

Legal Aid cuts: child protection implications

Opinion polling consistently shows that the public wants the protection of children to be the number one priority for Government spending on the legal aid system.¹

Yet, highly vulnerable children and young people at risk of abuse and exploitation will be *disproportionately* affected by the Justice Secretary's legal aid plans.

Key points

The worst affected:

- 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
- Trafficked children and young people
- Young refugees and asylum-seekers

The combined impact of the LASPO Act and the new proposals will be to: severely restrict children and young people's entitlement to legal aid; and force the closure of many firms specialising in child law.

Being unable to access legal support will leave these already vulnerable young people open to further abuse, exploitation and harm.

Children & young people are increasingly having to navigate the legal system alone and represent themselves in court.

The proposals put the UK in breach of international legal obligations.

Substantial additional costs will be placed on other public services – particularly social services, the NHS and housing – as a result of the changes to legal aid.

The changes can be stopped – but only if Lib Dem MPs demand a pause, as called for by Conference

¹ Legal Action Group (2012) *Social welfare law: what the public wants from civil legal aid*.

Impact of the current proposals on children and young people

“Children and young people’s very safety and well-being would be jeopardised if the proposals were to be implemented. In other words, the changes would have major implications for child protection as well as for access to justice.”

Baroness Howe of Idlicote²

Judicial Review proposals would have denied these young people legal aid:

Y – a young man aged 21 with a learning disability and a victim of trafficking and prolonged sexual abuse – would not have been able to challenge the Home Office’s 4 year delay in making a decision on his asylum application that was causing him significant mental health issues.

“Without legal assistance, I believe that I would have committed suicide. I will be grateful for the rest of my life”

B – a young woman aged 16, a care leaver who had experienced severe domestic violence – would have been unable able to challenge the failure of the local authority to correctly assess her needs and provide her with the support she needed after she was placed in unsuitable accommodation.

The proposed Residence Test would have denied these young people legal aid:

I – a young man aged 17 with significant learning difficulties who was assaulted whilst sleeping on the streets – would have been unable to challenge the failure of the local authority to provide him with suitable accommodation because he wouldn’t have had the ID documentation required.

A – a young woman aged 17 who had fled from domestic servitude from the house she was trafficked to as a young child – would not have been able to challenge the local authority’s failure to safeguard her welfare.

Removing prison law from scope would have denied these young people legal aid:

C – a 15 year old young man with a history of neglect and domestic violence – would have received no legal help to ensure he was provided with accommodation and support on his release from prison.

D – a 19 year old male prisoner with Aspergers – would not have been eligible for the advice and assistance he received regarding sentence planning or recategorisation to ensure appropriate and achievable targets reflecting his disabilities.

“[The proposals will have a] profoundly negative effect on affected children and young people by curtailing their access to justice...children and young people are likely to be disproportionately affected by the proposals”.

The Children’s Commissioner³

² Hansard, 11 July 2013, Column 475-476 - debate on Legal Aid in House of Lords

³ Response of the Children’s Commissioner to Transforming Legal Aid consultation.

If it wasn't for Legal Aid.....

I would be dead now....I was feeling suicidal.

18 year old male

I would have been homeless and exploited by adults wanting to do me harm. I'm feeling far less stressed and depressed now.

17 year old female

I would have been in danger from pimps and drug-dealers. I'm looking forward to starting my college course. I have a life now!

16 year old female

I would have been in prison, in a mental hospital or dead. No doubt!

18 year old male

Impact of LASPO Act on children and young people

These children and young people have been left unrepresented since LASPO came into effect in April 2013

L, aged 16, placed herself voluntarily in care due to parental alcohol problems. The youth agency supporting her was unable to find a lawyer willing to represent her to challenge an application for residency of her child from the paternal grandmother, as the case was no longer eligible for legal aid. She had no option but to represent herself in court and found herself up against a barrister for the other side. She found the ordeal highly traumatic.

E, 16, was the victim of sexual abuse whilst in the care of her local authority. She needed to collect highly sensitive evidence about her sex abuse for a Criminal Injuries Compensation appeal. No longer able to get legal aid, her only option was to rely on the support of the very local authority that had failed to protect her from the abuse.

Before LASPO all of the following children and young people received legal aid for their cases but would no longer be able to do so

H, a 16 year old, was granted refugee status after being raped and tortured in her own country. She would have been unable to get help with her case to be reunited with her family and would have been left isolated and traumatised alone in the UK.

J, a 22 year old with a learning disability, was living independently after being thrown out of the parental home. Without legal aid he would not have been able to successfully appeal against the refusal of his Disability Living Allowance, which provided him with backdated payments, preventing his eviction.

