

Shelter

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

Benefits and the loss of a home

Amendments 75, 76 and 77

In Schedule 1, page 141, para 28 (*loss of a home*) -

After line 7 insert:

“(1A) Services provided to an individual at risk of losing a home 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 in nature, and that addressing underlying benefits problems can be 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 relating to those proceedings. The government has said that the loss of the home will continue to be prioritised for legal aid funding, but in practice this will not necessarily be the case as the Bill will prevent advisers from resolving any benefits problems that have led 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 who are on low incomes or who 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 or mortgage arrears. Unless the underlying benefit problem is resolved, the claimant has no hope of ever meeting rental or mortgage 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 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 that have been 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 the 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, Samara 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 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, 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.

What happened in Lords Committee?

This amendment was debated in Lords committee. The Minister's arguments against the amendment are set out below, with our response.

Minister: "While we recognise that many people rely on benefits, these cases are primarily about financial entitlement and we generally consider their importance to be lower than cases concerning, for example, the liberty or safety of a person."

We say: Issues of financial entitlement are often decisive when the loss of a home is at stake and possession proceedings often stem from benefits issues. The government has accepted the principle that people should be able to access legal help when their home is at risk. However, this is meaningless if advisers cannot examine or tackle the underlying benefits problem which is causing the arrears. Unless advisers can resolve the cause of the problem, they will not be able to stop people losing their homes.

Minister: "For those who need assistance on welfare benefits matters, factual advice is available from, for example, Jobcentre Plus, the benefits inquiry line and the tribunal itself."

We say: Welfare benefits law is complex - described as "notoriously labyrinthine" by the Court of Appeal.¹ In resolving complex benefits cases factual advice is rarely sufficient and it is often necessary to seek expert help from solicitors or legally-trained advisors. Job Centre Plus advisers will advise on basic entitlement to benefits but will not be able to help with representations in support of the benefit claim, appeals against refusals, the preparation of tribunal cases or the obtaining of expert evidence. There is little or no overlap between the legal advice funded by legal aid and the sort of factual advice on entitlement offered by Jobcentre Plus. The tribunal is there to adjudicate between the parties and is not permitted to help one party prepare and present its case, even if it had the resources to do so.

Minister: "Legal aid will be available to help tenants engage with landlords to try and resolve the actual or threatened possession issue wherever possible, including, if possible, coming to an agreement about delaying the possession matter until the benefit matter is resolved."

We say: This is true, but in our experience landlords will not agree to delay the possession matter unless they are assured that the defendant will be actively assisted in resolving the benefits problem. Many tenants do not receive the benefit they are entitled to for a variety of reasons, including administrative failures and problems in providing evidence of means. At this point the tenant will be left without any legal support to help them to resolve the benefit matter, and given the complexity of the benefit system it is unlikely that they will be able to resolve the issue on their own. The case will return to court again without the underlying issue having been resolved, ultimately resulting in possession and the loss of a home. This is a waste of time and resources for the courts and it would be much more cost effective to resolve the underlying benefits issue and prevent the household from losing their home.

¹ Secretary of State for Work and Pensions v Borrowdale & Morina [2007] EWCA Civ 749 (para 1).

Further information

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