



justrights
the campaign for fair access to legal services
for children and young people

A black and white photograph of a young woman with long, dark hair and freckles. She is covering her face with both hands, with her fingers spread across her eyes and nose. Her expression is obscured, suggesting a sense of shame, fear, or despair. The background is a plain, light-colored wall.

NOT SEEN AND NOT HEARD
- HOW CHILDREN AND YOUNG PEOPLE WILL
LOSE OUT FROM CUTS TO CIVIL LEGAL AID

A report by Sound Off For Justice and JustRights on the impacts of the proposed Legal Aid, Sentencing and Punishment of Offenders Bill on children and young people

**Research conducted in
association with:**

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Legal action for the community

www.lawcentres.org.uk

youth
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JustRights

JustRights is a coalition of over 30 organisations, co-ordinated by the Law Centres Federation and Youth Access. It is working to provide a legal system that provides ready access to high quality independent legal advice, and representation for all children and young people whenever they need it, alongside recognition of children and young people's distinct needs for support in exercising their legal rights.

More information is at:
www.justrights.org.uk



Sound Off For Justice

Sound Off For Justice (SOFJ) is a campaign run by the Law Society that wants to make a noise for all those who will be silenced in court if the government's proposals go ahead. Access to justice is a fundamental right in a civilised democracy. The government's proposed cuts to legal aid mean that many people will not be able to exercise their legal rights.

We believe the government's cuts will actually end up costing more than they aim to save. That's because of the problems that people will face when they cannot address their legal issues and the knock-on costs for the government of dealing with those problems. Sound Off For Justice has put forward a selection of positive reforms that would allow the areas currently proposed not to be scrapped maintaining access to justice as a reality, not a theory.

Find out more at:
www.soundoffforjustice.org



Overview

Over 200,000 children and young people and their families will lose access to justice as a result of the government's proposed cuts to legal aid. The government's proposals, laid out in the Legal Aid, Sentencing and Punishment of Offenders Bill, will leave 140,000 children and 69,000 18-24 year olds struggling with serious legal problems related to employment, education, welfare, benefits, homelessness, debt and family breakdown.

Government plans to cut the legal aid budget by £350 million. This will leave some of the most vulnerable children and young people without legal aid support. Many English and Welsh children and young people rely on legal aid to help them through challenging situations. Over 6000 children aged under 18 and 69,000 18-24 year olds a year will lose out on the direct legal representation they need to face potentially life changing issues. These children and young people will be left to navigate the legal system, and face the courts alone.

In this report, Just Rights and Sound Off For Justice show that the cuts proposed in the Legal Aid, Sentencing and Punishment of Offenders Bill will have a huge negative impact on the lives of many of England and Wales' children and young people.

This report covers:

- The demographics of the children and young people who will be affected by cuts to legal aid, who are among our most vulnerable and disadvantaged.
- The impacts on children and young people where legal aid support is removed from their parents and families.
- The lack of alternative options to legal aid for children and young people to get the legal help they need.
- The costs to Government of removing essential legal aid support for children and young people.
- How Government can protect children and young people's access to justice by amending the Legal Aid, Sentencing and Punishment of Offenders Bill, and save money by preventing costs further down the line.

The Legal Aid, Sentencing and Punishment of Offenders Bill will block access to justice for many children and young people by removing the following areas from the scope of legal aid:

Employment cases other than those involving discrimination

Eben*, a 17 year old in his first job, would have been unable to challenge exploitation by his employer and enforce his rights.

Debt

Sophie*, a 19 year old with mental health problems whose bank account was used without her knowledge by a thief to launder £20000, would have been unable to challenge the bank's insistence that she was liable for the sum.

Immigration

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

Education, other than Special Educational Needs

Samantha* would have no support to challenge the local authority's failure to find her a school place after she moved house following her parents' divorce.

Welfare benefits

Jack*, a 22 year old with a learning disability living independently after being thrown out of the parental home, would have been unable to appeal successfully against the refusal of Disability Living Allowance, which brought him backdated benefit that prevented his eviction.

Criminal injuries compensation

Ellie, a 16 year old looked after child, would have had no help to collate the highly sensitive evidence about her sexual abuse – she would have had to rely on support from the same local authority that had failed to protect her from abuse

* These case studies are based on the details of real clients of Law Centres. Names and case details have been changed to protect privacy

“I was feeling suicidal. If I hadn’t got advice I would be dead now.” - 20 year old male with employment problem¹

In addition, more than 140,000 children will be impacted by the loss of legal aid support for their parents. Sound Off For Justice and JustRights estimate that this will affect:

- **68,000 children** a year in family contact and finance disputes
- **More than 36,000 children** by the removal of legal aid for welfare benefit cases
- **Around 40,000 children** in housing, education, immigration and clinical negligence cases currently supported by legal aid

Children and young people affected by these changes are among the most vulnerable in England and Wales, with 80 per cent of young people reporting civil legal problems also facing other challenges and disadvantages.²

Government says that its legal aid changes aim to save money. Yet the costs of legal aid for children are small compared to the potential savings.

