

Legal Aid Reform – the impact of the Legal Aid, Sentencing and Punishment of Offenders Bill.

A paper produced by the Kensington & Chelsea Advice Forum.

Introduction

Every year over a million people get help from civil legal aid. From April 2013, 650,000 people a year who are currently helped through legal aid will no longer be able to access this assistance after the Legal Aid, Sentencing and Punishment of Offenders Bill becomes law. These will be people with common, everyday legal problems such as debt, issues with the benefits system, poor treatment by employers, or experiencing family breakdown and related problems. Their problems will be “out of scope”.

At least 1,250 organisations give advice from many thousands more advice centres and community locations, such as GPs surgeries, housing associations, hospitals or day centres.

Advice charities, such as Citizens Advice Bureaux, Law Centres, Shelter and Advice UK members, are well-known to and trusted by the public. Most of these are members of national networks who provide support, infrastructure and represent the interests of advice agencies and their clients.

There is strong support for free legal advice both from the public and parliamentarians. Legal Action Group research shows that 82% of the public believe advice on common civil legal problems should be available at least to those who earn less than the average national income. It also shows that 1 in 5 people sought advice on housing, employment, debt or benefits problems in the last year, most from an advice charity or phone or internet service.

Advice charities offer advice on a range of issues, but most of the help they provide relates to everyday problems to do with housing, employment, debt or benefits, sometimes referred to as social welfare law. People from all walks of life need advice on these everyday issues at some point in their lives but people on lower incomes are more likely to experience these problems and find themselves in situations which cut across several legal issues at the same time. (*Paths to Justice*, Professor Hazel Genn, 1999.)

Advice covers a spectrum of help; the range can be illustrated as follows:

Information e.g. a leaflet or website	Assisted information e.g. finding the right web page	Generalist Advice – <i>legal advice tailored to individual problems</i>	Specialist Advice – <i>detailed legal advice, including acting on behalf of the client</i>	Representation in a tribunal or court
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In Kensington & Chelsea there are four ‘not-for-profit’ agencies providing advice across this spectrum – the CAB Service, North Kensington Law Centre, Nucleus and Worlds End Neighbourhood Advice centre. All but WENAC currently hold LSC contracts to provide specialist advice although they too continue to provide advice at this level. In the private sector, provision has declined significantly in recent years and there are now only two firms offering help through legal aid, principally in housing and family law – Oliver Fisher & Co, and Alan Edwards & Co., both located in Notting Hill.

Kensington & Chelsea will suffer one of the largest reductions in legal aid funding in London next year at around 85%. In one of the few remaining categories, housing and debt, only 360 fixed fee cases are available for bidding. It is estimated that 300 cases are required to support a single specialist caseworker. The CAB Service, for example, will lose funding for 3.2 posts covering debt and welfare benefits.

Welfare benefit problems

From April 2013 legal aid advice on all welfare benefit matters will be abolished. This includes advice on how to challenge unfair or wrong decisions or inaccurate assessments of personal circumstances made by the Department of Work and Pensions (DWP) or HM Revenues and Customs Tax Credit Office.

Reviewing or appealing benefit decisions involves being able to understand and applying statute and case law, following procedural rules set by the Tribunal and understanding what evidence is necessary to convince the Tribunal to overturn a decision. Specialist benefits advisers have this knowledge and expertise, whilst it would be impossible for most benefit claimants to manage the process on their own.

There is no doubt that the radical changes introduced by the Welfare Reform Bill will increase the already high demand for expert advice in this area. The Bill launched a complete transformation of the entire means-tested benefits and tax credits system

for people of working age. It also made changes to contribution based employment and support allowance (ESA), replaced disability living allowance (DLA) with a new personal independence payment (PIP) and replaced national systems for council tax benefit and the discretionary social fund with reduced localised support systems.

Few would disagree that the benefits system was in need of simplification but an unintended consequence of these changes, to be introduced next year and with much work still to be done on the regulations that cover their practical implementation, will mean that many people will be coming to advice agencies for help and representation. It is also inevitable that those who will lose out as a result of the new arrangements will be turning in desperation to local authority and health services, MPs and councillors, for help that will be difficult or impossible to provide.

