

## **LEGAL AID BILL**

### **ADVICE AND REPRESENTATION TO GYPSIES AND TRAVELLERS**

#### **BRIEFING SUMMARY**

The Legal Aid Bill<sup>1</sup> was published on the 21<sup>st</sup> June 2011.

If brought into force as it stands now this Bill will have disastrous effects on the provision of advice and representation to Gypsies and Travellers on accommodation issues (to say nothing of the disastrous effects on many other areas of the law such as welfare rights, debt and education to name but a few).

Clause 8 of the Bill states that civil legal services will only be available in those areas detailed in Schedule 1 Part 1 of the Bill.

Clause 26 provides that the Lord Chancellor may provide services by means of telephone advice. On the same date as the publication of the Bill the response to the consultation on Legal Aid has been published<sup>2</sup>. There had been a proposal that telephone advice should be the “mandatory single gateway” to Legal Aid assistance (which would mean that only those providers who had telephone advice contracts would be able to deal with that initial stage). At para 146 of the consultation response the Government has stated that, initially, they will confine this proposal to four areas of law: debt; special educational needs; discrimination cases; and community care. At paragraph 153 they confirm that the Community Legal Advice Helpline will continue in the following areas: debt; special educational needs; discrimination; community care; family; housing.

Schedule 1 Part 1 of the Bill contains those services which remain in the scope of Legal Aid (by this is meant all forms of advice, assistance and representation). At paragraph 17(1) “Judicial Review” is kept within scope. However paragraph 17(2) makes 17(1) subject to the exclusions in Schedule 1 Part 2. Part 2 paragraph 5 excludes ‘trespass to land’.

At paragraph 27 onwards “loss of home” is kept within scope but the following should be noted:-

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<sup>1</sup> Legal Aid, Sentencing and Punishment of Offenders Bill 2011

<sup>2</sup> The Reform of Legal Aid in England and Wales : the Government Response

- (8) *In this paragraph “home”, in relation to an individual, means the house, caravan, houseboat or other vehicle or structure that is the individual’s only or main residence, subject to sub-paragraph (9);*
- (9) *References in this paragraph to an individual’s home do not include a vehicle or structure occupied by the individual if there are no grounds on which it can be argued –*
- (a) that the individual is occupying the vehicle or structure otherwise than as a trespasser, and*
- (b) that the individual’s occupation of the vehicle or structure began otherwise than as a trespasser*
- (10) *In sub-paragraphs (8) and (9), the references to a caravan, houseboat or other vehicle include the land on which it is located or to which it is moored.*

Excluded services are listed at Schedule 1 Part 2. Gypsy and Traveller planning work (in other words High Court planning appeals, planning injunction actions, challenges to Stop Notices and direct action etc) are not mentioned but (subject to what I say later) must be taken to be excluded by not being included in Schedule 1 Part 1.

In its consultation response the Government accepts that the majority of the over 5,000 responses they received were against the reforms. Nevertheless they are willing to fly in the face of those responses. For example at paragraph 41 of the consultation response they state:-

*Over 90% of Respondents to the consultation disagreed with the proposals to remove from the scope of Legal Aid those cases and proceedings set out in the consultation.*

At paragraph 234 of the consultation response the Government conclude that they will proceed with a 10% reduction to all fees paid under the Civil and Family Legal Aid Schemes. At Annex B paragraph 74, the Government relate the key issues raised in the consultation on Housing cases (which incorporates Gypsy and Traveller accommodation cases). They state that one of the key points raised by Respondents was:-

*Funding should be provided for planning appeals and eviction cases involving Gypsies and Travellers because this group was one of the most vulnerable in society.*

However, in their response to the consultation from paragraph 75, they fail to actually respond to that point.

## **Discussion**

The main types of Gypsy and Traveller cases that come under the housing umbrella are: evictions from unauthorised encampments; evictions from rented sites; other issues relating to rented sites; High Court planning cases (injunctions, planning appeals, challenges to Stop Notices and direct action etc), and homelessness cases.

Under the Government Bill **all** unauthorised encampment eviction cases will go out of scope. A very large number of planning matters will go out of scope (there may be cases where it can be argued that loss of home is involved though this may be difficult to argue since the word 'eviction' is used under 'loss of home' in the Bill – so it can be argued in certain injunction cases but has to be presumed that all injunction cases will go out of scope. Stop Notice and direct action cases will normally involve Judicial Review and will therefore be within scope). Ironically, since, after an enormous struggle, the Mobile Homes Act 1983 has finally been applied to local authority sites, all aspects of the Mobile Homes Act 1983 apart from possession actions will go out of scope.

Some 25% of the Gypsy and Traveller population who live in caravans in England and Wales are either on unauthorised encampments or unauthorised developments and, therefore, many of those people will be directly affected by these proposals. At CLP we estimate that at least 75% of our 'accommodation cases' for our Gypsy and Traveller clients would no longer be within scope.

As is, of course, well known, the Gypsy and Traveller community are one of the most vulnerable and disadvantaged communities in the England and Wales in terms of health, education and discrimination and it is almost universally accepted that these disadvantages and problems would be addressed if there was adequate site provision.

The above means that perhaps up to 25% of this population are homeless compared with 0.1% of the settled population.

Those advising and representing Gypsies and Travellers on eviction cases know that many local authorities fail to follow the Government guidance on unauthorised encampments, fail to take into account Human Rights considerations, fail to take account of the relevant caselaw and fail to follow a proper and reasonable process. If Gypsies and Travellers involved in High Court planning cases are unsuccessful, then that will result in loss of their home and homelessness.

There has been some publicity in the media stating that Legal Aid will be refused to “squatters”. This publicity refers to a few high profile cases where expensive properties have been squatted. It is rather ironic, therefore, that the exclusion in the Bill does not actually cover “housing”. It would appear, therefore, that squatters in houses could potentially obtain Legal Aid. However, it should also be pointed out that it would be extremely rare for squatters in houses to obtain Legal Aid.

Some of the leading Supreme Court and Court of Appeal cases in the areas of evictions and homelessness have involved Gypsy and Traveller cases. Additionally the recent Supreme Court judgments in *Manchester City Council - v – Pinnock* and *London Borough of Hounslow – v – Powell and Others* made it clear that, in unauthorised encampment cases, Article 8 of the European Convention on Human Rights (the right to respect for private and family life and home) would be engaged. However, the Bill will ensure that Romani Gypsies and Irish Travellers (ethnic groups under the Equality Act 2010) will be excluded from raising these Human Rights issues in any defence to an eviction action.

The Equality Impact Assessment that accompanied the Bill fails to mention Romani Gypsies or Irish Travellers at all. A separate legal challenge is being considered because of this.

The Bill had its second reading in the Commons on 29 June 2011 and the Government are clearly determined to push it through as fast as possible.

For more information about the campaign that is already in progress to retain legal aid for Gypsies and Travellers please contact me – see below. Please sign our online petition at <http://www.petitiononline.co.uk/petition/no-mad-laws/3062> (please make sure you validate your signature).

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