



## Legal Aid, Sentencing and Punishment of Offenders Bill

Evidence submitted by Shelter to the HoC Public Bill Committee

### SUMMARY

1. Shelter welcomes the opportunity to give evidence to the bill committee. **We are a leading national provider of specialist social welfare law advice for housing, welfare and debt cases** and these issues will be the focus of our submission. **Shelter helps over 25,000 people each year under legal aid contracts.** We employ over 200 advisers and 40 solicitors to give legal aid and other advice to the public and provide this through a national network of face-to-face services, a free housing advice line open 7 days per week, and our website ([shelter.org.uk/getadvice](http://shelter.org.uk/getadvice)). Our work in this field gives us considerable expertise to comment on the government's plans for the reform of legal aid.
2. This bill will impose devastating cuts on legal aid funding for specialist advice to help people solve their housing, debt and welfare benefits problems at an early stage so that issues are less likely to develop into expensive court proceedings. **For the sake of saving just £49m, huge knock-on costs will be generated by these cuts.** Legal aid for social welfare issues only constitutes 5% of the total cost of legal aid but is being disproportionately hit, losing over a third of its budget.
3. The Government has argued that the UK legal aid system is comparatively expensive in relation to other countries, but this is extremely misleading. As the Justice Select Committee and the Council of Europe have said, **when all judicial costs are taken into account England and Wales are about equal to the European average.**<sup>1</sup>
4. Despite receiving some 5,000 responses to its recent consultation, the majority of which opposed the changes, the Government is putting forward its original proposals largely unchanged. Shelter is very disappointed that the Government has decided to press ahead with these reforms despite the enormous body of evidence showing that **they will leave the most vulnerable people in society defenceless, will end up costing the state more in the long run and will place significant extra strain on MPs** as more people will come to surgeries seeking help with complex housing and welfare issues.

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<sup>1</sup> "Council of Europe data on judicial systems across Europe illustrate that when the costs of courts, public prosecution services and legal aid are combined, the budget in England and Wales as a percentage of the GDP per capita is equal to the average."  
<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmjust/681/68102.htm>

## EVIDENCE

### Overview of key changes

5. **Housing:** 52,000 cases will be removed from scope (40% of all cases). We are pleased that the Government has amended its original plans and will now allow people facing illegal eviction to be able to get help (though the nature of that help has been restricted) and continue to fund legal aid for housing matters before possession proceedings are issued. However, this has been limited to only those cases where the landlord or lender has sent letters threatening action. This means that legal advisers who identify an arrears problem at an early stage **cannot engage in preventative work** but will have to wait for the situation to become more acute, with all the knock-on costs and adverse human impacts this will entail.
6. Other areas of housing law are severely restricted or removed from scope altogether. Restrictions on claiming legal aid for disrepair cases, on claims for damages arising from illegal evictions, and on dealing with landlord and neighbour harassment will all make it **much more difficult for vulnerable tenants to hold rogue landlords to account**.
7. **Welfare benefits** (including housing benefit): all cases (135,000) will be removed from scope. Where a benefits issue has led to arrears and the threat of possession, legal aid will be available to address the possession proceedings, but it will not be available as a preventative measure or to address the underlying benefits problem that led to proceedings. This is happening **alongside radical upheavals to the housing benefit system** and therefore at a time when more people are likely to need support through the transition.
8. **Debt:** all cases (105,000 or 74%) will be removed from scope except where a person is at immediate risk of losing their home from rent or mortgage arrears. However, as with housing matters, that help is only available at a relatively late stage.
9. The bill is **part of a broader package of reforms to legal aid** which includes plans to make obligatory the use of a telephone gateway for certain categories of law (community care, debt, discrimination and special educational needs). This shift away from face-to-face advice, including for vulnerable people who are the least able to access telephone services, is unwelcome – though we welcome the government's decision to exempt housing cases from the mandatory telephone gateway. On top of this there are also plans to reduce fees paid to providers and raise eligibility levels for legal aid.

