



Legal Aid, Sentencing and Punishment of Offenders Bill

Briefing for House of Lords 2nd Reading Debate – Monday 21st November

The Legal Aid, Sentencing and Punishment of Offenders Bill will impose **devastating cuts on legal aid funding for specialist advice that helps people to solve their housing problems**. Cuts to legal aid for housing issues will take 52,000 cases per year – about 40% of all housing work - out of scope, making an annual saving of £10m in the short term but increasing costs to the taxpayer down the line and denying access to justice for the most vulnerable in our society.

The Bill drastically reduces the scope of legal aid, for example by:

- Restricting the ability of vulnerable tenants to protect themselves from unscrupulous landlords;
- Removing funding for help with housing benefit (HB) issues. This means that, even where advisors can still assist (for example with possession proceedings) we will not be able to resolve the underlying issues which are the cause of the arrears;
- Curtailing the extent to which people will be able to resolve interrelated housing, debt and welfare problems, not allowing advice to be given on the underlying cause of the problem.

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 Bill will **reduce the opportunity for early intervention**, which is often highly effective in resolving housing and other social welfare problems before they escalate to crisis point.

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. This **shift away from face to face advice, including for vulnerable people who are least able to use the telephone services**, is unwelcome. There are also plans to raise people's contribution payments, making legal aid less accessible. This is on top of recent reductions in the fees paid to providers, making it increasingly unviable for overstretched advice agencies to operate. The combined effect of these reforms is to leave a whole swathe of low income and vulnerable people with no way to resolve their legal problems.

A green light to rogue landlords

The legal aid cuts will make it significantly harder for tenants dealing with disrepair and tenancy disputes to get legal help. Most landlords behave professionally, but these changes will **make it much easier for the minority of unscrupulous landlords to take advantage of vulnerable tenants** and give the whole sector a bad name.

Over 15% of people now rent privately, an increase of over 40% in the last five years. This will increase as changes in the Localism Bill allow local authorities to discharge their duty to all homeless households by placing them in the private rented sector, while the new cap on benefits and the reductions in Local Housing Allowance will force many more families into the bottom end of the private rented sector.

In 2010, Shelter conducted a survey of environmental health officers and found over 90% of those who deal directly with private renters had encountered landlords harassing or illegally evicting tenants. Results from the survey, conducted through the Chartered Institute of Environmental Health (CIEH), paint a very worrying picture of the massive impact this small group of landlords are having on private renters.¹ It is not only private landlords who evict unlawfully or fail to carry out repairs appropriately; Shelter also advises people in the social sector with these problems. But once this Bill is passed, far **fewer tenants across the board will have the option of redress when landlords do not uphold their legal responsibilities**. The most effective remedies against rogue landlords will be cut in the Bill as it stands.

Disrepair

Landlords have a legal obligation to keep their properties, and the installations and heating systems within them, in good repair. However, sadly, poor conditions are very prevalent in private rented accommodation. Figures from the Department for Communities and Local Government show that **40.8% of private rented dwellings do not meet the Decent Homes Standard**. When landlords fail to maintain their properties the most common remedy is to ask the courts to oblige the landlord to carry out the works and to compensate the tenant accordingly.

Changes in the Bill will mean that tenants will only be able to claim legal aid to secure injunctions to get repairs done, where a 'serious risk of harm to the health or safety' of the tenant or a family member is involved. They will not be able to get legal aid for damages claims. Under the current system where damages claims are legally aided, neglectful landlords know that the greater the delay in carrying out the works, the greater the damages award may be, which provides an incentive to carry out works promptly.

Once this Bill is passed, landlords will know they have nothing to lose if they wait until the day before their injunction hearing before carrying out repairs. Landlords will also know that tenants will not receive legal aid to bring claims for damages even if the failure to carry out repairs has caused ill health and caused damage to the tenant's possessions. **This will remove an important deterrent to allowing rental properties to fall into disrepair**. Shelter believes that legal aid should be retained for damages in disrepair cases.

¹ Shelter, in partnership with the CIEH, undertook a web-based survey of CIEH members working in the housing sector. The survey ran from the 8th to 26th July 2010 and received a total of 184 responses. Questions to the survey were not compulsory and the survey received between 120 and 130 responses to the majority of questions. The minimum number of responses was 108. Half of CIEH members who responded to the survey were employed in roles that involve tenancy liaison. Of these, 90% had encountered examples of landlords engaging in the harassment or illegal eviction of tenants

Rachel

Rachel and her family lived in a flat rented from a social landlord for over ten years. From day one she had begun to experience the effects of disrepair. The property above had been boarded up, but was not particularly secure. Vandals broke in and caused damage resulting in water leaking into Rachel's flat causing damp and water damage, including one occasion when water came in through the light switch in her daughter's bedroom, flooding the stairs and the hallway and leaving the room without light for years.

The damp and the disrepair went on for years, including periods with no hot water or heating. As a consequence of repeated flooding the flat was badly affected with mould growth and over time the property started to smell. Rachel's depression worsened and the damp aggravated her son's asthma, causing him to miss school on many occasions. Social services became involved. Both Rachel and the police raised complaints with the landlord but nothing was done to remedy the situation. Rachel's requests to move house were refused. This continued over a period of 4-5 years and it was only when Rachel came to see Shelter that things started to change.

