



LEGAL AID – HOUSING

Legal Aid, Sentencing and Punishment of Offenders Bill – Clause 8, Schedule 1 ***Briefing for Commons committee***

The Legal Aid, Sentencing and Punishment of Offenders Bill will impose **devastating cuts on legal aid funding for specialist advice to help people 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.

Legal aid forms a crucial part of our justice system, funding legal advice and representation to help people understand and protect their rights and to 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. The Bill drastically reduces the scope of legal aid, for example by:

- taking out damages claims for illegal eviction. These can often act as an effective remedy and deterrent so reducing the opportunity for tenants to pursue these claims risks giving a green light to rogue landlords;
- not funding help with housing benefit (HB) issues until the tenant is on the brink of eviction. This removes the possibility of early intervention to resolve problems before they escalate;
- curtailing the extent to which people will be able to resolve interrelated problems by often not allowing advice to be given on the underlying cause of the problem.

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 affordable, and for 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.

The reforms will **place significant extra strain on MPs** as more people will come to surgeries seeking help with complex housing issues. In a survey of MPs conducted by ComRes last year, nearly three quarters (72%) of MPs agreed that housing is one of the top three problems raised by their constituents. There will be far less support available for their case work in the future.

A green light to rogue landlords

The legal aid cuts will make it significantly harder for tenants dealing with disrepair, illegal eviction 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.**

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 but dangerous group of landlords are having on private renters.¹ Other headline results included:

- Almost 100% of environmental health officers say they have encountered landlords who persistently ignore their responsibilities.
- Over 60% of environmental health officers said that more than half of their cases involved people from vulnerable groups.
- Over half of CIEH members believe environmental health problems in the private rented sector are set to get worse in the next year.

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. 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.

It would be wrong to suggest that it is 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. It is the remedies most needed against rogue landlords that the Government is seeking to cut in this Bill.**

Unlawful eviction and harassment

Shelter deals with many tenants who have been victims of illegal eviction and harassment. Our research has revealed that more than 350,000 people have been threatened or lived in a property where their landlord threatened another tenant.

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

The most common legal remedy in these cases is to pursue a damages claim that may have an injunction attached to it. The damages part of the claim compensates the tenant for the loss of the tenancy itself (if the client doesn't go back) and the distress, hardship and suffering caused to the tenant, together with specific things such as the value of clothing or other belongings damaged or thrown out, or the cost of emergency alternative accommodation. The court has additional powers 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 their disapproval of that in the damages award. An injunction can be added to the claim if the client wishes to be reinstated in the property. However, because many people do not wish to return to the same property and to the same landlord who has unlawfully evicted them, it is often the damages claim that is of most practical use in cases of illegal eviction and harassment and this often acts as the greatest deterrent.

Anita

Anita was an assured shorthold tenant of a private landlord. Anita has mental health problems and, as a result of being sectioned under the Mental Health Act, spent several weeks in hospital with her landlord's full knowledge. While in hospital, Anita's landlord phoned her and said he was going to evict her. On discharge from hospital she stayed briefly with a friend with the full intention of returning to her home. However, when she came back shortly after, she found that the landlord had disposed of many of her belongings and claimed she had abandoned the property. Anita approached Shelter for help but was too afraid to return to the property. With legal aid funding, Shelter is assisting her in a claim for damages. The changes would mean that the only legally aided remedy available to Anita would be to seek an injunction to return to her unscrupulous landlord.

The Bill will remove the possibility of getting legal aid for damages-only remedies including the aggravated and exemplary damages that are awarded to deter rogue landlords from bad behaviour. Tenants will only be able to get legal aid to secure an injunction if they wish to be reinstated in the property. The worse the landlord's behaviour, the less likely it is that a tenant will want to be reinstated in the property, therefore the absence of funding for damages claims will mean that **the very worst rogue landlords will go unpunished and their victims will be unprotected and uncompensated for the losses they suffer.**

Richard

Richard has mental health problems. He was unlawfully evicted by the local authority as they alleged he had abandoned the property. Most of his belongings were either damaged or thrown away. However, photographs taken by the housing officer clearly showed he was still residing there at the time of the eviction - family photos on display in the living room, a chess set mid-play, washing up on the draining board, his furniture and books, a pile of ironing.

As a result of the eviction, Richard spent a month on the streets. He was attacked whilst sleeping rough and still walks with a limp. This led to a deterioration in his mental health and post traumatic stress disorder.

By the time Richard sought advice from Shelter, his home had been re-let to other tenants (despite his curtains still remaining at the property). Richard did not want the family to be evicted so did not seek an injunction to be reinstated. He did however start a substantial claim for damages. As a result, the local authority has offered him an alternative secure tenancy and has accepted liability for unlawful eviction. Had the changes in the Bill already been introduced, Richard would not have been able to start a damages-only claim and would almost certainly still be on the streets, or he would be pursuing a claim that would result in the new tenants being evicted.

Disrepair

Landlords have a legal obligation to keep their properties, and the installations and heating systems within them, in good repair. 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 still be able to claim legal aid to secure injunctions to get repairs done, though only where a 'serious risk of harm to the health or safety' of the household concerned is involved, but 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 landlord's failure to carry out repairs has caused ill health and caused damage to the tenant's furniture and possessions. **This will remove an important deterrent to allowing rental properties to fall into disrepair.**

Rachel

Rachel had lived with her family in a flat for over ten years. Almost as soon as she moved in, she began to experience 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 on numerous occasions. Both Rachel and the police raised complaints with the landlord but nothing was done to remedy the situation. Water continued to leak into the brickwork of Rachel's flat causing damp and damage. Over a period of 4-5 years, the floods continued, including one occasion when water came in through the light switch in her daughter's bedroom, flooding the stairs and the hallway. The landlord did stop the leak, but didn't repair the light fitting, leaving the room without light for years.

Over time the property started to smell as a consequence of repeated floods. Rachel's depression worsened and the damp aggravated Rachel's son's asthma, causing him to miss school on many occasions. Social services became involved.

The damp and the disrepair went on for years, including periods with no hot water or heating. The flat was badly affected with mould growth. The problems were reported repeatedly to the landlord but 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, agreeing to pay 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.

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 will also be excluded from receiving legal advice. For example, Shelter sees cases in which tenants are evicted because someone who has no legal right to rent out the property has issued an invalid tenancy agreement on a property they do not own. The tenants have no way of knowing in advance that a rogue landlord has granted them a bogus tenancy. Tenancy law is complicated and tenancy rights are not easily understandable to non-specialists, therefore legal aid should be available to ensure that low-income tenants can receive advice on their rights in these situations.

Housing benefit

Under Government 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 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. 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.

MOJ officials have said 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.

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.

Please support our call for all housing 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

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