Case studies

Mrs M sought advice following the breakdown of her marriage. The tenancy was in her husband's sole name and he claimed the child benefit and tax credits. We made a referral to a solicitor for the divorce, child custody, and transfer of tenancy matters. We dealt with her own claims for child benefit, income support and child tax credit and housing/council tax benefit. So far, a relatively straightforward case. Then HMRC decided that the date of separation had been January 2007 and sent Mrs M an overpayment demand for £18,179. Upon our investigation they said they had taken this date from Mrs M's first phone call to them on 25 March 2010 claiming child tax credit in her own right. HMRC said they had asked her for a date of separation and that she had given them this 2007 date. It transpired that Mrs M had not understood the question and thought she was being asked when the marital difficulties had begun. We thought a written explanation of the matter would result in the overpayment decision being overturned. However, HMRC refused to review the matter and we proceeded to tribunal. The hearing did not take place until 2012. We represented and the client won the appeal. The judge's written decision stated:

' I found the appellant to be an honest and reliable witness. I accept that when she was pressed for a date of separation in her telephone conversation with the respondent (HMRC), the date of 1 January 2007 was given because this was around the time her marital problems started and that the appellant did not understand the question properly.

This means that the appellant and her ex-husband continued to be entitled to tax credits.'

Mrs M was distressed at the marital breakdown; she had 3 children affected by this event and also had to wait for 2 years before the tribunal date with a potential debt of £18,000 hanging over her.

Mr K came for help with a reassessment of his Employment & Support Allowance (ESA) award, and we noticed that he was not receiving the severe disability premium (SDP) as he would be entitled to.

On further investigation we discovered he had not been awarded his entitlement to SDP for 3 years. SDP is an additional payment for those in receipt of a means tested benefit such as ESA, Income Support or Pension Credit, who are receiving either the middle or higher rate of the care component of Disability Living Allowance or Attendance Allowance, and are not living with any non-dependants, nor claiming carer's allowance.

We contacted the JCP on behalf of Mr K and assisted him with the completion of a short form; eventually, after several letters and phone calls, he was awarded backdated SDP arrears of over £6000.

He was also awarded ESA and he was placed in the support group, having been placed in the work related activity group in his previous ESA claim. The additional benefit has greatly assisted him with managing to live a massively improved life.

He was previously struggling to manage financially and this was causing him considerable stress and causing his health to deteriorate.

Debt problems

From April 2013 legal aid advice on debt matters, with the exception of a very small number of cases relating to housing repossession, will be abolished. Debt advice not only covers negotiating offers to creditors, it also includes advice on insolvency remedies, bankruptcy and Debt Relief Orders, disputing a debt, helping clients to use their rights under consumer credit legislation to challenge unfairness or seek time to pay, respond to court claims for payment of debt and challenge the enforcement actions of creditors, courts and bailiffs. This all requires knowledge of consumer credit law, enforcement statute and case law, court powers and processes, insolvency legislation and rules and debtor protections.

In particular, it will be more difficult for people on low incomes to obtain a low-cost insolvency remedy, the debt relief order (DRO). DROs were introduced in April 2009 to provide a low-cost alternative to bankruptcy to people on low incomes and with no

assets. To keep administrative costs of the new scheme to a minimum, experienced debt advisers, including many funded by legal aid, assist eligible clients through the application process. Nucleus and the CAB currently have legal aid funded advisers qualified as approved intermediaries to do this work.

Case studies

Peter had had a good job which he had had to give up in order to care for his wife Louise, who has progressive multiple sclerosis, and their one child, aged 10. They lived in rented accommodation and had no assets. They were getting all the benefits to which they were entitled (Carer's Allowance, Incapacity Benefit, Child Benefit and Child Tax Credits, Disability Living Allowance) and their rent and council tax were covered by Housing/Council Tax Benefit. They had various credit card and store card debts between them and a joint loan with debts amounting to about £13,000 and £10,000 respectively. Peter had been just managing to meet the minimum payments for all their debts using the money they received in disability benefits (which amounted to £541.66 per month). However, Louise's condition had deteriorated and they now needed to be able to pay for a full-time carer.

We advised them that they had two options. Either we could negotiate with their creditors for reduced payments (of £1.00 per month) with the interest and charges frozen or they could each apply for a Debt Relief Order, which is a cheaper and simpler form of bankruptcy for people with less than £15,000 of debt, no savings or assets and less than £50 per month of disposable income. The first option would entail making token payments for the rest of their lives (or until their circumstances improved) and negotiating with constantly changing debt collection agencies, whereas the second option would help them to draw a line under their debts, even though the DRO would be on their credit file for six years and would affect their ability to obtain credit in the future.