## Principles

10. It is a fundamental principle of justice and fairness that people should not be excluded from accessing the justice system simply because they cannot afford to pay for legal help. Legal aid funds legal advice and representation to help people understand and protect their basic rights and get a fair hearing. It helps them to access the court process to sort out disputes and to solve problems that may otherwise lead to poverty and social exclusion. **Legal aid is a crucial part of the preventative housing safety net**, providing support to people at times of need so that bad situations do not become disasters.

## Consequences

11. Far from encouraging early resolution of legal problems, **these cuts will encourage unnecessary court proceedings** as people are denied the legal advice that allows them to resolve problems outside of the courts. The reforms will also increase the number of litigants in person (thereby increasing court time and expense) and for many people they will mean there is no access to resolution of legal problems.

### *Less opportunity for early intervention*

12. When housing, debt and welfare problems arise, obtaining advice at an early stage can be crucial in resolving them before they escalate. One of the Government's arguments for making these reforms is that legal aid is being used to fund help that is not legal in nature. This is not the case: the system is extremely rigorous and there has to be a legal issue at stake as a first condition for receipt of funding. The belief that problems only become legal in nature once they reach the stage of court proceedings is mistaken and potentially costly. **Early intervention by legal professionals is often highly effective in resolving legal problems before they escalate to crisis point.** In terms of welfare benefits, the situation is even worse because all cases will be removed from the scope of legal aid even if they have gone to tribunal.

### *Threats to the viability of the advice sector*

13. The removal of so much advice work from the scope of legal aid will destabilise the advice sector and make the current business plans of many providers unworkable. It will not be economically viable for many providers to continue giving advice only in the areas that would remain within the scope of legal aid. The government's own impact assessments anticipated that **the not-for-profit advice sector would lose around 77% of its legal aid funding.** That the cuts to scope are taking place on top of a 10% across-the-board cut in fees means that many providers will be forced to close. This will lead to a widespread loss of expertise and the creation of more advice 'deserts' – whole areas of the country where no legal aid advice is available at all for vulnerable people who need help.

14. The Ministry of Justice has pointed to alternative sources of advice, such as local authority in-house services and organisations such as Shelter. However, we do not believe this is realistic. **We expect to lose about 45% of our income for legal aid work.** At a time of economic difficulty our income is highly unlikely to increase sufficiently to plug the gap. While it is the case that we are investing in the growth of our voluntary-funded helpline, the reality is that we are also facing unprecedented demand for advice services. Given the cuts to local government funding we highly doubt that local authority in-house advice services would be able to absorb the increased unmet need these proposals would create. The consequence of this is that **many more people will turn to their local MPs and councillors for help** and there will be much reduced scope to refer these cases on to local advice agencies and solicitors.

15. The £20m of new funding for the advice sector announced by the Secretary of State on 29<sup>th</sup> June is welcome but we must emphasise that short-term funding for general advice will not be a substitute for the sustainable long-term funding of specialist legal help. A properly funded legal aid scheme is the best and most cost effective way of ensuring that people have recourse to the justice system when they encounter legal problems.

### **The economic case for legal aid**

16. Social welfare law **only uses around 5% of the total legal aid budget** (around £136m of a total £2.1bn pot). It provides extremely good value for money but will be disproportionately hit by the cuts **with a loss of £49m**. Research by Citizens Advice has shown that:

- For every £1 of legal aid expenditure on **housing** advice, the state can save **£2.34**.
- For every £1 of legal aid expenditure on **debt** advice, the state can save **£2.98**.
- For every £1 of legal aid expenditure on **benefits** advice, the state can save **£8.80**.<sup>2</sup>

### **Ways forward**

17. We urge the Government to look again at the alternative solutions proposed by the Law Society suggesting savings of £384m which can be made across the justice system instead of cuts to legal aid which will only save £49m.<sup>3</sup> Shelter is calling for all housing, welfare and debt cases to be brought back into scope to avoid extra costs stacking up for Government further down the line, increased pressure on over-stretched MPs and local authorities and vulnerable people being left to tackle their problems alone.

### **Further information**

Please get in touch with 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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<sup>2</sup> *Towards a business case for legal aid*, Citizens Advice, 2010

<sup>3</sup> <http://www.lawsociety.org.uk/influencinglaw/policyinresponse/view=article.law?DOCUMENTID=434634>