

Children's rights and access to justice: a briefing from JustRights¹

Access to advice, advocacy and legal representation provides vital help for children and young people whose human rights may have been breached and, crucially, the means to enforce rights to education, health and housing. But, as evidence considered earlier this year by the UN Committee on the Rights of the Child showed², cuts to legal aid and restrictions on judicial review mean that when children's rights are breached, children are finding it more difficult to get advice, representation and justice.

Children and young people's access to justice: a significant human rights issue

Legal aid

Since April 2013, the types of cases that can be funded through legal aid have been severely restricted. Many cases have been removed from the scope of legal aid provision³, leaving children without the advice they need to understand or navigate their way through a complex legal system. We're particularly concerned about the impact of the removal of most social welfare, immigration and prison law matters from the scope of legal aid.

During the passage of the LASPO Bill, ministers said an expanded Exceptional Case Funding (ECF) scheme would provide a "safety net". The Government's estimates of the percentage of 'out of scope' cases likely to be readmitted under the ECF scheme were modest⁴ but implied at least 847 children and 4,888 young adults being granted ECF each year. However, this "safety net" has proved inaccessible and unfit for purpose.⁵ The Ministry of Justice's (MoJ) data shows that only 8 children and 28 young adults were granted legal aid under the ECF Scheme between October 2013 and June 2015.⁶ In 2014, a Freedom of Information request from CRAE to the Ministry of Justice showed the number of children granted legal aid for education cases had fallen by 84%.⁷

In 2014, a child rights impact assessment of the legal aid changes produced by the Children's Commissioner concluded that a wide range of rights under the UNCRC were likely to be negatively impacted by the civil and prison law legal aid changes and said: "*we consider that urgent review and*

¹ This briefing draws on some of the evidence JustRights submitted to the parliamentary Joint Committee on Human Rights in October 2016

² *Civil Society Alternative Report to the UN Committee on the Rights of the Child* (2015, Children's Rights Alliance for England) www.crae.org.uk/media/78665/crae_civil_society_report_to_un_web.pdf

³ The types of cases that have been removed include most private family law (except those that involve domestic violence or child abuse), immigration (except asylum and detention), welfare benefits, prison law (except parole and independent adjudications) and education (except special educational needs).

⁴ The Ministry of Justice's 'Impact Assessment Annex A: Scope' (*Reform of Legal Aid in England and Wales: The Government Response* (London, TSO, 2011), para 10, Tables 1 and 3 show forecasted reductions in the volume of cases as a result of the legal aid reforms.

⁵ M. Spurrier, *Exceptional funding: a fig leaf, not a safeguard*. (Public Law Project, 2013).

⁶ Parliamentary answer by Lord Faulks, 17th November 2015: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Lords/2015-10-20/HL2802>

⁷ JustRights' full analysis of data on legal aid is available in *Justice For The Young: A Snapshot* (2015). <http://justrights.org.uk/sites/default/files/Justice%20for%20young%20a%20snapshot.pdf>

*reform is needed in order to ensure that the Legal Aid system can adequately protect the rights of children and young people and that the Government's obligations under the UNCRC are met."*⁸

In response to calls to act on this recommendation, the minister with responsibility for legal aid said: *'The MoJ is not currently conducting a specific review of children's access to legal aid.... The Government plans to undertake a post-implementation review of the legal aid provisions within LASPO within 3-5 years of implementation.'* In effect, this means that a review could be as distant as 2018.⁹

In the interim, research with children affected by these cuts has shown that the legal aid changes have had a profound impact on their ability to effectively exercise their right to information, advice, support and representation. Children and young people believe that *"our inexperience and lack of knowledge of our rights make us especially vulnerable to exploitation and injustice. People in authority often don't take our rights seriously."*¹⁰

JustRights is concerned that these groups have been disproportionately impacted by the cuts to legal aid:

- homeless young people;
- sexually exploited children;
- young people with mental health problems and learning disabilities;
- children affected by care proceedings;
- children in care and care leavers;
- children and young people in custody;
- trafficked children and young people; and
- young refugees, asylum-seekers and child migrants.¹¹

Judicial review

Judicial review allows children to challenge the decisions or actions of public bodies which breach their human rights. Changes to funding and payment arrangements for judicial review¹² have made it more difficult for children, adults acting on children's behalf and children's organisations to use it to protect children's human rights. The High Court found legal aid changes, relating to payments to lawyers in judicial review cases, to be unlawful and expressed *'great concern'* that there had been a 23% decline in applications for legal aid in judicial review claims since the changes came into force.¹³ In addition to the funding difficulties faced by individual children in bringing judicial

⁸ Office of the Children's Commissioner (2014) Legal changes since April 2013: child rights impact assessment., p30 http://www.childrenscommissioner.gov.uk/content/publications/content_871

⁹ Parliamentary answer by Shailash Vara, 10th February 2015: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-02-05/223668/> For more details see: *'Justice for Young People Swept under the carpet'*: <http://thejusticegap.com/2015/03/justice-young-people-swept-carpet/>

¹⁰ *Make Our Rights Reality*, (JustRights/Youth Access, 2015). See also: Carter, J (2014) The impact on children of legal aid changes since April 2013: participation work with children and young people.

http://www.childrenscommissioner.gov.uk/content/publications/content_873

¹¹ *Legal Aid cuts: child protection implications* (JustRights, 2013). http://justrights.org.uk/sites/default/files/Legal_Aid_-_Child_Protection_Implications_sept_2013_FINAL.pdf.