The cost of fully protecting all children up to age 18 from the cuts would be £10 million – equivalent to the cost of imprisoning just 71 young offenders.³

For young people up to 18-24 the cost is £40 million – less than half the weekly cost of youth unemployment.⁴

The cost of not providing advice is far greater. One estimate of the costs to Government of unmet advice needs amongst young people puts them at hundreds of millions of pounds a year.⁵

We know that when young people do not get advice their problems escalate. Research shows links between civil legal problems and crime: young people who had recently been arrested had higher levels of housing, debt and benefits problems, key factors influencing re-offending.⁶

- 55% of 16-24 year olds who had been recently arrested reported experiencing at least one 'difficult to solve' civil justice problem.
- There is substantial evidence of an adverse impact of legal problems on young people's mental and emotional health, with 34% of NEET 18-24 year olds reporting stress-related illness as a result, and more than a third going on to use NHS services.⁷
- Citizens Advice estimate that for every £1 saved by cuts to legal aid, Government will spend £8 dealing with the social, judicial and health issues that will result.

¹ Quote taken from the original transcripts of interviews with young people aged 16-24 conducted by Butler and Hutchinson for Youth Access in 2007 as part of a qualitative study into the impact of legal advice delivered in youth settings.

² Pascoe Pleasance (2011, forthcoming) Civil Legal Problems: Young People, Social Exclusion and Crime Law Centres Federation and Youth Access.

³ Punishing Costs, New Economics Foundation, 2010.

⁴ The Cost of Exclusion: Counting the cost of youth disadvantage in the UK, Prince's Trust, 2007.

⁵ See Kenrick J, (2009) Young people's access to advice - the evidence Youth Access. This estimate is based on work by Ministry of Justice economists who have used Crime and Civil Justice Survey data to estimate that over a three-and-a-half-year research period, unresolved law-related problems cost individuals and the public purse at least £13billion (Department for Constitutional Affairs (2006) Getting earlier, better advice to vulnerable people).

⁶ Civil Legal Problems: Young People, Social Exclusion and Crime, Pleasance, P., forthcoming.

⁷ With rights in mind Sefton, M. Youth Access 2010.

1. Which children and young people will these changes affect?

The children and young people these changes will affect are England and Wales' most vulnerable

Research suggests that approximately one-third of 18–24-year-olds experience at least one civil justice problem over a three and a half year period,⁸ and that 16–24-year-olds will experience at least 2.3 million rights-related problems requiring advice a year.⁹ Research shows that **disadvantaged, vulnerable young people** are the most likely to need legal advice. This section of the report looks at use of legal aid by children and young people, and the disadvantages these young people face.

What legal issues are young people facing?

Recent figures from the Ministry of Justice give a breakdown of the types of cases for which children and young people use legal aid to help deal with their own problems. The top four legal issues for children and young people who receive legal help are:

- debt
- housing
- welfare benefits
- asylum and immigration.

Help with legal representation is most often given for housing, immigration and clinical negligence. A full breakdown of the legal issues children and young people seek help for is available in the appendix to this report.

Children and young people who need legal aid are vulnerable

80 per cent of young people reporting civil legal problems also face other disadvantages including sole parenthood, having a mental health issue, being a victim of crime, or exclusion from education, employment or training.¹⁰ Data from the 2004 civil and social justice survey shows although young people who were not in education, employment or training accounted for less than one in five 18-24 year olds, they accounted for approaching half of all young people seeking legal advice.¹¹

Many children and young people in the UK meet the criteria for vulnerability

- 30 per cent of households headed by 16-24 year olds live in poverty.¹²
- 36 percent of people presenting to local authorities as homeless between January and March 2011 were aged 16-24.¹³
- The latest unemployment figures show that 20.2 per cent of 16-24 year olds are unemployed. 206,000 16 -18 year olds are without work, as are 744,000 18-24 year olds.¹⁴
- In 2010 there were approximately 225000 young people aged 16-24 living alone.¹⁵

⁸ The advice needs of young people – the evidence: Key research evidence on young people’s needs for advice on social welfare issues. Kenrick, J., Youth Access, 2009.

⁹ These figures have been calculated by Youth Access using data from the 2006–08 Civil and Social Justice Survey. The calculations have been checked by the Legal Services Research Centre and are deemed to under-estimate the extent of young people’s unmet needs for advice.

¹⁰ Pascoe Pleasance (2011, forthcoming) Civil Legal Problems: Young People, Social Exclusion and Crime Law Centres Federation and Youth Access.

¹¹ Kenrick J, (2009) Young people’s access to advice - the evidence Youth Access.

