

Legal Aid, Sentencing and Punishment of Offenders Bill Second Reading, Wednesday 29th June 2011 CPAG Briefing Paper

- The Ministry of Justice is use the Bill to go ahead with plans to “save” £22 million by removing welfare benefits matters from the scope of legal aid funding.
- Social security is the largest subject area being removed from scope after family, with 113,000 cases (2008/09) that will no longer be funded.

Poverty

CPAG considers that advice and representation on welfare rights is a vital tool for combating poverty by helping to maximise the income of claimants. Benefits affected will include those for children and families. Social security is a highly complex and fast changing area of law. Claimants can currently access advice for cases up to the Upper Tribunal which is at the equivalent level to the High Court. Even if the law is simplified by the government’s proposals on welfare reform, this is likely to take years to achieve, and the benefits system will be subject to massive upheaval. In the mean time claimants will be deprived of advice just at the time when they most need it.

Lack of access to advice on benefit entitlement at an early stage will inevitably increase poverty, debt, and homelessness. The government has carried out an Equalities Impact Assessment on removing welfare benefits from scope that in our view is completely inadequateⁱ. However, it is clear even from this cursory assessment of the impact of the proposals that they will impact disproportionately on ill and disabled people and on BAME groupsⁱⁱ. These are also households where children are most at risk of poverty. In our view it is clear that the proposed cuts will hit the poorest and most vulnerable households. They will inevitably worsen child poverty, and impede the governments’ ability to meet the targets in the Child Poverty Act.

We believe that dedicating resources to timely advice is good investment, because it saves the future costs of dealing with the effects of poverty, which are estimated to be £25 billion per year according to research by the Joseph Rowntree Foundation.

The DWP’s first impact assessment on the Cumulative Legal Aid Reform Proposals accepts that: “resource gains might be more than outweighed by the total economic costs”ⁱⁱⁱ and also foresees the possibility of “reduced social cohesion” and “Increased criminality” if disputes cannot be resolved by legal means.^{iv}

The citizen and the state

CPAG won a test case in which the Supreme Court held that over 65,000 letters sent by the Department for Work and Pensions threatening to recover official error overpayments through the courts were unlawful.^v Claimants in some of these cases were able to access advice services to help them to get these overpayments written off. These proposals mean that in future more claimants will be unable to access advice services when the state makes serious errors of this kind.

There is no alternative funding; cuts to local authority grants mean that local authority welfare rights units are also at risk. In the context of public law which is protected from cuts, the consultation paper recognises that:

“In our view, proceedings where the litigant is seeking to hold the state to account by judicial review are important, because these cases are the means to which individual citizens can seek to check the exercise of executive power by appeal to the judiciary. These proceedings therefore represent a crucial way of ensuring that state power is exercised responsibly.”

Yet precisely the same consideration applies to welfare benefits, where the dispute is always between the citizen and the state. The proposed cuts would place the unrepresented claimant at a grave disadvantage in disputes with the state, which has almost limitless legal resources at its disposal.

Legal aid will no longer be available for welfare benefits cases in the Court of Appeal, the Supreme Court and the European Court of Justice^{vi}. Highly complex issues can arise in these cases, including points of European law. Claimants will again be placed at a serious disadvantage in adversarial proceedings against the state. Only a tiny number of cases is affected,^{vii} begging the question why this cut should be made.

The discretionary public funding scheme is also to be cut back to the point where it is unlikely to cover social security cases in future, so claimants will not be able to access this funding either. Welfare benefit claimants, some of the most vulnerable people in the country, will be deprived of any effective access to justice about what most concerns them; their means of subsistence.

The government suggests in its response that benefit claimants can get help from Job Centre Plus and the Benefits Advice Line^{viii}. CPAG has numerous examples of claimants being given wrong advice by these sources. For instance, on our advice line yesterday (Tues 28th June 2011) we had a call about a claimant who had asked the DWP to advise him what effect a part time course of study would have on his JSA claim. The DWP failed to give him any advice at all, telling him that "his six minutes on the advice line were up". He had to ask for advice from the CAB which in turn came to us for help, and we were able to advise on the relevant legal provisions. In a democracy, citizens should be entitled to independent and impartial advice on their rights.

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Notes

ⁱ Reform of Legal Aid in England and Wales: Equality Impact Assessment published 21 June 2011

ⁱⁱ See paragraphs 2.213-2.215 Ibid

ⁱⁱⁱ See paragraph 7.13 Legal Aid Reform: Scope Changes; Equalities Impact Assessment Paragraph 9

^{iv} Paragraph 27(ii)

^v The Child Poverty Action Group v Secretary of State for Work and Pensions [2010] UKSC 54

^{vi} Proposals for the reform of Legal Aid in England and Wales para 4.144

^{vii} 10 cases were funded by legal aid in 2008/9 – see Legal Aid Reform: Scope Changes p 16

^{viii} Reform of Legal Aid in England and Wales, Government Response June 2011, para 105, p. 137