¹² Civil Legal Aid (Remuneration) (Amendment)(No 3) Regulations 2014 SI 2014 No 607

¹³ *Ben Hoare Bell Solicitors & Ors, R (On the Application Of) v The Lord Chancellor* [2015] EWHC 523 (Admin), paragraph 69.

reviews, changes introduced by the Criminal Justice and Courts Act 2015 will restrict and deter charities and other organisations bringing claims on behalf of children generally.¹⁴

The UN Committee's recommendations to the UK

In June 2016, the UN Committee called on the UK Government to: *“assess the impact and expedite the review of the reforms on legal aid ..., in order to ensure that such reforms do not negatively affect children’s access to justice, and guarantee effective participation of children in such assessment and review”* (para 30(b))¹⁵.

The Committee also highlighted, in relation to the right to education that *“among children subject to permanent or temporary school exclusions, there is a disproportionate number of boys, Roma, Gypsy and Traveller children, children of Caribbean descendant, children living in poverty and children with disabilities, and with the exception of Scotland, only children with disabilities have the right to appeal against their exclusion”* (para 72 (b)). They recommended the Government: *“ensure that children have the right to appeal against their exclusion, and are provided with legal advice, assistance and, where appropriate, representation for those without means”* (para 73(c)).

In response, JustRights believes Government should:

- Immediately initiate an independent assessment and review of the impact of the legal aid changes on children. The review should focus on the impact reforms have had on children’s rights and children and young people’s access to justice. It should include meaningful involvement from a range of stakeholders (including organisations and individuals who work with children and young people) and, crucially, guarantee the effective participation of children and young people in all stages. The review should specifically consider the impact on disabled children, those with mental health issues and BAME children.
- Commit to the adoption and implementation of a specific, measureable, cross-departmental action plan on child rights – including around children’s access to justice.
- Invest in the development of free, independent, age-appropriate advice, advocacy and legal representation services for children and young people.
- Exempt cases concerning children from the restrictions on judicial review work introduced by the Criminal Justice and Courts Act 2015 and the funding changes for judicial review work introduced by the Remuneration Amendment Regulations 2014.

What next?

Parliamentarians have previously voiced concerns about children and young people’s access to justice. In December 2013, the parliamentary Joint Committee on Human Rights (JCHR)¹⁶ said the Government had failed to fully consider its obligations under the UNCRC. In March 2015, the JCHR again criticised the Government for its failure to fulfil its duties under the UNCRC:

¹⁴ In 2014, JustRights published a briefing on the implications for children and young people’s access to justice of changes to judicial review http://justrights.org.uk/sites/default/files/Judicial%20Review%20-%20JustRights%20briefing%20Lords%20Oct%20%202014_1.pdf

¹⁵ The UN Committee on the Rights of the Child’s concluding observations on the UK can be found here: www.crae.org.uk/media/93148/UK-concluding-observations-2016.pdf

¹⁶ Human Rights Joint Committee, *The implications for access to justice of the Government's proposals to reform legal aid* (UK Parliament, 2013) www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/100/10002.htm

"The Government's reforms to legal aid have been a significant black mark on its human rights record during the second half of this Parliament..... the evidence we heard from the outgoing Children's Commissioner for England and from all the NGOs we took oral evidence from provides firm grounds for a new Government of whatever make-up to look again at these reforms and to undo some of the harm they have caused to children."¹⁷

Also in March 2015 the Justice Committee expressed deep concern that *"children were facing particular difficulties in accessing legal advice and representation"*.¹⁸

Despite these clear calls from parliamentarians, the Government has yet to announce any details of their promised review of the impact of legal aid changes on children. Parliamentarians could build on their previous inquiries and hold the Government to account to ensure it initiates an independent review which focuses on the impact of the legal aid reforms on children's rights and their access to justice.

In October 2016, Amnesty International UK published their report scrutinising the 'two-tier' justice system and criticising the impact of legal aid cuts on vulnerable children and young adults¹⁹. The human rights organisation also launched a public campaign and petition²⁰ urging the Secretary of State for Justice to conduct an urgent review of the impact of LASPO on access to justice and protection of human rights. JustRights contributed to the research report and endorses the call for Government to expedite a review of the legal aid cuts.

Children's rights and access to justice are once again on the political agenda it is time for the Government to act.

About JustRights

JustRights is a coalition of over 30 charities²¹ campaigning for fair access to advice, advocacy and legal representation for children and young people. JustRights was founded in 2009 by Children's Rights Alliance for England, Law Centres Network, The Howard League for Penal Reform and Youth Access.

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¹⁷ Human Rights Joint Committee, *The UK's compliance with the UN Convention on the Rights of the Child* (UK Parliament, 2015).

¹⁸ House of Commons Justice Committee, *Impact of changes to civil legal aid* (2015)

¹⁹ *Cuts that Hurt: the impact of legal aid cuts in England on access to justice* (Amnesty International, 2016):

<https://www.amnesty.org/en/documents/eur45/4936/2016/en/>

²⁰ www.amnesty.org.uk/actions/uk-government-denying-children-and-families-access-justice-legal-aid-cuts?from=issue

²¹ JustRights members: Association for Young People's Health; Brightside; Brook; Catch 22; Children England; Children's Rights Alliance for England; Community Links; Confederation of Heads of Young People's Services; Coram Children's Legal Centre; Coram Voice; Family Rights Group; The Howard League for Penal Reform; Independent Academic Research Studies; Just for Kids Law; Law Centres Network; Law for Life; Migrant & Refugee Children's Legal Unit; National Council for Voluntary Youth Services; National Youth Advocacy Service; National Youth Agency; New Horizon Youth Centre; No Recourse to Public Funds Network; Peer Power; Release; Royal Association for Deaf people; Streetgames; Streetlegal; The Cabin; Young Minds; Young People's Law Service; Young People's Support Foundation; Youth Access; Youth Legal & Resource Centre.