating into possession proceedings. The exclusion of benefits work from legal aid will tie the hands of advisers who are trying to prevent homelessness and lead to many more unresolved cases filling the county courts.

For people on low incomes or have lost their job and found themselves in financial difficulty, Housing Benefit and Support for Mortgage Interest (SMI) can be essential in helping to meet housing costs. Yet, delays in processing claims, wrong decisions or incorrect payments can lead to rent arrears. Unless the underlying benefit problem is resolved, the claimant has no hope of ever meeting rental payments and clearing the arrears. Shelter deals with thousands of cases in which tenants have not received the housing benefit to which they are entitled, and who would have been evicted but for our intervention. The complexities of housing benefit administration are such that it is not possible for most individual tenants to resolve their benefit problems without active advice and assistance. No one should face losing their home because of bureaucratic mistakes out of their control.

Samira

Samira was threatened with eviction for rent arrears because her claim for housing benefit had been refused. She was unable to deal with the matter herself, as the council simply told her that her claim was cancelled since according to their records, she was already claiming from a different address. Shelter intervened on her behalf, and insisted that her claim should be reviewed. After a full investigation, it transpired that Samira had been allocated a National Insurance number that had already been allocated to someone else. The other address was the address of the other holder of the same NI number. Without Shelter's involvement, this situation would not have been discovered and resolved. Eventually, Samira was awarded both a new National Insurance number and over £7000 arrears of housing benefit. The possession claim against her was withdrawn, as her rent account went into credit.

Ministry of Justice officials have said that that the 'Mixed Case' rule allows for an out of scope matter to be brought back into scope if it is otherwise impractical to run the case. However, the need for advice and representation to ensure that housing benefit is being correctly paid is too important to be left to the uncertain scope of the rule. In any event, this rule excludes precisely the kind of work which is most useful in resolving rent arrears cases: letters and calls to the housing benefit department to sort out an incorrectly paid claim or a claim which has not been paid at all. Nor does it cover backdating or appeals.

As a consequence of this reform, the courts will have more adjourned hearings and will ultimately be compelled to make possession orders because there is no-one to resolve the benefits issue. This will cause untold distress for tenants, homeowners and their families, is inefficient as far as the courts are concerned and will result in greater costs to the taxpayer in the long run.

George

George sought advice from Shelter after receiving a notice seeking possession from his local authority landlord. The Shelter adviser identified that the possession claim was due to rent arrears which in turn were caused by the same local authority failing to appropriately assess George's housing benefit claim. Shelter submitted evidence for a revision of the housing benefit decision, resulting in an award of six months of backdated housing benefit. This cleared the arrears and the landlord withdrew the notice. Without legal aid to sort out the housing benefit matter, this case would almost certainly have gone to court, using court time and public money, and may still not have been resolved. Had he not had this help, George may well have lost his home through no fault of his own.

Please support our amendments and help ensure that vulnerable people are not excluded from effective help as a result of a blanket prohibition on the type of advice that can be provided under legal aid.

Further information

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