

Briefing on changes to Legal Aid

Legal Aid, Sentencing and Punishment of Offenders bill
Second reading briefing, 29 June 2011

A broad range of organisations and members of the public are deeply concerned about the Government's planned changes to legal aid. The Green paper consultation in February received an unprecedented 5000 responses - 90% of which disagreed with the proposals. Yet, **the Bill brings forward changes to legal aid virtually as planned.**

Key concerns

Over 650 000¹ of the poorest and most vulnerable people will not be able to get the vital advice and representation they need with serious but everyday problems as a result of the cuts to legal aid, which target frontline services provided by modestly-paid legal aid solicitors and charities².

No legal aid will mean no advice for many as other advice services are also being cut³. Pro bono, charities or other advice providers cannot expand to meet this level of need and people on low incomes can not pay for the hidden costs of preparing a legal case, such expert or medical reports (known as disbursements).

Cutting legal aid in this way will cost the state more overall. The plans will remove the best value-for-money advice, where fixed fees of around £200 per case⁴ save the public purse between £2.34 and £8.80 for every £1 invested⁵ by preventing problems spiralling.

Advice saves time, money and heartache for the State, not just the public, by identifying systemic failings in Government services. Giving advice services greater ability to tackle the waste caused by failures in public service administration and decision making must make economic sense. Government departments that cause the problems should contribute towards the cost of legal aid.

People on low incomes will have to face lawyers alone at tribunals and at appeals brought by the opposing party, without even getting advice on preparing their case in many areas, as legal aid is removed. Those who can afford it will still pay to bring large legal teams and choose to appeal decisions repeatedly – including Government bodies with state-funded lawyers.

¹ [Legal Action Group, The Real Impact of Legal Aid Cuts, 2011](#)

² The average salary of a young legal aid solicitor is £25,000 (Law Society); not-for-profit providers will lose three quarters of their legal aid funding (Ministry of Justice).

³ EHRC funding for discrimination advice is ending; Financial Inclusion Fund debt advice is only guaranteed until March 2012; many local authority are reducing funding for advice agencies.

⁴ Fixed fees for Legal Help on welfare benefits, debt, housing, employment, family, clinical negligence and immigration range from £167 - £260 per case.

⁵ [Citizens Advice, Towards a business case for legal aid, 2009](#)

A mandatory telephone gateway will stop the people who need help most getting it. People need face-to-face advice due to their personal circumstances or vulnerabilities, yet initial advice on certain types of problem will only be available over the telephone, irrespective of the person seeking advice⁶.

The proposals will increase the administration and complexity of the legal aid scheme. Complicated definitions on the type of cases legal aid can fund (under scope rules) will create burdensome initial assessments, requiring detailed documentary evidence which many vulnerable claimants will struggle to provide; claimants who have already been mean-tested for benefit purposes will have to prove they have less than £3000 in assets – these are just two of the changes which will add to the administrative burden on claimants, advisers and Government.

How legal aid helps

Here are just two examples of how legal aid changes people's lives. More are available at: www.justice-for-all.org.uk/Our-stories

Employment advice keeps people in work:

A new mother approached a CAB in the north of England as her employer had refused to consider her request to return for 3 days a week following maternity leave. She didn't feel able to return full-time, due to the child care costs and the time she'd have to spend with her baby as a single mum. On the other hand, she didn't want to resign and live off benefits.

A CAB in the north advised her on the Flexible Working Regulations and helped her follow the formal processes to request a part-time return to work. The bureau adviser also helped her prepare for meeting with her employer to negotiate terms. She has since successfully returned to work part-time, and has even secured flexible weekend hours which will make it easier for her ex-partner to spend time with his new child. The CAB adviser was funded through legal aid, which will no longer fund advice on employment problems like this.

Immigration advice allows escape from domestic abuse:

The eldest daughter of a Bengali family, approached a Law Centre because her step-father was abusing her siblings and her mother—locking them in the house, abusing them sexually, beating them, and depriving them of food. Her mother was afraid to approach the authorities, as she did not know what her immigration status was, and she dreaded being deported and separated from her children.

Rochdale Law Centre assisted the family in filing police reports and obtaining the support of social services and also regularized the mother's immigration status so that she could remain in the UK to care for her children. She is now taking English and job-training classes, and her children are receiving counseling and doing well in school. Legal aid will no longer fund advice on immigration problems like this.

Read on:

Appendix 1: The changes to legal aid in the Bill

Appendix 2: Contacts for more information

⁶ Although children will be exempt from having to use the telephone gateway.

Appendix 1: The changes to legal aid in the Bill

Scope: what legal aid will help with -

Legal aid will still be removed for advice on:

- Clinical negligence
- Debt, except where there is an immediate risk to the home
- Education (except as below)
- Employment
- Family law (except as below)
- Housing matters, except where there is an immediate risk to the home or serious disrepair
- Immigration, except in cases of detention
- Welfare benefits

There will be some provision for very limited 'exceptional circumstances', where international law gives a right to legal aid.

What's changed from the Green Paper? The proposals to cut the scope of legal aid have been amended to provide legal aid for Special Educational Needs cases and slightly loosen the tight 'domestic violence' exemption for eligibility for advice on private family law. This will now be 'domestic abuse', allowing just 1000 more cases a year to receive legal aid out of 250 000 family law cases⁷. There are fears this criterion could lead to more allegations of or use of the legal system for redress for domestic abuse.

Eligibility: who legal aid will help -

People on low incomes will be required to pay more towards their legal aid funded cases as changes to eligibility rules will still:

- Raise contribution levels to 30% of 'disposable'⁸ income above £315.
- Require people on means-tested benefits to prove they have less than £3000 assets by removing passporting benefit rules in the capital eligibility test.

What's changed from the Green Paper? Two proposals⁹ to restrict already tight eligibility criteria for legal aid have been dropped, as they would raise very little money and be administratively burdensome.

Mandatory telephone gateway: how people can access legal aid -

There will be a 'mandatory' single telephone gateway and people will not be able to approach a face-to-face service for advice on certain areas of law. Initially phone-only approaches will be for debt, special education needs cases, discrimination cases and community care. This will be extended in phases to cover other areas of law.

The Ministry of Justice already recognise that language barriers, complex documentation, and the stress often involved in seeking advice make a telephone

⁷ Ministry of Justice Impact assessments June 2011

⁸ Tight definitions mean court fines, debt repayments and more must be met from 'disposable' income.

⁹ Proposals dropped are lowering the asset threshold contributions to £1000 & removing the disregard for pensioners with equity in their homes

gateway inappropriate for advice on asylum. Yet people who need advice in the areas of law under the telephone gateway have the same issues.

Appendix 2: Contacts for more information

Justice for All, the campaign for free legal advice, is a coalition of over 3000 charities, legal and advice agencies, trade unions and members of the public. More information about the campaign can be found at www.justice4all.org.uk

Key contacts from our alliance are below who would be happy to provide further briefing on different aspects of legal aid.

[Contact details listed for MPs for the following campaign members:]

Action against Medical Accidents (AvMA)
Advice UK
Citizens Advice
Community Links
Free Representation Unit
Garden Court Chambers
Immigration Law Practitioners Association
Law Centres Federation
The Law Society
LASA
Legal Action Group
Legal Aid Practitioners Group
Liberty
Mind
Mencap
National Aids Trust
National Federation of Women's Institutes
NAVCA
Refugee Action
Release: Drugs, the Law and Human Rights
Resolution, first for family law
Rights of Women
Scope
Shelter
Welsh Women's Aid
Unite the union
Young Legal Aid Lawyers
United Reformed Church