¹² <http://statistics.dwp.gov.uk/asd/hbai/hbai2010/index.php?page=chapters>

¹³ <http://www.communities.gov.uk/documents/statistics/pdf/1918613.pdf>

¹⁴ Office for National Statistics (14April 2011) Families and Households 2001 to 2010 ONS

¹⁵ Office for National Statistics (17 August 2011) Labour Market Statistical Bulletin ONS.

Miriam's story*

In 2009 **Miriam** was aged 24, living independently and holding down a great job in the city. She suffered a serious mental breakdown and had to leave her job. As she has no family able to financially support her, she had to claim Disability Living Allowance and Housing benefit. However, because of her age, her Housing benefit did not fully cover her rent, and she was illegally evicted by her private Landlord. Miriam came to the Law Centre and successfully applied as homeless with their help.

However, once in temporary accommodation, and despite the best efforts of her support worker, she failed to obtain housing benefit for 6 months. Her new housing association landlord tried to evict her, but the Law Centre challenged this, as well as supporting her to finally obtain housing benefit, and have it back dated.

A few months later, Miriam was told that she had arrears of over £500, and that she would be evicted again - this was due to an error on Housing benefit's part, as they continued to pay her former landlord rather than her new accommodation. She was again threatened with homelessness, and prevented from applying for permanent housing.

The Law Centre ensured that Housing benefit cleared the arrears, and supported Miriam in applying for a permanent home.

Throughout this time, Miriam was suffering acute mental illness. Despite being a highly intelligent, well educated person, it would have been impossible for her to navigate the complexities of the housing benefit system alone. She had nowhere to turn except the Law Centre who were able to help her as she was eligible for legal aid. As Miriam's problems were bound up with her housing benefits, the vast majority of the support she received from the Law Centre would be out of scope if the Legal Aid Bill passes.

Miriam is now much better, and getting her life together. She is passionate about the need for a safety net for people, especially young people, when they fall into crisis.

Terry's story*

Terry, aged 17, got his first job as a trainee mechanic in a garage in London. He was keen to work and cheerfully worked overtime. Terry worked 50 hour weeks for the first month of his new job, but at the end of the month was only paid £160, the equivalent of 70p per hour. His employer told Terry that he would not be paid for the first week of his employment since he was “training” and was being paid as a “trainee”. Terry approached the Law Centre, who advised him that he should have been paid the national minimum wage for all the hours he worked, including the week of alleged “training”. The Law Centre wrote to the employer pointing out the breach of law and threatened to take the case to the Employment Tribunal. Terry was paid for all the hours he worked, including the overtime, and went on to find another job where he was not exploited.

John's story*

John was 17 and living independently, having been thrown out of his mother's home following repeated conflicts with his mother's boyfriend. He has a learning disability and attended a special school. Having had no experience of managing money, he fell into arrears with his service charge and was threatened with eviction.

Streetwise Law Centre supported him to apply for Disability Living Allowance. He was initially refused, and then won on review. He didn't really understand that he had a learning disability, and would not have been able to explain his needs at review or appeal. Nor did he have anyone able to support him – the staff at his accommodation had no knowledge of Disability Living Allowance (DLA). The backdated benefit cleared his arrears and Streetwise helped him set up a standing order to pay his rent when the DLA came into his bank account.

* These are real cases involving Law Centre clients, although names have been changed to protect privacy.

2. How will children be affected when their families lose access to legal aid?

The government's proposed amendments to the Legal Aid, Sentencing and Punishment of Offenders Bill will affect cases involving welfare benefits, employment, criminal injuries cases, immigration, some housing and family cases, and debt. In addition to the issues this will cause for children and young people who are unable to obtain justice for their own cases, thousands will be affected in cases where their parents or guardians cannot obtain legal aid to resolve issues either on behalf of the child or in their own right.

In this section of the report, we look in detail at the huge social impact that cutting legal aid will have on children when their families lose access to legal aid, focusing on five key areas:

- Private family law
- Education
- Clinical negligence
- Welfare benefits
- Immigration

Private family law

Government's proposals will not only impact children and young people directly. The lives of thousands of children, young people and their families will be affected where their parents and guardians cannot access legal aid.

- Around 60,000 children with separating parents will be affected each year by the Government's proposals to remove most private family work - around 34,000 cases a year - from legal aid, other than in cases with proven domestic violence.¹⁶
- Couples trying to resolve issues relating to finances or children will be entitled to assistance with mediation, but if mediation does not work, they will be given no help. Around 80% of finance cases for separating couples are solely concerned with finance issues¹⁷ - this will affect an estimated 8000 children each year in addition to those affected by disputes directly related to arrangements for the children.