P, a 15 year-old left paralysed after a medical mistake during a routine operation, would have been unable to secure the compensation that will help pay for his ongoing care.

Numbers of children and young people affected by the loss of legal aid

Under LASPO

- The MOJ estimated that 75,000 children and young people (including 6,000 children under 18) would lose entitlement to legal aid each year as a result of LASPO.⁴
- Recent research showing a huge fall in the uptake of legal aid since April⁵ suggests these figures are likely to be substantial underestimates.

Under the current proposals

- The Justice Secretary has been unable, or unwilling, to provide equivalent figures in relation to his current proposals.
- In response to a Freedom of Information request made by The Children's Society, the MOJ has confirmed that in 2011/12 37% of all actual or prospective judicial review cases, where legal aid was granted, and 39% of cases that ended before applying for permission to the Court or before the Court made a decision, related to 0-25 year olds.
- Young people are certain to be disproportionately affected by restrictions on legal aid for prisoners and those who do not satisfy the residence test, as well as by changes to criminal legal aid.

The vulnerability of children and young people needing legal aid

- Research shows that over 80% of young people with legal problems are in at least one highly vulnerable group, e.g. a care leaver, victim of crime/abuse or NEET.⁶
- Two-thirds meet or exceed common cut-off points for cases of mental illness.⁷
- A high proportion of the children and young people affected by the current proposals will be homeless, prisoners (a majority of whom have proven histories of abuse, learning difficulties or mental health problems), refugees or victims of trafficking.

The cost of removing legal aid from children and young people

- Robust research has shown that a typical young person with a civil legal problem costs local health services, housing services and social services around £13,000 if they cannot receive early advice.⁸ In addition, clear links have been established between young people's unresolved civil legal problems and increased criminal offending.⁹
- The residence test would cause a cost shift of at least £26m a year to local authorities.¹⁰

⁴ Figures supplied to JustRights by MOJ on 10/10/11 in response to a Freedom of Information request.

⁵ Legal Action Group (Sept. 2013) *Civil Legal Aid- the Secret Legal Service?*

⁶ Pleasence, P. (2011) *Civil legal problems: Young People, Social Exclusion and Crime*. Youth Access and Law Centres Federation.

⁷ Balmer, N.J. and Pleasence, P. (2012) *The Legal Problems and Mental Health Needs of Youth Advice Service Users*. Youth Access.

⁸ Ibid.

⁹ Pleasence, P. (2011) *Civil legal problems: Young People, Social Exclusion and Crime*. Youth Access and Law Centres Federation.

¹⁰ No Recourse to Public Funds Network (Sept. 2013) *Shadow Impact Assessments for the Proposed Residence Test*.

Lib Dem party policy

“The Liberal Democrat youth policy¹¹ includes a commitment to providing young people with access to specialist support and advice on their legal rights and responsibilities—something that I hope would attract universal support. I therefore urge the Government to think again more carefully about their proposals for young people.”

Dr Julian Huppert MP¹²

On 18th September 2013 the **2013 Lib Dem party conference passed an emergency motion** calling on the Justice Secretary’s *Transforming Legal Aid* proposals “to be stayed pending thorough consultation and scrutiny to ensure there will be no adverse effect upon access to justice, the availability of local justice...and the quality of legal services provided to those who cannot afford to pay privately.” The motion reinforces the extent to which access to justice and fairness are at the heart of Lib Dem values.

“As far as possible, our intention is that, where children are involved, legal aid will still be provided.” Lord McNally¹³

Compliance with the UK’s international legal obligations

Lawyers have argued that the proposals are contrary to the rule of law. The changes also contravene a number of important rights that the UK Government is bound by national and international law to uphold, for example:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Article 3 of the United Nations Convention on the Rights of the Child

“Children should have access to free legal aid, under the same or more lenient conditions as adults.”

The Council of Europe guidelines on child-friendly justice¹⁴

******* Action you can take *******

It is incumbent upon Lib Dem MPs to argue with colleagues and within the coalition for a pause to enable:

- full scrutiny of the proposals by the Joint Committee on Human Rights
- assessment of the impact of the changes brought in by LASPO in April
- a thorough age impact assessment
- consideration of substantial exemptions for children and young people at risk of harm

¹¹ *Free to be Young*, Policy Paper 96, Liberal Democrats, 2010.

¹² Hansard: Westminster Hall debate on legal aid, 11/05/11.

¹³ Answer to a Parliamentary question from Lord Harrison on 7th July 2011.

¹⁴ *Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice*, adopted by the Committee of Ministers on 17 November 2010, at the 1098th meeting of the Ministers' Deputies.

FURTHER INFORMATION

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The JustRights campaign on legal aid is supported by:



the Howard League for Penal Reform **YOUth Legal** & Resource Centre

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