

New changes to Legal Aid affecting homeless people

The government is proposing drastic new changes to legal aid which will have a huge impact on Shelter's ability to help homeless people.

This comes shortly after the implementation of huge cuts to civil legal aid affecting housing, debt and welfare cases in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). At a time when so many people are struggling and at risk of losing their homes the proposed cuts will further strip away help for people facing homelessness. It will make it even more difficult to find a place for people to stay for the night in emergency situations.

We already encounter families who have slept in parks, in railway stations or in hospitals, or who have been travelling on night buses to keep warm – sadly, these changes will 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.

The proposals to limit judicial review

How do we use judicial review?

Shelter provides specialist social welfare law advice on housing issues to around 15,000 people each year under legal aid contracts, both face to face and on the telephone. Judicial review is one of the main tools our advisors and solicitors use to challenge local authorities to prevent someone from becoming street homeless. Therefore the Government's proposal to limit funding for judicial review to only those cases where permission to proceed is granted by a judge will severely limit our ability to help people.

Why is the government making this proposal?

This proposal is meant to ensure that frivolous cases are not funded at the public expense. The government say that most cases are withdrawn before a full hearing. They conclude that this must be because those cases are without merit.

However, a significant number of cases are in fact withdrawn because they settle in favour of the claimant before they need to go that far. This is either because the local authority concedes at an early stage, or because the immediate grant of an emergency injunction (for example, ordering an authority to accommodate a family) effectively resolves the case without requiring a full hearing. In fact, in some cases it is simply the threat of a judicial review which prompts the local authority to provide the temporary accommodation, but often not before substantial work has been done.

Far from being frivolous, the claims in question were sound, and a good resolution of the dispute was achieved with limited or no use of court time.

How will this affect people?

Limiting access to legal aid for judicial review will mean that homeless people will find it more difficult to find organisations who are able to challenge the local authority's unlawful decision-making for them. For example, local authorities have a duty to protect and accommodate children, and their families, who have no other access to housing or benefits. However, because local authority resources are so squeezed they will sometimes

turn people away rather than meet their obligations. If these people then approach providers like us we can challenge the local authority and use judicial review to persuade the council to fulfil their legal duty by finding the homeless person somewhere to stay. Providers will be much less likely to take on cases, even those they might easily win, knowing they can't be paid for their work. We will do what we can but with limited resources this won't be much.

It is perverse that the strongest cases are those most likely to settle early and therefore the least likely to be covered by legal aid. Those few cases that can be taken on will be pursued to a further stage, when they could previously have been settled earlier at far less cost, as otherwise there will be no payment for bringing them.

At a time of increasing pressure on local authorities and other government agencies it is vital that this scrutiny measure is not lost. Judicial review is not brought lightly or frivolously; it is a vital constitutional safeguard in holding the state to account and ensuring it only acts lawfully and within its powers. It is often the only thing standing between a homeless family and the street.

CASE STUDY

Shelter recently acted for a couple evicted from their private rented tenancy because the landlord wanted to sell the property unoccupied. The wife was suffering from cancer and undergoing treatment. They went to their local authority to make a homelessness application.

The local authority refused to provide temporary accommodation for the couple, on the basis that she was not vulnerable (meaning less able to fend for herself than the average person if on the streets) because her husband could care for her. The council stated that since she had her husband to support her, she would not suffer more than the average homeless person if she were street homeless: her husband would make sure she had access to medication and kept her hospital appointments.

Shelter made detailed representations, supported by medical evidence that she needed to be somewhere clean, dry and warm, and that if she was on the streets she would face a very high risk of infection, but they still did not change their position. Only when we judicially reviewed the local authority's decision did they back down and agree to accommodate the couple.

The local authority's position was entrenched, so it took court action to force them to back down. But their position was so unreasonable that they settled the case quickly, before the permission stage was reached. In future, therefore, Shelter would not be paid for the work undertaken for this couple and therefore would not be able to take the case on or would have had to take them through a long and costly court process.

The proposal to remove legal aid for cases where success is not guaranteed

These proposals will also end funding for people facing eviction whose chances of success can not definitely be said to be more than 50%. At present, a case must generally have at least a 50% prospect of success in order to be eligible for legal aid, but certain exceptional cases can get funding if they are considered to be 'borderline' (i.e. where the chance of success is 50:50). Borderline cases are currently only funded where the case is of overwhelming importance to the client, for example being about their life or the roof over their head, or where there is a significant human rights issue or it is of public importance. The government proposal will remove legal aid even in those most important cases.

How will this affect people?

Predicting results at the start of a case is tricky; but many families are still in their homes today because they won cases which were classed as borderline. In future they will be unrepresented and therefore likely to be evicted.