¹⁶ <http://www.statistics.gov.uk/pdfdir/div0211.pdf>

¹⁷ LSC Statistical Information 2010-11 http://www.legalservices.gov.uk/docs/about_us_main/Statistical_information_pack_2010-2011.pdf

How this will affect children

Family disputes will take longer to resolve

The removal of funding for most contact and residence disputes will impact on children caught in the middle. If the parents are unable to resolve the dispute, or take longer to do so because they are acting in person, this will extend the period of time during which the family is under extreme stress. In the worst cases, they may be wrongly deprived of a relationship with one parent for a prolonged period, perhaps permanently. Children also may be left unprotected in cases where one parent suspects the other of abuse.¹⁸

Financial security for some families will be threatened

The removal of funding for ancillary relief will mean that some parents with care are unable to secure an adequate financial settlement, leading to a lack of financial security for families and more children living in poverty.

Domestic violence will need to be proven to receive legal aid

Under the proposed new legal aid system, private law family applicants will need to prove that domestic violence has occurred in the relationship in order to be eligible for legal aid support. The victim of domestic violence will no longer be able to accept undertakings. An undertaking is an enforceable promise made to the court by the perpetrator of domestic violence, threats or harassment that they will not act in this way towards the victim in the future. Undertakings resolve cases quickly, cheaply, and with the lowest level of conflict possible in such a difficult situation. However, under the new legal aid system, the victim of domestic violence will be required to get an injunction, a more complex and drawn-out legal process which requires the victim to prove to the court that the domestic violence has taken place. The extension of the legal proceedings, often a time of anger, mistrust and lack of cooperation between the parents, will inevitably impact adversely on the children of the relationship.

¹⁸ The Cumulative Impact Assessment published by the Ministry of Justice in November 2010 acknowledged at page 5 that outcomes for those denied support may be less fair, and that this may have significant adverse economic consequences.

Case study: Natasha's story*

"I am a 45 year old mother of 2 children. After an acrimonious split with the father of my first child, I entered into an ugly, protracted series of court battles centred on child contact. I was not initially granted Legal Aid because I did not qualify financially. The repeat applications to the court and the subsequent need for me to engage legal defence caused my son and myself to endure chronic financial hardship, despite being a successful business owner. It also caused me serious emotional distress, which inevitably had an impact on my son.

"I went on to remarry, and had a second child with my new husband. This relationship broke down in 2009, and statutory agencies became involved due to the risk of significant harm from my ex-partner to myself and my child. I was forced to represent myself in divorce proceedings, which resulted in drawn out court proceedings. During this time my daughter developed a life-threatening illness that forced me to give up my job and start receiving Income Support. At this point I became eligible for legal aid.

"Thanks to the support I received from legal aid, I was able to challenge my ex-partner over financial matters arising from the divorce, and was able to maintain the family home, securing a future for myself and my children."

Natasha's story shows how legal aid can be a lifeline for people in difficult situations, and how changes in circumstances can mean that even well-off people may need to use legal aid services to help deal with legal problems. Her case demonstrates the financial and emotional difficulties that families can face when parents are forced to represent themselves in court, and the essential support legal aid provides in these matters. Removing this support will put children at risk.

Education

The government's proposals will remove from the scope of legal aid most cases concerning education, including:

- disputes about exclusions
- school closure issues
- bullying cases
- disputes about poor educational standards
- disputes about grants and loans and cases around choice of school.

Only education cases involving discrimination, and special educational needs cases will continue to qualify for legal aid support. However, these cases will qualify only for telephone advice.

These plans will leave 58% of children whose family currently receive advice through legal aid without the support they need to challenge obstacles to their education needs. A further 29% of children currently being represented for their education needs cases will not receive legal representation in court¹⁹

Around 2000 cases in which the family currently receive face to face advice will in future only qualify for telephone advice.

How this will affect children and families

It is unlikely that clients who qualify financially for legal aid will find the money to instruct lawyers privately. For those who no longer qualify for legal aid at all, they will have a choice between attempting to pursue a case relating to their child's educational needs on their own or not pursuing the matter.

¹⁹ <http://www.justice.gov.uk/downloads/consultations/annex-a-scope.pdf>

If children with special educational needs do not get the support they require, the consequences can be life-changing. Pupils with special educational needs are eight times more likely to be excluded permanently or for a fixed period than children with no such needs.²⁰ There is a strong correlation between exclusion from schooling and falling foul of the criminal justice system. One study found that 63% of excluded children had a criminal conviction.²¹ This suggests that both failure to tackle special educational needs and failure to address issues arising from exclusion have a strong chance of resulting in the child concerned becoming a young offender. Removing the legal aid support that enables children and their families to challenge exclusion may result in more children and young people turning to crime, with the government footing the bill for youth justice issues further down the line.

