

# Briefing

## Constitutional affairs select committee. Inquiry into legal aid

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# Shelter

Shelter is the UK's largest independent provider of housing advice and legal services, helping over 100,000 people every year. In addition to Shelterline, our national 24 hour housing helpline, and Shelnernet, our web-based information and advice resource, we provide a wide range of services including:

- A national network of more than 50 housing aid centres (HACs) and projects providing information, advice and advocacy - we have more contracts with the Legal Services Commission (LSC) than any other provider in the housing field.
- The National Homelessness Advice Service (NHAS) which provides second tier advice to people with housing problems through citizens advice bureaux (CABx).
- Specialist advice and consultancy on housing law and procedure for legal practitioners throughout the country via the LSC's Methods of Delivery pilot.
- A team of solicitors with experience in providing representation at every level of the court system and expertise in representing clients involved in possession actions via county court duty schemes.
- A Housing Rights Promotion Project funded by the LSC to increase awareness of housing rights in the North West and a wide range of publications and training aimed at other practitioners and professionals throughout the advice field.

## Introduction

Shelter welcomes the Constitutional Affairs Committee's inquiry into legal aid. The availability of high quality publicly funded legal and advice services is essential to meet the Government's objective of increasing access to justice. In our experience, poor access to advice and legal representation means that people are often unaware of their rights and how to enforce them and do not get the help they need to resolve their problems.

Legal and advice services also have a critical role to play in helping to meet the Government's wider social policy objectives. Lack of access to advice has been identified as a key factor in creating and maintaining social exclusion<sup>1</sup> and, as the report *Paths to Justice*<sup>2</sup> found, those who are socially excluded are the least likely to take action to resolve their problems. In short, advice and representation are essential public services and it is vital that they are adequately funded and given sufficient prominence within the Government's overall spending priorities.

This inquiry arrives against a background of growing concern about access to publicly funded advice and representation and debate about the future viability of the Community Legal Service (CLS). The CLS encompasses a wide range of service providers including advice agencies, law centres, CABx and community groups, as well as solicitors in private practice. Shelter is a key stakeholder in, and supporter of, the CLS. We believe it has had

some success in improving the co-ordination of service delivery, driving up quality and promoting some innovative new approaches to providing services. However, we share the concerns of other providers about emerging gaps in provision and the implications of this, particularly for the poorest and most excluded people in society.

In addressing the terms of reference of the inquiry, our evidence focuses on the housing field. Housing is one of the most important areas of the law identified by the Government among its priorities for public funding. Research suggests that more than 1 million adults experience housing problems requiring a legal solution every year.<sup>3</sup> Housing law is particularly complex and unlike other social welfare issues, which can often be settled using other mechanisms such as mediation or tribunals, disputes often require litigation in the courts.<sup>4</sup> The availability of specialist legal representation is therefore critical to enable people with housing problems to obtain access to justice and enforce their rights.

More fundamentally, access to housing advice and representation also has a critical role to play in preventing homelessness. Much of Shelter's work - defending possession actions, securing emergency help under the homelessness legislation or resolving disputes between landlords and tenants, for example - relies on being able to obtain speedy and effective legal back up. Our legal team advise on well over 5,000 cases annually. However, in the majority of cases where legal action is needed, advisers rely on being able to refer cases to specialist solicitors at a local level. Gaps in provision therefore have very serious implications - in some cases, access to legal representation can, literally, make the difference between whether or not a client ends up on the streets.

### **What evidence is there of the emergence of 'advice deserts'?**

Shelter shares the concerns of other providers that it is becoming more difficult to access legal representation. In its annual report for 2001/02, the LSC highlighted a 6 per cent fall in CLS suppliers over the calendar year and suggested that up to 50 per cent of solicitors firms are 'seriously considering stopping or significantly reducing publicly funded legal work' due to concerns about remuneration and profitability. These concerns were echoed in the Law Society's report *Access Denied*<sup>5</sup> which anticipated a dramatic fall in the number of solicitors in private practice undertaking publicly funded work on social welfare issues over the next few years.

The second highest anticipated fall identified in the Law Society report - 38 per cent - was in the housing field. Shelter's experience backs these concerns up. It is important to place this in context - there have always been parts of the country, particularly in rural areas, where solicitors have been in short supply. However, the evidence from our advisers is that, in many parts of the country, they are finding it increasingly difficult to find solicitors to whom they can refer clients. We are also concerned that many solicitors are using up

their allocation of matter starts before the end of the financial year, leaving them with no capacity to take on new cases.

A snapshot survey of our housing aid centres last year highlighted these difficulties. Some of the findings are summarised below:<sup>6</sup>

- In London, where housing and homelessness problems are particularly acute, our advisers report that it is becoming increasingly difficult to find solicitors to take on routine cases and 'virtually impossible' to find them in emergency cases. In some cases, this means that clients are being forced to sleep on the streets.
- There are no firms with housing contracts across the whole of Gloucestershire or in North Somerset. Although some firms are able to provide general advice, they are not able to provide the level of expertise needed by most of our clients.
- In Bristol, there is now only one firm carrying out specialist housing work - five years ago, there were at least six firms practising in the housing field.
- There is only one franchised firm specialising in housing in Kent and none at all in Medway.
- Provision is patchy in large parts of the West Midlands - in Dudley, for example, there are no firms offering specialist housing advice.
- There are no housing solicitors in Northamptonshire - cases are referred to the single solicitor with housing expertise in Milton Keynes.

The pattern that emerges is one of over-stretched firms struggling to meet demand and significant gaps in provision - and our evidence is that the situation is worsening.

