



## Legal Aid, Sentencing and Punishment of Offenders Bill

### *Briefing for Lords committee*

## A Green Light to Rogue Landlords

The legal aid cuts give a green light to rogue landlords by making it much harder for vulnerable tenants to challenge bad landlord behaviour. **Once this Bill is passed, far fewer tenants across the board will have the option of redress when landlords do not uphold their legal responsibilities.**

The Bill limits the options for people experiencing disrepair and harassment to obtain help under legal aid, meaning that the most effective remedies against rogue landlords will be removed. Most landlords deal responsibly with tenants and look after their properties. However, a minority of landlords are exploitative or even threatening in their treatment of tenants, including wilfully putting tenants at risk by refusing to do essential repairs and maintenance. The Bill as it currently stands will make it much easier for unscrupulous landlords to take advantage of vulnerable tenants and give the whole rental sector a bad name.

### **The case for allowing legal aid for disrepair and harassment damages claims**

Most legal remedies used against rogue landlords involve a claim for damages even where the tenant is seeking an injunction. This is necessary because in contract law damages are the primary civil remedy, and an injunction will only be granted where damages would not be an adequate form of compensation. The Bill will remove damages claims from the scope of legal aid but leave injunctions within scope, even though in successful damages claims the legal aid costs would be recompensed in the award.

In future the Government intends damages claims to be funded by Conditional Fee Agreements (CFAs)<sup>1</sup> which would require a client to find a lawyer willing to act for them on this basis. It is unlikely that this will be feasible in all but the most exceptional cases. **In practice, this decoupling of damages from injunctions has the effect of only offering a part-remedy to those needing to rely on legal aid.** The law entitling tenants to claim for damages remains on the statute books, but the low-income client dependent on legal aid will have no way of accessing this form of redress.

In the case of illegal eviction, the Government has been persuaded that both damages and injunctions should remain eligible for legal aid. In Commons Committee the Government put forward amendments to this effect. However, in cases of harassment and disrepair, damages claims are to be excluded from legal aid funding.

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<sup>1</sup> An agreement between a client and their legal representative that legal fees will only be paid if the case is successful.

## **1. Harassment**

### **Amendment**

**Schedule 1, paragraph 32, page 133**, after line 43, insert:

“(c) a claim for damages in respect of the harassment by any person of a residential occupier”.

**Schedule 1, paragraph 32, page 133**, after line 46, insert:

(3) For the purposes of sub-paragraph (1)(c) –

(a) “residential occupier” has the same meaning as in section 1(1) of the Protection from Eviction Act 1977; and

(b) a person (“A”) shall be taken to have harassed a residential occupier (“B”) where A

- (i) does an act or acts likely to interfere with the peace or comfort of B or members of his household, or encourages or incites another person to do so; or
- (ii) persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, or encourages or incites another person to do so.”

**This amendment would ensure that legal aid continues to be available for people needing to pursue a damages claim in cases of harassment.**

The most common remedy in these cases involves pursuing a damages claim which may have an injunction attached to it. The damages part of the claim would represent compensation for the disruption and distress caused to the tenant. An injunction can be added to the claim if the client needs ongoing protection against further threats, encroachment or interference by the landlord or his agents.

In practice, many people do not wish to continue to live in a property if the landlord has harassed them. Many are afraid and prioritise seeking safer accommodation elsewhere. Therefore, although the injunction can be very important in some cases, it is the damages claim which can be of great practical use in cases of harassment. On top of the damages mentioned above, the court has the power to award aggravated damages where it wishes to express its outrage at a landlord’s bad behaviour, and exemplary damages where the landlord has made a profit from his illegal act and the court wishes to reflect its disapproval of that in the damages award.

The Bill, as it currently stands, allows a client to be assisted in seeking redress against harassment, but only if the client wishes to seek an injunction. It excludes legal aid for damages-only remedies and therefore stands in the way not only of claims for general damages, but also the aggravated and exemplary damages which are awarded to deter rogue landlords from bad behaviour. The Bill would also undermine the special exemption made in the Civil Procedure Rules, which provides that no claim for harassment should be allocated to the small claims track (CPR 26.7). The purpose of this rule was to ensure that tenants should be able to obtain legal aid to be represented and so that the courts would have the assistance of a legal representative.

We believe that the exclusion of damages claims will give a green light to rogue landlords, as vulnerable and low income tenants will have very limited ways to challenge harassment meaningfully. The worse the landlord behaviour, the less likely it is that a tenant will want to continue in the property. The absence of funding for damages claims in this context will increasingly mean that rogue landlords will go unpunished.

## **2. Disrepair**

### **Amendment 1**

**Schedule 1, paragraph 30, page 132, line 34, delete the word “serious”**

**This amendment extends the range of disrepair cases within the scope of legal aid by providing that legal aid should be available in cases where there is a risk of harm to the health or safety of the individual, not only where the risk is “serious”. Trivial and unmeritorious claims would still be excluded by the operation of the legal aid merits test.**

### **Amendment 2**

**In Schedule 1, paragraph 30, page 132, line 35, for “family” substitute “household”.**

**In Schedule 1, paragraph 30, page 133, line 1, delete sub-paragraph (3).**

**In Schedule 1, paragraph 30, page 133, after line 23, insert:**

“member of the individual’s household’ means any person who occupies as his home the premises which also constitute the individual’s home”.