The effectiveness of telephone helplines

People who still do qualify for educational legal support to deal with special needs assessment and discrimination cases will only be eligible for telephone helpline support under the government's proposals. However, the effectiveness of telephone help lines in assisting people to resolve problems is questionable. American research in 2002²² found that three to six months after legal advice had been given over telephone help lines:

- 21% of callers to legal advice helplines had not acted on the advice they received
- 52% of callers to legal advice helplines had unsuccessful outcomes.
- Worse outcomes were correlated with clients having a lower level of education, having language difficulties, and being without significant income - in other words, the sort of demographic groups who are disproportionately found among people entitled to legal aid.

²⁰ Department for Education, 2010, Permanent and Fixed Period Exclusions from Schools and Exclusion Appeals in England, 2008/09, SFR 22/2010

²¹ Pritchard and Fox, 1998, cited by IPSEA in their response to the Green Paper, page 4

²² The Hotlines Outcomes Assessment Study <http://www.nlada.org/DMS/Documents/1037903536.22/finalhlreport.pdf>

Clinical Negligence

The government proposes to remove clinical negligence entirely from the scope of legal aid. Some few cases may fall within the exceptional funding test. This could have massive impacts on the most serious cases of clinical negligence, particularly those involving catastrophically injured children. We know that significant numbers of parents receive support from legal aid around clinical negligence on behalf of their children.²³

The government's stated intention is that these cases should be brought on a conditional fee (no-win no-fee) agreement. However, for many cases, including catastrophically injured children, this is not an option. Such cases often need extensive medical reports running into the tens of thousands of pounds just to establish whether there is a case. They often have to be held in abeyance for a number of years to establish the long term consequences for the child. It is not commercially practical to run cases involving catastrophic injury on a no-win no-fee basis. The government's proposed solution to this problem of allowing recovery of insurance premiums related to the costs of disbursements has been widely criticised as unworkable and insufficient to resolve the problem.

The government also claims that "up to 100%" of some types of legal aid proceedings will be brought back into the legal aid scheme by means of the exceptional funding test.²⁴ However, the test is deliberately drawn very narrowly, and its legal and practical implications remain completely unknown.

How this will affect children and families

For cases where the family is unable to get a no win no fee agreement, an application will have to be made under the exceptional funding test. No help and support is available for this type of application. A proportion will fail to make any application, and a further proportion will be refused funding. It is highly unlikely that those clients will be able to pursue their cases without support.

²³ Figures from the Ministry of Justice show that spending on civil representation for under 18 year olds in 2010-11 included £6,278,733 on 587 clinical negligence cases.

²⁴ MoJ Impact Assessment June 2011, Annex A, Table 3

Therefore a proportion of children catastrophically injured as a result of clinical negligence who would currently receive redress and funding for their care for the rest of their lives will now receive no support. Given the seriousness of these cases, this is unacceptable.

Welfare benefits

Government proposes to remove from scope all advice in connection with welfare benefits. Such advice may at present cover queries over:

- entitlement
- challenges to decisions
- in the case of disability living allowance, assistance in completing an application.

If parents' benefits are not being paid as they should be, or if they are temporarily suspended pending the outcome of a challenge to a decision, any children in the household concerned will be living in even greater poverty than they should be.

The government argues that other advice services can pick up queries over entitlement or assistance with applications. Where a decision is being challenged, the government argues that as the Tribunal process is designed for litigants in person, legal aid is not needed. However, this ignores the role played by pre-Tribunal advice and assistance. Statistics show²⁵ that cases where a client has had pre-appeal advice have a 55% success rate, as against a success rate of only 28% in cases where no advice has been taken.

²⁵ Administrative Justice and Tribunals Council, Response to Green Paper, paragraph 44

How many children and families does this affect?

There are no reliable figures for the number of benefits cases where the family concerned includes children, either from the LSC or HMCTS.

We know that 78964 lower tier tribunal cases (38%) involved some form of advice and representation.²⁶ Given the financial situation of the applicants, in probability for the overwhelming majority of those cases the advice was provided through legal aid.

We also know that in 2007-8, around 20000 cases related to income support or jobseekers' allowance, and around 116,000 cases related to the main disability benefits for those of working age.²⁷ ONS figures show²⁸ that there are 352000 households in which the adults have never worked, containing a total of 250000 children under 16. There is likely to be a strong correlation between such households and these benefits. Assuming the 136,000 tribunal cases relating to benefits for those of working age have the same proportion of children, and 38% of those cases currently receive advice, this would represent 36,700 children whose families no longer get the support they need.

²⁶ Administrative Justice and Tribunals Council, op cit

²⁷ Decision making and appeals in the benefits system, Work and Pensions Select Committee Second Report of 2009-10, Annex A

²⁸ <http://www.statistics.gov.uk/cgi/nugget.asp?id=1163>

Immigration

Children in immigration cases will be particularly affected by the proposed cuts to legal aid. Legal aid support will not be available for children who are party to immigration proceedings. Some limited changes have been made to the original proposals, but these will still leave many children without advice, assistance and representation.