Many possession proceedings in the County Court are borderline cases. It is not always clear at the outset whether arrears can be dealt with or whether acceptable proposals for repayment can be put forward. No-one should go unrepresented where their home is at risk and they have an arguable chance of success.

CASE STUDY

Shelter recently helped a mother of three young children who had fled domestic violence. The family had lived in six homes in as many years, but the children were just beginning to thrive at school when she got into rent arrears. When her landlord sought to evict her, Shelter secured legal aid to defend the possession proceedings even though she only had a borderline chance of success.

This meant we could adjourn the case giving us enough time to negotiate a settlement with the landlord that allowed her and her family to stay in their home. Without our intervention funded by legal aid, she would have been evicted. Predicting chances of success at the start is not an exact science and borderline cases win as often as they lose.

Many of the most important cases of recent years, those that changed and developed and extended the law and were fought all the way to the Supreme Court and beyond, were classed as borderline. Where you are seeking to change and develop the law through a test case, that will inevitably be borderline because there can be no guarantee that the Court will agree to develop the law in this way. Under these proposals these cases would not be funded, and this will result the removal of a vital mechanism for ensuring the law reacts to changes in society.

The proposal to remove legal aid for those new to the UK

The government also proposes removing the right to legal aid altogether from anyone who has not been lawfully resident in the UK for at least a year. This test will apply to all. For example, people who have been recently granted asylum, those who are fleeing domestic violence, unaccompanied children, and victims of trafficking.

How will this affect people?

Local authorities have a duty to protect and accommodate children, and their families, who have no other entitlement to housing or benefits. However, they sometimes fail to do this and it is legal aid that holds them to account, preventing children from ending up on the streets. Often families are only in this situation because their applications (eventually granted) take years to be dealt with by the Home Office, and in the meantime they are not allowed to work or to claim benefits. All too often it is only the threat or reality of legal action that forces local authorities to uphold their legal duty to protect children from living on the streets.

It is often simply the threat of legal challenge that gets families housed. This proposal is therefore likely to leave families with children homeless and with no ability to challenge refusals to help them.

CASE STUDY

A young lady approached Shelter for assistance with a 2 month old baby. She had been trafficked from Nigeria by her abusive father when he was 16. After being sold to a woman in Manchester and forced to work as a prostitute she managed to escape to London. She met a man with whom she fell pregnant but

had to move out when he became violent towards her.

After she had her baby they slept on the kitchen floor of a hostel her friend was living in but eventually she was asked to leave and they ended up sleeping on the streets. When she approached Shelter for help, we assisted her to get in touch with social services. The authority refused to help and we therefore issued urgent court proceedings. The court granted an emergency injunction, ordering social services to accommodate and support mother and baby so they were not sleeping on the streets.

She was placed into a refuge for victims of trafficking (and therefore the judicial review was withdrawn) and has now been granted Leave to Remain in the UK. She intends to enrol in college as soon as she can.

Others who are here lawfully – including British citizens – but can not demonstrate 12 months residence will also have no access to legal aid whatever the need. They may be renting in the private sector and exploited by rogue landlords and they will have no protection against harassment, unlawful eviction or squalid conditions. They may be homeless and refused accommodation by a local authority and they will go unrepresented when they appeal.

These proposals deprive an entire category of people – many lawfully and properly in the UK, many others who would be were the Home Office able to deal with their cases efficiently – from access to the courts. They will increase poverty, exploitation and destitution and are an affront to the rule of law.

Conclusion

In his Ministerial Foreword, the Lord Chancellor says that expenditure on legal aid has “spiralled out of control” and there is the assertion of a loss of public confidence in the system. This is simply not true: expenditure has in fact fallen by 25% in the last decade, with yet further reductions due to the last round of cuts still to be felt. In addition, successive opinion polls have found widespread public support for the scheme, perhaps in recognition that it is a vital safety net, and that most of us are only a short step – loss of a job, a sudden serious illness, eviction from rented accommodation – from needing it ourselves. In May 2013, a Comres poll for the Bar Council found that 68% agreed that “at less than 0.5% of annual government spending, legal aid is a worthwhile investment in our basic freedoms” and only 11% disagreed.

The legal aid system has already been severely cut back and the full effect of the previous cuts is yet to be felt. We fear that the measures, if implemented, will cause many people to be automatically excluded from access to law, and many others could very quickly join them – as loss of a job can lead to arrears and possession proceedings very quickly. We are concerned that in future those who become homeless will face yet further difficulties getting back on their feet.

We are therefore urging the government not to adopt these proposals.

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