It was agreed that by far the best option for them would be for them each to apply for a Debt Relief Order (at a cost of £90 each). On checking their credit files, however, it was found that the balance of the joint loan was shown as £26,000 even though the bank in question had agreed to reduce the amount owing a couple of years ago due to a successful appeal with regard to irresponsible lending and there should only be £6500 still to pay. With joint and several liability, unless amended the loan would bring them both well over the £15,000 threshold. After several letters to the bank, we managed to get a letter confirming that the balance owing was now only £6500 and arranged for their credit file to be amended. Once this was done, they could go ahead with the Debt Relief Orders.

Peter and Louise are now debt free and able to live within their means.

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Pierre is 77 years old and receives Pension Credit. He owns his own studio flat which he bought 30 years ago and the property is now free of mortgage. Unfortunately, Pierre has not been well this past year and had ignored demands for his service charges and major works charges. He does not have sufficient income or savings to pay the demand for £11,000 plus legal costs. He came to see us with a court summons for the following week for a section 146 Notice which would involve him forfeiting his lease to the freeholder of his property.

We advised Pierre that as he is on Pension Credit he is entitled to help with his housing costs and that housing costs include service charges. We wrote to the Pension Service on his behalf to request that he be given help with his service charges and for the award to be backdated to cover the year just ended.

We attended court with Pierre and successfully managed to get relief from forfeiture provided that he complies with various terms and conditions covering payment of the service charge/ground rent and future service charge, which need to be repaid within one year, and that the client should maintain his property in a fit manner and not cause any nuisance to his neighbours. We also managed to get legal costs reduced from £13,000 to £8,500 and to get agreement that we can return to court to ask for a further extension of time to pay should this prove necessary.

This case is still ongoing. We are waiting to hear how much of the debt will be covered by the Pension Service. We have also advised Pierre on his options for raising money to cover the balance of the debt, including the legal fees, his options being either a small mortgage (unlikely to be given due to his age), a secured loan or an equity release scheme and have referred him to Age UK for further advice in this respect. We have also entered into dialogue with the freeholder's representatives to see whether the lease can be extended by 7 years to bring it up to the usual 75 years requirement, the cost of which could be covered by the sums raised by the equity release scheme. We have also referred him to Age UK for help with sorting out his property under their 'decluttering' service and have arranged to attend a home visit to this end.

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Housing Problems

From April 2013 the only housing cases which will qualify for legal aid will be those where a person's home is at "immediate risk" (such as possession proceedings) or where housing disrepair poses a serious threat to health. This means that legal aid will no longer be available to tackle a wide range of landlord and tenant issues where tenants are at a disadvantage, such as the unlawful tactics that landlords and their agents sometimes use to make tenants vacate properties.

It will also not be possible to get legal aid to challenge problems with housing benefit or support for mortgage interest which can undermine housing security, and sometimes eventually lead to loss of home. Early intervention to deal with housing debts before court will also be out of scope.

Case study

Mary, a 52 year old woman with mental health problems, had originally sought advice about credit debts. The debt specialist, whose job was funded by legal aid, had previously negotiated small token payments with all Mary's creditors. Mary had managed to pay her mortgage with help from her daughter Leanne, a lone parent with two children, who also lived with her, until the DWP reduced the amount of support for mortgage interest paid with her income support in October 2010. The interest rate on Mary's mortgage was 6.49 per cent, but the new DWP rate was only 3.63 per cent. Mary came back to the agency for help when her mortgage arrears started to increase again. Mary and Leanne faced homelessness if nothing was done, but Mary could not afford the normal monthly payment, let alone anything towards the arrears. The debt specialist adviser was able to negotiate an interest only mortgage and £2 per month towards arrears enabling Mary, Leanne and her children to stay in their present home. Without advice funded by legal aid, it is probable that Mary and Leanne would have been homeless.

Employment problems

From April 2013 legal aid advice on employment problems and rights will be abolished. This includes advice on unfair and un-notified dismissal, failure to pay proper wages, advice in preparing for an employment tribunal, tackling workplace disputes, and any other advice under employment law.

The Government intend that legal aid for discrimination cases should continue. This is of course welcome as discrimination can often be a factor in dismissal cases and workplace disputes. However, it is very hard to prove.

Case studies

Mr B had worked as a shop assistant in a small local fashion boutique for three years without any paid holiday. When he began to request holiday pay, as was his statutory right, he was dismissed over a trumped-up allegation of theft. We issued

tribunal proceedings for unfair dismissal and back-dated holiday pay, which the shop defended on the basis that Mr B was self-employed and so not entitled to paid holiday. This was plainly incorrect as Mr B had been an employee, and even if he had not been, he would still have been entitled to holiday pay as a worker. The week before the hearing, the employer finally instructed solicitors at which point the claim for £2,500 back-dated holiday pay was conceded. However, the shop continued to claim the dismissal was fair and the case proceeded to a hearing, during which the employer made an offer to settle for £3,000 plus written confirmation that they did not believe Mr B was guilty of theft and also an agreement to provide a positive reference.