With legal aid funding, Shelter was able to pursue the landlord concerned. At first they refused to accept any liability, but eventually they carried out the works and paid damages, including the legal aid costs. This case therefore had a zero net cost to the legal aid fund.

If the legal aid cuts go ahead, there will be no more legal aid for damages claims. Landlords will be able to delay carrying out repairs until the last minute with no fear of having to pay for the consequences.

Landlord Harassment

The Bill only allows legal aid to be given for an application for an injunction under the Protection from Harassment Act. In practice, understandably, many people do not wish to continue to live in a property if the landlord has harassed them. Often they are afraid and prioritise seeking safer accommodation elsewhere. Therefore, although the injunction can be very important in some cases, it is the damages claim which is of the most practical use in cases of harassment.

On top of the damages mentioned above, the court has the power to award aggravated damages where it wishes to express its outrage at a landlord's bad behaviour and exemplary damages where the landlord has made a profit from his illegal act and the court wishes to reflect its disapproval of that in the damages award. **Damages can act as a real deterrent to repeat offences by a landlord** but once the Bill is passed tenants will no longer be able to seek damages under legal aid for poor behaviour by landlords except in cases of unlawful eviction. Shelter believes that damages for landlord harassment should remain within the scope of legal aid.

Trespassers

The Bill removes legally aided advice from trespassers so as to prevent squatters from claiming legal aid. However, the current wording of the Bill means that people who are unknowingly trespassing or who become trespassers will also be excluded from receiving legal advice.

This might include:

- Family members of a tenant who continue living in the property after the tenant has died;
- One half of a separating couple who had a joint tenancy, where the other partner leaves the property and gives notice to the landlord terminating their tenancy;
- A tenant of a landlord who has defaulted on a mortgage leading the mortgage company to seek possession.

These people are not squatters and may have been living in the property lawfully and paying rent for many years, but the way the Bill is drafted would remove any right for them to seek legal aid when changing circumstances render them, legally, 'trespassers'. Shelter believes legal aid should be available for people to obtain advice where their right to occupy their home has been terminated for reasons entirely beyond their control and for which they bear no responsibility.

Housing benefit

Under the Government's proposals, all benefits work is to be removed from scope. In Shelter's experience, addressing an underlying benefits problem can be vital in preventing people from losing their home. The Government's stated policy intention is to retain legal aid in cases where there is a potential loss of home, but the Bill will prevent advisers from taking early steps to sort out benefits problems which could lead to eviction proceedings.

For many people on low incomes, HB is essential to meet housing costs. Yet through no fault of the tenant, delays in processing claims, wrong decisions or incorrect payments can lead to rent arrears. Unless the underlying benefit problem is resolved, the client often has no hope of ever meeting rental payments and clearing the arrears. At present, legal aid funds both work to defend possession proceedings and work to resolve the benefits matter that is the cause of the problem.

The exclusion of all benefits work from the scope of legal aid will tie the hands of advisers who are trying to prevent homelessness.

MOJ officials have said that 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, 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. The consequences of advisers not being able to carry out this work are that the courts will have more adjourned hearings rather than having cases resolved; and ultimately be compelled to make possession orders because there is no-one to resolve the benefits issue.

This will cause unnecessary distress for tenants, is inefficient as far as the courts are concerned and will result in greater costs to the taxpayer in the long run. Shelter believes that the Bill should be amended to allow HB work to be carried out so that homelessness can be prevented and so that the courts do not become clogged up with cases which could be resolved out of court.

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 still not have been resolved. Had he not had this help, George may well have lost his home.

The telephone gateway

The Bill enables the Secretary of State to establish a mandatory telephone gateway for people who wish to access legal aid services. **Shelter supports an expanded telephone advice service but we oppose it being mandatory.** As a provider of telephone advice services we recognise that telephone advice can provide speed and flexibility for those who are not able to access face-to-face provision, and that it can help to plug the gap in advice 'deserts' where there is no alternative provision. However, telephone advice is not appropriate for everyone.

The gateway will adversely impact on the most vulnerable clients for whom telephone advice is inappropriate. Urgent cases and cases with complex issues or large amounts of documentation will be difficult to resolve over the phone. Clients who do not speak English will particularly struggle with accessing advice in this way. Research by the Legal Action Group has shown that the groups most likely to experience a social welfare law problem are also those least likely to use a telephone helpline or be able to travel far to access advice². **The mandatory gateway is likely to put many people off legal advice at all, meaning that their problems will be left to become more complex and expensive for the state to resolve further down the line.**

The telephone gateway will have significant implications for sustainability of local services. Local advice agencies are embedded in communities and their local knowledge and involvement can often be crucial to resolving client cases. Advice agencies also use their local knowledge and local contacts to work with local authorities in the development of good practice. The shift to a central telephone gateway does not seem consistent with the Government's wider localism strategy and belief in the importance of local decision-making.

Further information

Please get in touch with Shelter's Public Affairs Manager Anne Baxendale by email on anne_baxendale@shelter.org.uk or by telephone on 0844 515 1182.

November 2011

² Social Welfare Law: what is fair? LAG, 2010 <http://www.lag.org.uk/Templates/Internal.asp?NodeID=93529>