



Legal aid cuts: where are we now?

On 8 April 2013 the Government announced a further round of cuts to legal aid in the Transforming Legal Aid consultation. The consultation received around 16,000 responses. A response to the consultation was published on 5 September 2013 and the Government has started to enact secondary legislation to implement the proposals. On 13 December 2013 the Joint Committee on Human Rights (JCHR) published its report on “the implications for access to justice of the Government’s proposed legal aid reforms”. This document sets out where we are now with the changes.

The Residence test

Status: *Proposed implementation March 2014*

Any person not lawfully resident in the UK for 12 months is not entitled to legal aid. This is subject to some exceptions e.g. for asylum seekers; victims of trafficking; certain cases involving children or domestic violence; detention cases; and children lawfully resident but aged under 12 months. The JCHR has called for the test to be implemented by primary legislation, if at all, has expressed concern that the test will place the UK in breach of the UN Convention on the Rights of the Child and the Trafficking Directive and has criticised the exceptions as too limited – e.g. a trafficking victim will be unable to access legal aid to help if they become homeless.

Prison law

Status: *Came into force on 2 Dec 2013. House of Lords debate expected early February 2014.*

Legal aid is no longer available for treatment, resettlement, categorisation, or for Parole Board hearings where the Board does not have the power to direct the prisoner’s release. This means it is no longer possible to carry out legal work to assist prisoners in rehabilitating and reducing their risk of reoffending. EG the removal of resettlement means that a prisoner cannot access criminal legal aid to help secure release accommodation. The JCHR has urged that funding remain available for all parole hearings, categorization, mother and baby cases and cases affecting young people and prisoners with mental health problems.

The merits test for civil legal aid

Status: *Proposed implementation early 2014*

No legal aid for cases where the prospects of winning are unclear. The JCHR has recommended that funding remain available for these cases citing concern that the proposal may result in inequality of arms and impede the development of the law.

No legal aid for families on modest incomes in the Crown Court

Status: *Proposed implementation early 2014.*

No household with a disposable income over £37,500 will receive legal aid in the Crown Court unless they can demonstrate “hardship”.

Judicial review

Status: *Awaiting Government response following further consultation*

Legal aid will only be paid where a judge has granted permission for the case to be argued or where specific requirements are met. This represents a shift from the original proposal that lawyers would only be paid if permission was granted. The new consultation proposes to change the law to make it harder for illegal decisions by Government to be challenged by:

- restricting the ability of campaign groups (among others) to bring judicial reviews;
- restricting judicial reviews based on challenges to procedural defects that Government believes would have made no difference to the ultimate outcome.

Criminal legal aid: police stations and courts

Status: *Awaiting Government response following further consultation*

Contracts for police station and court duty work will be competitively tendered, although not based on price. Clients will retain ability to choose their solicitor. However, there will be limited number of duty contracts, likely to lead to closure of hundreds of firms. There will also be a cut in fees of at least 17.5% across the board.

Fee cuts for experts and lawyers

Status: *Came into force on 2 December 2013*

Expert witness fees cut by 20%, increasing the likelihood of miscarriages of justice in complex cases. Fees also cut for lawyers in civil, crime, and immigration law. The civil cuts have been drawn to the attention of Parliament by the delegated legislation committee.