***Ms P**, a nursery worker, was dismissed when five months pregnant for allegedly telling a parent that she had force-fed her two-year-old child (it was not alleged that she had actually force-fed the child). The mother, who had made the allegation, was very unclear as to the details including the date of the alleged conversation. Ms P believed the real reason for the dismissal was her pregnancy given her emphatic denial, the vagueness of the complaint, the lack of any witnesses when all staff work so closely together, and her four year unblemished work record. The dismissal under these circumstances was a huge blow as it meant not only facing the birth of her first baby in financial insecurity but also she would not be able to get a reference from the only job she had had since leaving school, effectively ending her career in childcare. The nursery could not be persuaded to change the decision so we issued an unfair and pregnancy dismissal claim at the employment tribunal. This settled the night before the hearing for £15,000, but, more importantly, with an agreed reference which would allow Ms P to continue to work in her chosen profession.*

Family and immigration problems

Closely connected to social welfare law problems are other legal issues such as immigration status problems or family breakdown. Legal aid services on these issues too are to be abolished, unless detention, domestic violence or state childcare and protection is involved. Only North Kensington Law Centre has continued with an immigration contract and it is now the only specialist provider in the Borough. This provision is now under serious threat.

Typically, not-for-profit agencies have referred specialist work on family breakdown to private firms. The main legal aid provider in Kensington & Chelsea is Oliver Fisher & Co (referred to earlier) and they estimate that 250 cases a year will have to be turned away with no source of help other than advice agencies.

Case study

Dawn was a single parent with six children; four of whom lived with her and the other two lived with her ex-partner. She came to the agency for advice about how she could re-establish contact with her two eldest children whom she had not seen for ten years. Although she had parental responsibility and there was no court order preventing contact, the children's father with whom they lived simply refused any contact at all by telephone, letter or in person. He moved the children to the other end of the country, making it difficult for her to take any steps towards contact and she did not even know their address or phone number. Dawn wanted to make contact with her children, but their father was impossible to locate and his actions suggested he was unlikely to agree to mediation. The adviser arranged for Dawn to see a family legal aid solicitor to push for access to her children. Since there was no domestic violence, Dawn would not qualify for any legal aid under the proposed new rules and would be unable to afford legal fees from her benefit income.

Conclusion

When Government consulted on the proposed changes to the scope of civil legal aid, 95 per cent of respondents did not agree with the proposals. Reasons given by around 5,000 consultees for questioning the scale of the proposed scope changes included the complexity of social welfare law problems, the vulnerability of clients, the costs of other services and the lack of other alternative sources of advice or means of redress.

Research carried out by Citizens Advice in July 2010 quantified the knock-on costs of removing legal aid in certain areas. It was estimated that for every £1 of legal aid expenditure on housing advice, debt advice, employment advice and benefits advice the state saves between £2.34 and £8.80. Similar research carried out by the New Economics Foundation for the Law Centres Federation points to the same conclusion with savings up to £10.

Official data shows that 80 per cent of social welfare cases achieve positive outcomes for clients, which can involve savings for other services. It is also clear that clients would not have achieved these positive outcomes on their own.

- The loss of early and preventative advice from civil legal aid, especially on common social welfare issues such as debt, benefits, redundancy and landlord problems, neglects real legal needs and disproportionately hits vulnerable and poor communities.
- This lost work is low cost, but high volume, so 650,000 people lose out in order to achieve limited and questionable savings which may have greater knock-on costs and consequences for public services, the economy and society.
- Local advice services will lose over 77% of their legal aid funding (more in Kensington & Chelsea). This is massively de-stabilising.
- £51 million in total will be lost to non profit agencies.

The recession, welfare reform, benefit caps, the withdrawal of legal aid, pressure on local authority and NHS funding, and much reduced funding from charitable trusts are creating the perfect storm for advice providers in the voluntary sector.

We have always been the agencies of first resort but also, for many years, the last resort, for people facing real and immediate crisis-dismissal, homelessness, debt, ill-health,- often in combination. These people require expert advice and representation delivering practical solutions. The prospect of increasing demand and diminishing resources, with many providers potentially dropping out, is cause for serious concern.

Charles Barber
On behalf of Kensington & Chelsea Advice Forum

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