### **What action is being taken to ensure that there is access to legally aided advice in all legal specialisms?**

The LSC has been proactive in piloting new services to plug gaps in provision through the Methods of Delivery pilot. Shelter has been closely involved in the development of three of the pilots including the Specialist Support pilot which enables 6,500 solicitors firms, law centres and other agencies to access the support of our Legal Team via telephone advice, casework consultancy and training.

The evaluation of the pilot found that it had been successful in increasing access and improving quality by speeding up the progress of cases, enabling local practitioners to take on more complex matters and reducing the number of unwinnable cases being pursued. Based on our involvement in the pilot, Shelter strongly supports the use of 'second tier' services as an effective means of increasing access to high quality specialist advice.

Shelter is also currently exploring the potential to establish small teams of solicitors to provide legal back up to advisers on a regional basis. We believe a more regionally-based approach could help ensure effective co-ordination and a more even spread of provision.

### **How can the Department of Constitutional Affairs and the Legal Services Commission provide incentives for legal aid practitioners to continue legally aided work?**

Clearly, the key issue here is remuneration. The evidence set out above shows how solicitors are pulling out of the market due to the impact of the long term decline in legal aid remuneration. The failure to even uprate funding for contracted providers in line with inflation in 2003/04 was particularly damaging - the annual RPI linked increase should be restored with immediate effect.

It is important to stress that this impacts on the not-for-profit sector as well as private practitioners. Along with other providers, Shelter's experience is that we are losing money on some of our LSC-contracted work. We believe that contracts should be fully funded in line with the model set out by the Association of Chief Executives in Voluntary Organisations (ACEVO). We would also welcome a reduction in some bureaucratic procedures (such as the requirement to provide proof of eligibility when clients are very vulnerable, for example) and lighter touch auditing for agencies with a proven track record in providing high quality advice.

Finally, like other areas of social welfare provision, the availability of funding for housing work has been squeezed by the growth of the budget for criminal and immigration work - this also needs to be addressed.

### **Is the perception that legal practitioners are moving out of legally aided work correct?**

As set out above, Shelter's evidence is that solicitors are pulling out of housing work, especially those who previously retained a limited housing specialism as part of a wider practice. We share the concerns of other advice agencies that this is part of a worrying trend across the social welfare field.

Can the requirement for legal aid be reduced by the resolution of some legal issues on a more informal basis, through the citizens advice bureaux, long distance services or otherwise?

As set out above, Shelter believes that second tier support services have a key role to play in plugging gaps in service provision. We also believe that the Internet has an important role to play in providing information and basic advice to both clients and practitioners. More broadly, we believe that while - for the reasons set out above - access

to legal representation is critical, alternative methods of dispute resolution also have a key role to play in resolving problems before they get to court.

For example, Shelter has advocated the use of arrears resolution services in rent arrears cases.<sup>7</sup> The number of social landlord possession actions doubled between 1994 and 2001 and now stands at around 150,000 per annum.<sup>8</sup> However, outright possession is granted in only around 30,000 cases, suggesting that many of them could be dealt with more effectively without recourse to the courts. Arrears resolution services would work with landlords and tenants to stabilise arrears by resolving benefits issues,<sup>9</sup> implementing a repayment plan, providing debt counselling and advising tenants on their rights and responsibilities.

We believe that this kind of early intervention would be effective in preventing homelessness and would provide a cost effective alternative to court action.<sup>x</sup> The services could be provided by independent advice agencies and funded through a joint initiative between the DCA and ODPM.

Shelter also strongly supports the use of county court duty schemes as a final safety net for defendants in possession cases - we believe that these services should be available in all county courts.

### **Would a salaried service or the provision of law centres be a viable solution to lack of provision, either in areas without sufficient practitioners or elsewhere?**

Law centres provide high quality services and have enjoyed a revival since the CLS was established, although they still often suffer from funding difficulties. More generally, Shelter supports the current 'mixed economy' of provision in civil work. We believe that not-for-profit providers often bring significant benefits in terms of broader organisational expertise and understanding, a more integrated approach to resolving problems and an ability to access alternative funding mechanisms. We would strongly oppose the formal separation of the advice and representative functions - we believe this would, in many cases, impact on the quality of service provided and reduce choice for the consumer.

### **What would be the comparative funding costs of a salaried service?**

Shelter is not in a position to comment on this question, although we note the mixed evidence presented so far on this.

End Notes:

- 1 Legal and advice services: A pathway out of social exclusion, LCD/Law Centres Federation, 2001
- 2 Professor Hazel Genn, Paths to justice: What people do and think about going to law, 1999
- 3 Ibid
- 4 The evaluation of the Methods of Delivery specialist support pilot found that practitioners identify housing as the area of the law where they need the most support - 80 per cent of those needing telephone support service state that this is due to the complexity of the case.
- 5 Ibid
- 6 The findings reflect the position at the time of the survey in May 2003.
- 7 The More than a roof report [DTLR, 2002], which set out the Government's strategy for tackling homelessness, committed it to investigating the cost effectiveness of arrears resolution services.
- 8 Statistics distinguishing the reasons for possession being sought are not collected, although it is estimated that rent arrears account for around 90 per cent of actions.
- 9 Shelter's evidence is that problems with the Housing Benefit system is the single biggest cause of rent arrears.
- 10 We estimate that the cost to a local authority of evicting a tenant for rent arrears is between £2,000 - £3,000 in unrecoverable rent arrears, housing management costs, legal fees and the cost of a subsequent homelessness application.