How this will affect children and families

Research by the Refugee Children's Consortium has shown that children will be particularly affected by the loss of legal aid support in the following situations:

- Separated (unaccompanied) children, other than those pursuing asylum claims will no longer be able to access legal aid. This will include children, some of whom will have been in the UK for several years, applying for an extension of discretionary leave and who are being cared for by a Local Authority.
- Children facing removal from the UK along with a parent, or who will be separated from a parent by reason of that parent's removal, in cases where the child's interests require separate representation.
- Child victims of trafficking who have an immigration case, but do not make an asylum claim
- Children involved in refugee family reunion cases"³⁰

The removal of legal aid support will have a massive impact on these already-vulnerable children, who will be unable to get the support they need to bring immigration claims and to challenge decisions which may affect their right to remain in the UK.

²⁹ See, e.g., Administrative Justice and Tribunals Council, op cit, para 21-22

3. Where else can children and young people go for legal help?

Government's plans to cut legal aid come at a time when youth advice services are already being decimated by funding cuts. With increased pressure on struggling not-for-profit centres and an increased demand for advice from children and young people, cuts to legal aid may see many children and young people failing to get the legal advice they desperately need to turn their lives around.

In this section of the report we look at the 'exceptional funding' scheme proposed by Government, and the pressures faced by not-for-profit legal advice centres, which will be compounded by the Government's proposals in the Legal Aid, Sentencing and Punishment of Offenders Bill.

'Exceptional funding'

Government have suggested that legal aid reforms will preserve access to justice, with the introduction of an exceptional funding scheme, and a small amount of additional financial support for the voluntary sector. It's unclear which cases will be deemed 'exceptional' but it is clear that this fund won't be adequate to deal with the potential level of need. The advice sector for children and young people is already suffering from the impact of government cuts. Children and young people facing legal problems are likely to be left with nowhere to turn.

No help will be given to make an application to the new scheme, which will be administered by the Director of the new legal aid agency. The Government response to the consultation on these changes suggests that areas in which exceptional funding may be available include:

- trafficking
- advocacy at inquests
- clinical negligence, and;
- some child protection cases.³¹

³⁰ See the Refugee Children's Consortium briefing at: <http://www.childrenslegalcentre.com/Resources/CLC/Documents/PDF%20N-Z/RCC%20LASPO%20Bill%20Evidence%20to%20the%20Committee%20July%202011.pdf>

Advice services under pressure

Organisations that provide specialist legal advice to children and young people are already being hit hard by reductions in Government funding. Youth Access, the national membership organisation for young people's information, advice, counselling and support services surveyed 60 of their members in March 2011. They found that:

- Demand for services was increasing. 80 per cent of agencies have seen an increase in demand for their services from young people.
- Funding is reducing. 97 per cent of agencies report reductions to at least one current source of statutory funding.
- Many agencies face the risk of closure: 42 per cent of agencies said they faced this risk this year.
- Agencies are also finding it harder to meet young people's needs: 85 per cent of agencies don't expect to meet demand over the next 12 months.
- Young people are missing out: at least 45,000 young people will be left without access to services they depend on.³²

³¹ Ministry of Justice (2011) Reform of Legal Aid in England and Wales: The Government Response Ministry of Justice.

Not-for-profit advice centres will be deprived of a significant source of funding under the proposed changes to legal aid. Secretary of State for Justice Kenneth Clarke has recognised that this will potentially hinder access to justice for many. Speaking at the second reading of the Bill in the House of Commons, he said:

"I have heard widespread concern... about the future of not-for-profit advice centres. I agree that they do important work in providing quality, worthwhile advice of the kind required by very many people who should not need adversarial lawyers... This issue needs to be, and has been, considered on a cross-Government, interdepartmental basis. We are working with the sector and across Government to ensure that the government reforms help to improve the efficiency and effectiveness of the advice services available to the public, and we will provide up to £20 million of additional funding in this financial year to help achieve that."³³

We do not yet know how this £20 million will be spent. But it is unlikely to meet children and young people's need for advice, much of which already goes unmet. In the current system, one in five young people aged 18-24 fail in their attempts to get advice to deal with social welfare problems³⁴ in part due to a lack of specialist services that meet young people's needs. Less than 1 per cent of advisers and solicitors currently practising social welfare law report that they see young people as a target group.³⁵

Statutory services for young people are also being scaled down following spending cuts. An investigation for Children and Young People Now found that "local authorities have budgeted to spend almost £180m less on information, advice and guidance services for teenagers this year compared with last year."³⁶ Freedom of Information requests to all local authorities in England revealed that they are planning to spend 38 per cent less than last year on Connexions, the national information, advice and guidance service for 13-19 year olds, and related activities.

³² Youth Access (2011) The funding situation of Youth Information, Advice, Counselling and Support services (YIACS)

³³ House of Commons Hansard, 29 June 2011 col 994

³⁴ Data from the 2004 Crime and Civil Justice Survey, cited in Kenrick J, (2009) Young people's access to advice - the evidence Youth Access.

