

# Protecting Legal Aid for Children

## **Briefing for MPs on Legal Aid, Sentencing and Punishment of Offenders Bill**

Commons consideration of Lords amendments – Tuesday 17 April 2012

**JustRights** is a coalition of over 30 children's charities and youth organisations representing the interests of children & young people, *not* those of legal aid providers.

### Background

During the House of Lords stages of the Legal Aid, Sentencing and Punishment of Offenders Bill, Peers voted in favour of a cross-party amendment that would retain legal aid in civil cases for children under the age of 18 who need legal aid *in their own right* in order to deal with their problems independently from the needs or support of their parents or carers. This briefing sets out why we believe that the amendment should be retained by the House of Commons.

### **What does the amendment do?**

The changes proposed in the Legal Aid, Sentencing and Punishment of Offenders Bill, would, if passed unamended, remove access to legal aid for children aged under 18 who need to access the civil justice system *in their own right*. The amendment passed by the House of Lords retains legal aid for all children under 18 who need independent access to this support.

### **How many children does the amendment cover?**

41,000 children accessed legal aid as the primary applicant last year. The provisions under the Bill mean that 6,000 children would lose entitlement if this amendment were not retained – representing 14% of the total.<sup>1</sup>

### **How much will the amendment cost?**

Around £6m-£7m p.a. – based on data provided by the Ministry of Justice in answer to PQs and FOI requests. This represents only about 4% of current civil legal aid spending on children.

### **How much will the amendment save the taxpayer?**

- The Local Government Association estimates that the removal of legal aid for unaccompanied child asylum-seekers in immigration cases alone will cost local authorities £10m p.a.
- Robust research by Youth Access with the Legal Services Research Centre indicates that far greater costs than this will fall upon the NHS, the criminal justice system and the welfare system.<sup>2</sup>
- Legal advice targeted at children and young people is cost-effective because this age group suffers greater adverse consequences than adults from unresolved problems and benefits more from the receipt of advice.<sup>3</sup>
- It would save the Ministry of Justice the costs of administering applications by children to the Exceptional Funding Scheme.

### **What type of children does the amendment cover?**

Most of the children affected will be highly vulnerable teenagers living independently from their parents – perhaps after leaving care or escaping difficult family circumstances. Without legal aid, many of these children will need to navigate an adult-focused legal system without professional advice or representation. Data supplied to JustRights by the Ministry of Justice indicates that the cases covered by this amendment span all areas of law, but are predominantly social welfare and immigration cases:

<sup>1</sup> Although the Government have sometimes suggested that this removes legal aid from only 3% of cases, we believe the 14% figure to be more accurate, based on figures supplied to JustRights by MOJ on 10/10/11 in response to a Freedom Of Information request.

<sup>2</sup> See Just Rights (2011) *Heading for trouble?* Research Briefing November 2011 at [http://justrights.org.uk/sites/default/files/Heading\\_For\\_Trouble\\_FINAL.pdf](http://justrights.org.uk/sites/default/files/Heading_For_Trouble_FINAL.pdf)

<sup>3</sup> *The Outcomes And Impact Of Youth Advice – The Evidence*, Youth Access, 2011.

- Immigration – 2,490 cases costing £1.1m
- Debt – 280 cases costing £0.1m
- Employment – 90 cases costing £0.0m
- Housing – 430 cases costing £0.1m
- Welfare Benefits – 1,330 cases costing £0.3m
- Actions Against Police – 90 cases costing £0.1m
- Education – 110 cases costing £0.4m
- Clinical Negligence – [unknown following a Government concession]
- Personal Injury – 300 cases costing £1.6m
- Miscellaneous others (incl. Asylum, Consumer and Public Law) – 165 cases costing £0.3m

#### Four key reasons for retaining the amendment:

- 1. Children do not possess the knowledge and skills to resolve their legal problems without expert advice.**  
Children differ from adults: developmentally; in their legal status; and in their ability to navigate the legal system. If this amendment is not passed, thousands of vulnerable children will be left to deal with legal difficulties and potentially navigate tribunals and court hearings on their own.
- 2. The Government has clear legal duties to protect children's access to legal aid.**  
The UK Government is bound by the United Nations Convention on the Rights of the Child and The Council of Europe guidelines on child-friendly justice to provide children with access to free legal aid. Baroness Walmsley recently warned in Parliament that if children's access to legal aid is not protected, the Government "*will be taken to the international court. It is as simple as that.*"<sup>4</sup>
- 3. The Coalition Government has made commitments to protect children and young people.**
  - The very first point in the Liberal Democrats' current youth policy is a commitment to improve young people's access to legal advice.
  - The Government's recently published 'Positive for Youth' paper commits the Government to providing additional support for vulnerable children and young people.
- 4. Government assurances about protecting children are not sufficient.**
  - 14% of children's cases will be out of scope, not 3% as often stated by ministers.
  - Contrary to misleading Government claims, the 6,000 children covered by this amendment will not be protected by the Exceptional Funding Scheme. The MOJ has confirmed to JustRights that their figures on the number of children affected *already* account for those who would get exceptional funding. If children were entitled to legal aid automatically Government would avoid the cost of administering children's applications to the scheme, as well as possible delays that would be detrimental to children's welfare.
  - **Conditional Fee Arrangements** (CFAs) are only of relevance to the small number of clinical negligence cases that remain out of scope.
  - The young people covered by this amendment will rarely be represented by a **litigation friend** – indeed most of them will be needing to bring their cases precisely *because* they don't have parental support.

#### For more information or a personal briefing, please contact:

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**For detailed JustRights reports**, including *Not Seen and Not Heard* (Sept. 2011), our joint report with the Law Society on the impact of LASPO Bill on children and young people, go to: [www.justrights.org.uk](http://www.justrights.org.uk)

#### The JustRights campaign on legal aid is supported by:

Catch 22 | Children's Legal Centre | Children's Rights Alliance for England | Confederation of Heads of Young People's Services | Children's Rights Officers and Advocates | Howard League for Penal Reform | Independent Academic Research Studies | Just for Kids Law | Kids Company | Law Centres Federation | National Youth Agency | National Council for Voluntary Youth Services | National Youth Advocacy Service | Streetwise Community Law Centre | Streetlegal | The Cabin (the UK's only CAB for young people) | Voice | Young Minds | Youth Access

<sup>4</sup> *Hansard: Monday 16 Jan 2012: Column 443. House of Lords: Legal Aid, Sentencing and Punishment of Offenders Bill - Committee (3rd Day).*