

## The Residence Test

### *Effects on Homeless People*

The residence test is due to come in to force on August 4<sup>th</sup> 2014. It will be introduced via Statutory Instrument, pending approval of both Houses of Parliament.

### Summary

#### *What is the issue?*

- The Government is seeking to introduce a residence test that will predetermine who is eligible for legal aid, regardless of personal circumstances.
- The residence test will remove the right to legal aid altogether from anyone who has not been lawfully resident in the UK for at least a year.
- **This means local authorities will be able to abandon those who are fleeing domestic violence, unaccompanied children, and victims of trafficking without legal challenge.**

### Context

#### *Why is Shelter campaigning on this issue?*

As a housing and homelessness charity, we already encounter families who have slept in parks, railway stations or hospitals, or who have even been travelling on night buses to keep warm. Sadly, these changes are likely to 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.

These changes follow huge cuts made under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 that has restricted civil legal aid, affecting housing, debt and welfare cases, and severely reducing the amount of help available to families facing homelessness.

### The impact on Children

#### *How do we protect children now?*

Social services authorities have a duty to protect and accommodate children, with their families, who have no other entitlement to housing or benefits. **This often occurs whilst families wait for their residency applications to be dealt with by the Home Office and are not allowed to work or claim benefits.** Often it is only legal action that forces local authorities to comply with their duty to protect children from living on the streets.

#### *What are the proposed changes and likely effects?*

The Government intends to remove the right to legal aid altogether from anyone who has not been lawfully resident in the UK for at least a year, even including those fleeing domestic violence, unaccompanied children, and victims of trafficking.

Quite simply, this proposal is likely to leave families with children homeless and with no ability to challenge refusals to help them. **These proposals deprive an entire category of people from access to the courts.** They will increase poverty, exploitation and destitution and are an affront to the rule of law.

Even those who have residency – including British citizens – but cannot demonstrate 12 months' residence, perhaps because they have lost important documents, will also struggle to access to legal aid, regardless of their need. These

people are highly susceptible to exploitations by rogue landlords but will have no protection against unlawful eviction, harassment or squalid conditions.

If legal aid were unavailable to people who could not satisfy a test of twelve months' lawful residence and who had been unlawfully denied assistance by the relevant authority, **many families and individuals will be unable to obtain even emergency accommodation, and they would be left to fend for themselves on the streets.**

The inevitable outcome of a residence test for legal aid will be to allow local authorities to adopt unlawful practices. Once authorities realise that solicitors are no longer in a position to take judicial review proceedings in such cases with the help of legal aid, they will be able to turn away homeless applicants without risk of challenge.

The consequences of this change are not only the hardship and misery caused by continuing homelessness for families brought about by unlawful decisions, but also the damage done to public confidence in the rule of law when it becomes widely perceived that there is no accountability for unlawful conduct by authorities.

## Legislation and the residence test

### *How does Shelter help homeless people?*

Every week, Shelter advises families who are facing homelessness, destitution or the possibility of children being taken into local authority care because **authorities are unwilling to comply with their duties under the Housing Act 1996 or the Children Act 1989.** We often need to start judicial review proceedings to ensure that such families have a roof over their head and adequate subsistence.

Many of our clients are not eligible for mainstream assistance under the homelessness legislation (Housing Act 1996) on account of their immigration status. Consequently, when their previous accommodation arrangements break down, **they find themselves homeless and destitute, since they have no recourse to public funds and are not entitled to state benefits.** Often this is compounded by disability, other medical factors and language difficulties.

For those who can't get help from family or friends, their only recourse is to apply to the social services authority for support. Where the household consists of a family with children, they will need to ask the authority to conduct a 'child in need' assessment with a view to providing the family with services under section 17 of the Children Act 1989. Young people on their own will have to apply for accommodation and support under section 20 of the Children Act. For single adults who are "in need of care and attention" because of their medical condition, it will be necessary to ask the authority to provide accommodation under section 21 of the National Assistance Act 1948.

In other cases, our clients will be eligible to apply to the housing authority to perform its mainstream homelessness duties under the Housing Act 1996, but they may have difficulty in proving their eligibility. By way of example, **many nationals of countries which are members of the European Union will have a right of residence in the UK by virtue of their employment or self-employment, or through five years' continuous lawful residence, but will struggle to convince the local authority of their status.** The question of their lawful residence is therefore at the very core of the case.

We also encounter people who have been lawfully resident in the UK for years, but who do not presently have the documents in their possession to prove their status. **The most common examples of this problem occur where the person's passport and other paperwork are with the Home Office;** or where a household have been illegally evicted by a private landlord and find that their personal papers have been lost or are locked inside their former home.