³⁵ According to data analysed by Youth Access from the Workforce Survey conducted by the LSRC for the National Occupational Standards for the Legal Advice Sector project.

³⁶ 'Young people's advice services take a £180m hit' August 11 2011, Children and Young People Now see <http://www.cypnow.co.uk/news/1083841/>

4. The costs of doing nothing: the hidden costs of removing legal aid support for children and young people

Government says that its legal aid changes will save money. But the long term costs of leaving children and young people's problems unresolved are likely to far outweigh the short term savings. Unresolved legal problems have knock-on impacts on children and young people's employment prospects, physical and mental health and housing.

New research shows that there are links between unresolved problems and young people's offending behaviour³⁷. Government could make greater savings by helping young people solve their problems earlier, rather than by cutting off access to legal help. In this section of the report we examine the consequential impacts of young people's failure to get the legal support they need.

Figures provided by the Ministry of Justice show that: total savings from cutting legal aid to children and young people will be £50 million. This is made up of:

- £40 million from restricting legal aid to 18-24 year olds
- £10 million from restrictions for those under 18

JustRights and Sound Off For Justice believe that these short term savings will be significantly outweighed by the long term costs that arise when young people's civil justice problems go unresolved. We estimate that the current cost of young people's failure to access advice is several hundred millions of pounds a year.³⁸

Below we examine the knock on impacts of failure to get legal help for children and young people, leaving civil justice problems unresolved.

Employment

Problems with benefits, housing, or other civil justice issues can disadvantage young people's chances of keeping and getting a job, leaving Government to pick up the costs of out of work support. 70% of people of all ages who lose employment as a result of civil

justice problems go on to experience a period of unemployment and, of these, 59% go on to claim unemployment-related benefits.³⁹

Health and Mental Health

Research shows substantial evidence of an adverse impact of civil justice problems on young people's mental and emotional health, with over three times as many young people who experienced social welfare problems reporting mental health issues as those who did not (31 per cent compared to 9 per cent). The associations between social welfare problems and poor mental health were particularly strong for problems related to homelessness or welfare benefits.⁴⁰

New analysis of the Civil and Social Justice Panel Survey found that "stress-related illness was commonly mentioned as being both a cause and consequence of civil justice problems. In all, 24% of problems faced by young people led to illness of some description, with knock on demand on health services."⁴¹

Housing

Around 7 per cent of young people lose their homes as a result of unresolved civil justice problems.⁴² Although the Government has said that it will keep cases regarding homelessness within the scope of legal aid, there will be no help to resolve welfare benefits problems which may also lead to eviction.

³⁷ Pascoe Pleasance (2011, forthcoming) Civil Legal Problems: Young People, Social Exclusion and Crime Law Centres Federation and Youth Access.

³⁸ See Kenrick J, (2009) Young people's access to advice - the evidence Youth Access. This estimate is based on work by Ministry of Justice economists who have used Crime and Civil Justice Survey data to estimate that over a three-and-a-half-year research period, unresolved law-related problems cost individuals and the public purse at least £13billion (Department for Constitutional Affairs (2006) Getting earlier, better advice to vulnerable people).

³⁹ Causes of Action: Civil Law and Social Justice: Second edition, Pleasance, P., Legal Services Commission, 2006.

⁴⁰ With rights in mind Sefton, M. Youth Access 2010.

⁴¹ Pascoe Pleasance (2011, forthcoming) Civil Legal Problems: Young People, Social Exclusion and Crime Law Centres Federation and Youth Access.

⁴² Young People and Civil Justice, Balmer, N., Tam, T. and Pleasance, P., Youth Access, 2007

Research in 2008 by the New Economics Foundation indicated an annual cost to the state of £26,000 for each homeless person. This figure included the cost of benefits, hostel accommodation, and care of children.⁴³

Crime and offending

New research shows clear links between young people's civil justice problems and their offending behaviour. Analysis of the 2010 Civil and Social Justice Panel Survey found that young people who had recently been arrested or who had recently had contact with the police experienced more social welfare-related justice problems than other young people. In particular, young people who had recently been arrested had higher levels of housing, debt and benefits problems; key factors influencing re-offending⁴⁴ (and areas of law that will be removed from the scope of legal aid). Young people who had been arrested were also less likely to have obtained advice to help them deal with these problems.⁴⁵

How legal advice can help turn young people's lives around

Getting early advice to resolve problems can help prevent the costs from spiralling, for both young people and government. Young people who responded to the Civil and Social Justice Survey were twice as likely to meet their objectives where they managed to obtain advice in comparison to when they handled their problems alone.⁴⁶

⁴³ New Economics Foundation (2008) Work it out: barriers to employment for homeless people New Economics Foundation.