**This amendment expands the class of persons whose health or safety is at risk to include anyone who resides in the property as a household member even if he or she is not related to the tenant.**

### **Amendment 3**

**In Schedule 1, page 132, line 32,** after “Risk” insert “or damage”.

**In Schedule 1, paragraph 30, page 132:**

**In line 35,** after “safety” insert “or damage to the person or property”

**In line 37,** after “risk” insert “or damage”

**After line 39,** insert:

“(1A) Where such arrangements as are specified in sub-paragraph (1)(c) are made or purport to be made, services shall not be withdrawn on the account only of such arrangements where the individual continues to qualify for services in accordance with sections 10 and 20 of this Act and regulations made thereunder.

(1B) For the avoidance of doubt, where services are or have been provided with a view to securing such arrangements, services may continue to be provided in connection with a claim for damages in respect of the same deficiency or deficiencies.”

**This amendment would allow funding to continue (subject to means and merits) to enable the tenant to claim damages where the landlord has carried out repairs, thus removing the need for the injunction sought.**

The amendments above would ensure that tenants have a meaningful remedy against rogue landlords who fail to carry out repairs. Landlords have a legal obligation to keep their properties, and the installations and heating systems within them, in good repair. If a landlord fails to do so, the most common remedy is to ask the courts to oblige the landlord to carry out the works and to compensate the tenant accordingly. As with remedies for illegal eviction and harassment, injunctions to get the works done are usually tied to claims for damages.

In the case of disrepair, the Bill allows legal aid for the injunction, but not for the damages claim.<sup>2</sup> However, it goes further than in harassment cases by even limiting the circumstances in which an injunction may be sought. The changes in the Bill mean that tenants will only be able to claim legal aid to secure injunctions to get repairs done where there is a ‘*serious risk of harm to the health or safety of the individual or a member of their family*’. Shelter believes that tenants should not have to wait until the risk becomes serious before they can seek redress. We also believe that the provisions should, as is currently the case, extend to members of the *household* rather than just to family members. Again, the Government also wants all damages claims to be funded by CFAs.

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<sup>2</sup> The Bill does not mention disrepair specifically, but instead allows legal aid ‘*in relation to the removal or reduction of a serious risk of harm to the health or safety of the tenant*’.

By separating out claims for damages from injunctions, the Bill will effectively remove the principal measure available to tenants to challenge disrepair. **It gives a message to unscrupulous landlords that they are much less likely to have damages awarded against them and this means that there is little incentive for them to carry out works promptly.**

Under the current system where damages claims are legally aided, neglectful landlords know that the greater the delay in carrying out the works, the greater the damages award may be, which provides an incentive to fix problems quickly. Once this Bill is passed, landlords will know they have nothing to lose if they wait until the day before their injunction hearing before carrying out repairs. Landlords will also know that tenants will not receive legal aid to bring claims for damages even if the landlord's failure to carry out repairs has caused ill health and caused damage to the tenant's furniture and possessions. This will remove an important deterrent against allowing rental properties to fall into disrepair.

**The Bill also risks increasing costs to the legal aid fund.** At present, tenants who successfully claim for disrepair usually also get costs awarded against their landlord, meaning that the cost of the case to legal aid is zero. If the bill is implemented as proposed, the damages claim will not be able to continue once the repairs are carried out, meaning the case will not go to judgement, the landlord will not be ordered to pay costs and the legal aid fund will have to pay for the work done.

#### **Rachel**

*Rachel and her family lived in a flat rented from a social landlord for over ten years. From day one she had begun to experience the effects of disrepair. The property above had been boarded up, but was not particularly secure. Vandals broke in and caused damage resulting in water leaking into Rachel's flat causing damp and water damage, including one occasion when water came in through the light switch in her daughter's bedroom, flooding the stairs and the hallway and leaving the room without light for years.*

*The damp and the disrepair went on for years, including periods with no hot water or heating. As a consequence of repeated flooding the flat was badly affected with mould growth and over time the property started to smell. Rachel's depression worsened and the damp aggravated her son's asthma, causing him to miss school on many occasions. Social services became involved. Both Rachel and the police raised complaints with the landlord but nothing was done to remedy the situation. Rachel's requests to move house were refused. This continued over a period of 4-5 years and it was only when Rachel came to see Shelter that things started to change.*

*With legal aid funding, Shelter was able to pursue the landlord concerned. At first they refused to accept any liability, but eventually they carried out the works and paid damages, including the legal aid costs. This case therefore had a zero net cost to the legal aid fund. If the legal aid cuts go ahead, there will be no more legal aid for damages claims. Landlords will be able to delay carrying out repairs until the last minute with no fear of having to pay for the consequences.*

**Call time on rogue landlords. Please support our amendments and help to ensure that vulnerable and low income people are able to access the full range of remedies available to challenge unscrupulous landlords.**

## Further information

Please get in touch with Shelter's Public Affairs Manager Anne Baxendale by email on [anne\\_baxendale@shelter.org.uk](mailto:anne_baxendale@shelter.org.uk) or by telephone on 0844 515 1182.

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**HOUSING LAW PRACTITIONERS ASSOCIATION**