

Aid to be slashed for the UK's poorest

By Robert Stevens
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The British Conservative/Liberal Democrat government has unveiled a green paper which heralds the end of the 60-year-old system of Legal Aid in England and Wales.

“Proposals for the Reform of Legal Aid in England and Wales” was released on November 15. Justice Minister Kenneth Clarke presented the report and announced that the measures will result in a cut of £347 million (16 percent) from the £2.1 billion legal aid budget by 2014-15. Clarke said, “It is starkly obvious that the England and Wales legal aid system has become far too expensive, and it is an obvious place to start tackling deficit problems”.

While the cuts are being imposed as part of the £83 billion total cut in public spending, announced in October, slashing the legal aid budget is not merely a financial decision. It has a profound anti-democratic content, the essential purpose of which will be to deny millions of the poorest people in society access to legal services.

Legal aid in England and Wales was established by the 1949 Legal Aid and Advice Act as part of the construction of the welfare state in the post-war period. Legal Aid is administered by the Legal Services Commission and assists more than two million people annually. Its budget funds solicitors and agencies that advise people on their legal problems when faced with eviction, debt and family breakdown. The service represents people in court. Its Criminal Defence Service section deals with criminal cases and Community Legal Service with civil cases.

At present, any person with assets worth less than £8,000 qualifies for legal aid for civil cases. Those with assets worth up to £3,000 and less than £316 in monthly disposable income pay nothing. Proposals in the new paper abolish this qualifying level, stating, “For these people, litigation is essentially cost free, and there is no restraint on their decision to use the courts to resolve issues.”

Under the proposed measures, anyone with assets of more than £1,000, including the value of their home, will have to pay towards their legal costs. The government

plans to reduce the number of civil law cases receiving Legal Aid by 547,000 a year. To achieve this, civil law cases that currently qualify are to be made exempt. These include divorce and welfare benefits cases, school exclusion appeal, and employment cases, immigration cases where the person is not detained and clinical negligence and personal injury cases. Housing cases are removed, excepting when involving homelessness or serious disrepair, as is debt advice where there is no risk of repossession. How these caveats are to be determined and who by has not been outlined.

Clarke said that a new “civil and family scheme” would “discourage people from resorting to lawyers whenever they face a problem, and instead encourage them to consider more suitable methods of dispute resolution.”

Legal Aid will no longer be an option for the most disadvantaged people in society, including the poorest and the disabled. More than half of the Legal Aid cuts fall disproportionately harder in their impact on people with low incomes. These include the removal of aid for welfare benefit cases, child access, non-violent domestic disputes and divorce. Legal Aid in welfare-related issues for those seeking asylum support is also being removed.

The document notes that “Legal aid currently funds legal advice in relation to decisions about benefits such as Disability Living or Attendance Allowance, Incapacity Benefit, Income Support and Housing Benefit”. It proposes entitlement for cases regarding these benefits be removed even though, “the class of individuals bringing these cases is more likely to report being ill or disabled in comparison with the civil legal aid client base as a whole”.

In many cases, people in destitute circumstances are denied benefits or have benefits cut due to administrative error and are then forced to appeal to a tribunal. At present they have access to Legal Aid, but this will no longer be available. The paper claims that those requiring legal aid in cases regarding welfare benefits can instead turn to charities and voluntary groups. “We therefore consider that legal aid is not justified in these cases

because the issues are not generally of sufficiently high importance to warrant funding,” the paper states.

Richard Hawkes from the disability charity Scope asked, “In an era of budget cuts, job losses and welfare reform that contains some pretty sharp sticks, what now happens to disabled people who fall foul of public and private bureaucracies? The courts have traditionally been the last line of defence against poor, unfair and unlawful decisions.”

The abolition of a basic legal right is also put forward in the paper. At present a defendant at a police station has the choice as to who will represent them and to see a legal representative face to face. Under Legal Aid this decision is for the defendant only to make. The government now proposes to abolish this right. The document states, “We will be looking at whether providers should have greater discretion to exercise their professional judgment in determining whether a police station attendance is necessary or whether they could provide the necessary advice over the telephone.”

What is planned is the rapid erosion of what remains of legal aid provision, with the introduction of what the document describes as “full market competition”. It states that it is the government’s intention “to move, during the course of 2011–2012, to introduce competition into the pricing of criminal legal aid services” and an intention “to move subsequently to competitive pricing in civil and family legal aid”, whereby “market forces would determine their price, and providers would be paid for work completed, rather than remunerated for the number of hours worked.”

The green paper proposes a 10 percent cut in fees across the board for firms who intend to continue providing legal aid services. According to the solicitors journal web site, “The proposed ten percent fee cut will slice such a large chunk off their thin profit margins that their very existence will be in question, possibly leaving only large volume suppliers in that space. Some sectors are already predicting that practices will have to turn away half of their clients, making substantial restructures, redundancies and closures a distinct possibility.”

It is estimated that barristers doing civil case legal aid work will see a 42 percent reduction in their income.

Even prior to the fees reduction outlined in Clarke’s paper, the Legal Services Commission had vastly curtailed the number of firms able to offer legal aid from 2,400 to 1,300. Law firms have to meet an extended set of criteria to be awarded new contracts.

As a result large swathes of the country are being cut

off from being able to access legal aid services. In Wales the number of solicitors is being reduced by a half, whilst in Cornwall 50 firms are being reduced to less than 10. In Poole and Dorset just one firm of solicitors has a contract which covers over 140,000 people.

Mark Stobbs of the Law Society said, “The LSC is potentially creating advice deserts here, where people simply can’t get access to a proper lawyer.” Its chief executive Des Hudson said that the proposals were “playing fast and loose with the basic principle that the courts and justice system are available irrespective of your wealth.”

The coalition is continuing the attacks made by the previous Labour government. Prior to the May general election, Labour put forward policies to slash 75 percent of law firms practicing criminal aid, reducing the number of legal aid firms in England and Wales from 2,500 to around 400. A Ministry of Justice report in March stated that a “future tendering process would ensure a more consolidated market, with a smaller number of more efficient suppliers, required to undertake the full range of the services we need.”

In his response to Clarke’s proposals, Shadow justice secretary Sadiq Khan acknowledged that the Legal Aid budget would have been sharply cut had Labour remained in office.

The cuts will have a highly detrimental impact on the network of law centres nationally, which currently provide legal services for 120,000 people each year. It is estimated that these numbers could be halved as the new measures are implemented, with many centres forced to close. The South Manchester Law Centre is faced with 15 job losses and possible closure after losing 80 percent of its funding when the Legal Services Commission awarded contracts elsewhere. This single centre is currently dealing with 500 cases and assists hundreds of people free of charge every year.

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