⁴⁴ Social Exclusion Unit (2002) Reducing Re-Offending by Ex-Prisoners. London: Office of the Deputy Prime Minister.

⁴⁵ Pascoe Pleasance (2011, forthcoming) Civil Legal Problems: Young People, Social Exclusion and Crime Law Centres Federation and Youth Access.

⁴⁶ The LSRC analysed data for Youth Access from the Civil and Social Justice Survey on the extent to which respondents met their objectives relating to 9,591 adults aged 18 and over, including 841 young adults aged between 18 and 24, interviewed between 12th January 2006 and 31st September 2008.

⁴⁷ Quotes taken from the original transcripts of interviews with young people aged 16-24 conducted by Butler and Hutchinson for Youth Access in 2007 as part of a qualitative study into the impact of legal advice delivered in youth settings.

In their own words: how legal aid support makes a difference to young people's lives 'If I hadn't gotten advice...'⁴⁷

"I was feeling suicidal. If I hadn't got advice I would be dead now."

- 20 year old male with employment issue

"My little girl could have been taken away."

- 17 year old female with housing and benefits problems

"I would probably have been dead, I was sharing needles, involved in prostitution. The staff here encourage me, they believe in me, and I have started to believe in myself. I used to hate myself before."

- 24 year old female with housing and social services problems

"I would have lost my home, been back in B and B and may have got into trouble again."

- 20 year old male with housing, debt and benefits problems

"I would have been homeless, mentally disturbed and in the gutter."

- 19 year old female with debt and benefits problems

"I would have been very depressed and doing nothing with my life"

- 17 year old female with domestic violence and housing problems

"I would be in prison. We would certainly have lost our home and I probably wouldn't have been seeing my children now."

- 25 year old female with debt, housing and social services problems

"I think I would probably have had a breakdown....and still looking for advice."

- 17 year old female with immigration, housing and benefits problems

"I wouldn't be alive now"

- 20 year old male with housing and immigration problems

"I would have got worse and committed crimes."

- 21 year old male with housing and benefits problems

"We would be stuck - homeless and hungry"

- Young couple aged 17 and 18 with housing and benefits problem

5. Protecting children and young people's access to justice

Taking legal aid away from children and young people will leave them alone in a legal system designed for adults, and will leave government footing the bill for the costs down the line. Government can afford to protect children and young people. It can't afford not to.

JustRights and Sound Off For Justice are calling for amendments to the Legal Aid, Sentencing and Punishment of Offenders Bill to protect children and young people's access to justice.

This report argues that the proposals in the Legal Aid Sentencing and Punishment of Offenders Bill will lead to significant numbers of children and young people being denied access to Justice. The removal of help with legal aid to assist with key civil justice problems will leave children and young people to navigate a legal system alone, with little help available from advice agencies already hit hard by Government cuts. Failure to resolve these problems will result in knock on costs in terms of reduced employment prospects, poor mental and physical health, and possibly increased offending costs that fall both on children and young people and on Government.

Our proposed amendments

The amendments JustRights and Sound Off For Justice are seeking to make to the Legal Aid, Sentencing and Punishment of Offenders Bill will ensure adequate protection children and young people, and save Government money down the line.

Amendments to the Bill could ensure that children and young people are protected from the impact of the cuts, either by:

- ensuring that they are always treated as 'exceptional' cases, or;
- by listing them on the face of the Bill as one of the groups to whom these changes do not apply.

The cost of these changes would be small; £10 million to protect all under 18 year olds, and £40 million to protect young people aged 18-25. These costs are dwarfed by the costs of not taking action: £10 million is equivalent to the cost of imprisoning just 71 young offenders.⁴⁸ £40 million is less than half the weekly cost of youth unemployment.⁴⁹

Funding for legal aid for young people should be accompanied by a review of how children and young people access justice, to ensure that it is delivered effectively and efficiently. A lack of targeted services that meet children and young people's needs mean that too many are already missing out.

Justrights members have pioneered and developed successful models of delivering high quality legal advice and representation to the children and young people who most need it. These services achieve life changing outcomes. We want all children and young people to be able to access legal advice and representation when they need it.

Wider changes to the Bill would help to protect children and young people who are affected by their family's loss of legal aid. Sound Off For Justice has proposed a number of changes to the scope provisions that would mitigate the adverse impacts on children, including:

- setting out additional circumstances in which funding should be retained in family cases;
- clarifying the scope of housing legal aid and;
- retaining legal aid for welfare benefits appeals and for clinical negligence, particularly for catastrophically injured children.

How children and young people are treated by the justice system defines our view of them as citizens, and will shape their own view of society. We must not fail them. Government must act to protect their access to justice.

⁴⁸ Punishing Costs, New Economics Foundation, 2010.

⁴⁹ The Cost of Exclusion: Counting the cost of youth disadvantage in the UK, Prince's Trust, 2007.

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