Even where a household is quite clearly eligible for assistance under the 1996 Act, in our experience **housing authorities will frequently refuse such assistance at the point of application for spurious reasons such as a lack of specific identification documents or on the basis of a cursory and inadequate enquiry into their circumstances.** The Local Government Ombudsman has had reason to express concern about the prevalence of such 'gatekeeping' practices in certain authorities ([Homelessness: how councils can ensure justice for homeless people](#), July 2011).

## Conclusions

### *What are the key points?*

- The introduction of a residence test will deny access to justice for some of the most vulnerable in society, including British nationals returning from abroad
- Social service authorities will no longer fear judicial reviews being brought by solicitors, who are no longer funded by legal aid, leading to increased refusals
- More families, regardless of whether members have suffered trafficking, abuse, violence and exploitation, will be street homeless

## Shelter Case Studies

Below are some typical case histories of our clients' experiences. In cases A and B, brought with the benefit of public funding, the client would not have satisfied the residence test and, if such a test were in place now, we would not be able to pursue their cases. In cases C and D, the clients would satisfy the residence test, or are likely to satisfy it, but would struggle to prove it within the urgent time scale required if homelessness is to be averted.

### *Client A – Trafficked abuse victim with baby refused help*

A young woman with a 2 month old baby approached Shelter for assistance. She had been trafficked by her abusive father when she was 16. After being sold to a woman in Manchester and forced to work as a prostitute she managed to escape to London. She began a relationship with a man and 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 has now been granted Leave to Remain in the UK. **In future, the authority could not be ordered to accommodate them**, even though a child is involved, because the mother would not pass the residence test.

### *Client B – Mother, a victim of domestic violence, fighting to keep her child*

Ms B and her five year old daughter S were evicted from private rented accommodation. **Having fled domestic violence from her husband, who was serving in the British Army, Ms B, a Jamaican national, had made an application for leave to remain in the UK.** Her daughter was a British citizen and the father had obtained a visiting order, whereby Ms B was prohibited from taking the child out of the country without permission.

Following their eviction, Ms B was initially taken in by friends, but they were unable to keep them. She had no money and spent the daytimes at her daughter's school or at the local hospital, to keep warm on winter days.

Ms B approached social services for assistance. However, the authority refused to accommodate mother and child together, on the basis that (in their contention) their only duty was towards the child. They proposed to place S in foster care and stated that Ms B could visit her there.

Separating mother and child could have been highly detrimental to the wellbeing of the child. A view corroborated by S's head teacher, who stated in a letter in support of Ms B's case:

*“Separating this family would be very damaging to the child and grossly detrimental to the child's personal wellbeing. There are absolutely no child protection issues in fact, quite the opposite, [Ms B] is obviously a very good*

*parent who has nurtured and cared for her daughter and produced a hardworking, high achieving, well-mannered and motivated little girl. Any question of separating mother and daughter would be catastrophic for both.”*

We obtained permission for judicial review of the council's decision, on the basis that the authority should provide accommodation and support for the child and mother together pending the outcome of Ms B's application for leave to remain. **In the course of the proceedings Ms B was granted indefinite leave to remain and became eligible for assistance from the housing authority under the homelessness legislation.**

***Client C – Working EU national with children refused help by Council***

A Council decided that Ms C, a Dutch citizen working in the UK, and her two dependent children, were not eligible for assistance, despite being homeless. Shelter helped her to contest the decision on the basis that she had employment which was “genuine and effective”, and therefore had a right to reside as an EU worker. The decision has since been withdrawn by the Council. Ms C and her children are now in interim accommodation pending full investigations, and therefore street homelessness has been prevented for now. **The client may not have been able to receive legally aided advice if the residence test were in effect.** The question of her right of residence is the central issue in the case itself, and even production of her passport or other identification documents would not have established whether she was lawfully resident.

***Client D – UK national suffered domestic abuse and has son taken into care***

Ms E is a UK national who had been living in Cyprus with her two children and husband. She suffered domestic violence, and fled back to the UK, where she found herself homeless with her youngest son. Her son was subsequently taken into care. She has applied for homelessness assistance in order that she be able to resume caring for him, but she will not be considered to be in priority need unless there is a reasonable prospect of him returning to live with her. She has been referred for family law advice in relation to regaining custody of her son. In view of her absence from the UK, she would, under a residence test, be obliged to produce documentary evidence of 12 months’ lawful residence in the past in order to apply for legal aid for advice both about housing and about child care.