



POLICY RESPONSE

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Response to a Consultation Document on the Scope of Civil Legal Aid

January 2015

1.0 Introduction

Housing Rights Service (HRS) was established in 1964 and is the leading provider of independent specialist housing advice services in Northern Ireland (NI). We work to achieve positive change by protecting and promoting the rights of people who are in housing need and our policy work is based on the experience of our clients. Our services are delivered throughout NI and focus on the key areas of preventing homelessness, accessing accommodation, tackling affordability and poor housing conditions.

At the outset, we believe that access to justice is paramount in any democracy. If access to justice is to be truly meaningful, then those with limited financial resources must be able to secure financial assistance from the state. Whilst we accept that public services must be delivered in a cost-effective manner, we would urge Government to ensure that the most vulnerable in our society are not prevented from accessing justice. We agree that any cost cutting exercise should be delivered in a *'fair, balanced and sustainable way'*.¹

The consultation paper sets out the cost of some of the areas which are proposed to be removed from Legal Aid and Advice (Green Form). Those areas which cover housing related issues, which HRS would be concerned with, amount to a small percentage of the overall Green Form expenditure. Despite it being a small proportion of the overall expenditure, removing such funding could have a devastating effect on the lives of people who potentially need this assistance. Therefore, we strongly feel that the funding of housing related cases should be protected.

We do not agree that cuts to Civil Legal Aid funding will better serve access to justice and would oppose any reduction in funding. Furthermore, if cuts are to proceed, we would be concerned that the Department's proposals put too much reliance on an already stretched and shrinking advice sector. The Department must give serious consideration to the possible negative impact that additional stressors will put on both general and specialist advice services. If access to justice is paramount, then sufficient resources must be made available to the advice sector to meet any extra demand flowing from the reduction in Civil Legal Aid services currently provided by legal specialists.

The Department should also give consideration to the evidence coming out of England and Wales on the negative impact resulting from equivalent cuts introduced under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). The Justice Select Committee at Westminster is currently taking evidence on the impact of the legal aid cuts in England and Wales.² Recently, some of England and Wales' senior judges made a submission to the Justice Select Committee stating that, *"The apparent saving of cost by a reduction in the legal aid budget needs to be viewed in context: often it simply leads to increased cost*

¹ Par 1.5 of the consultation paper

² Impact of changes to civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012

*elsewhere in the court system as, for example, anecdotally, cases take longer. The judiciary's perception is that cases which may never have been brought or been compromised at an early stage are now often fully contested, requiring significantly more judicial involvement and causing consequential delays across the civil, family and tribunals justice systems."*³ We believe that the Department should closely monitor the evidence given to the Justice Select Committee so as to avoid similar negative impacts arising from the proposed cuts to Civil Legal Aid in NI.

The Department should also reflect on new research carried out by the Legal Action Group (LAG) which shows the negative impact that legal aid cuts have had on people's health in England and Wales.⁴ According to this research, a total of 88% of GPs surveyed believed that if their patients could not have access to legal or specialist advice it would have a negative impact on health. 67% of the GPs surveyed, responded that they had patients who lacked access to advice on social security benefits. 54% reported that they had seen an increase in patients with housing problems. The report goes on to say that their findings correspond with the impact assessment carried out by the Government prior to LASPO being introduced in England and Wales i.e. that sick and disabled people would be feel more of an impact from the cuts. It is therefore important that the Department takes such research on board when considering cuts, especially cuts affecting advice on social security benefits, debt and housing matters.

³ Written evidence from the Judicial Executive Board to the Justice Select Committee at Westminster - <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/impact-of-changes-to-civil-legal-aid-under-laspo/written/9472.html>

⁴ 'GPs say legal aid cuts damaging patient health', Legal Action, December 2014/January 2015, page 6

2.0 Summary

- Housing Rights Service believes that access to justice can only be truly delivered if those with limited financial resources are able to get help from the state.
- Whilst the expenditure from Green Form on housing cases may be a small percentage of the overall amount; the removal of such assistance could have a disproportionately negative effect on the lives of people who need this type of assistance.
- The Department should bear in mind the strains already being placed on the advice sector as a result of increasing demand for its services and cuts to its funding streams. If Civil Legal Aid is to be cut, the Department should consider innovative ways of funding the advice sector to ensure that it has sufficient resources to deal with any additional stress placed on it. The Department should also look at ensuring the advice sector has systems in place for providing standards of quality advice and to demonstrate that value for money is delivered.
- The Department should fully consider evidence emerging from England and Wales on the impact of cuts to legal aid which they have already suffered. Evidence from the experiences of the legal profession and the health sector allude to the negative impact on the legal system and the health of those people denied Legal Aid assistance.
- Whilst we welcome the protection of 'homelessness' cases for funding through legal aid we would urge the Department to employ a wide definition of homelessness so as to ensure access to justice where a person has lost their home or is at risk of losing their home, whatever the reason for their situation.
- The Department should investigate the provision of alternative dispute resolution mechanisms in the private rented sector where, at present, litigation is the main means of redress. This is a core area of improvement which has been called for by the NI Private Tenants' Forum.

3.0 Strategic considerations for scope reform

3.1 Importance of issues

3.1.1 Homelessness

We are pleased to see that the Department proposes that cases involving homelessness and intervention by the state will be treated as 'high priority for legal aid funding'.⁵ However, we would ask that the Department provides clarity on what they will consider to be a 'homelessness' case.

⁵ Paragraph 5.1 of the consultation document

In our experience, homelessness is a wide ranging situation; it is more than being ‘actually’ homeless i.e. without a roof over your head. The threat or risk of becoming homeless is just as important as actual homelessness and can arise from a myriad of circumstances. If there is a means of challenging such a potential loss, then financial assistance through Civil Legal Aid should be made available to those who need it.

A statutory definition of homelessness is provided by the Housing (NI) Order 1988 which we believe encompasses all types of homelessness and the multitude of reasons for that homelessness.⁶ It can include a person or household:

- Being actually homeless with no accommodation available for them to occupy;
- Being threatened with homelessness due to e.g. being served with a notice to quit due to rent or mortgage arrears, being harassed or intimidated by neighbours;
- Living in accommodation which is not reasonable for them to continue to occupy e.g. overcrowding, disrepair, unable to maintain the property, or unable to afford the accommodation.

We are concerned that some of the areas that the Department is proposing to remove from Civil Legal Aid can actually lead to homelessness. For example:

- A claimant who has been refused Housing Benefit which can ultimately lead to rent arrears and the threat of eviction, needs to be able to access legal advice on appealing a Housing Benefit decision;
- Breach of contract e.g. where a landlord fails to carry out their repair obligations it can make the accommodation uninhabitable and not reasonable to continue to live in, thereby making the occupant homeless.

We would ask that the Department interprets homelessness cases as widely as possible so as to capture the range of possible scenarios which can lead to homelessness. HRS would be keen to contribute to any discussions which the Department might undertake in determining the definition of homelessness for the purposes of Civil Legal Aid.

3.1.2 Human rights

Again, we are pleased that cases involving the protection of the individual against undue intervention by the state will be given high priority. The Human Rights Act 1998 is one of the most significant pieces of constitutional legislation ever passed in the UK. It makes the European Convention of Human Rights legally binding in all parts of the UK; thereby enabling individuals and organisations to seek legal redress in domestic courts and tribunals if they believe their rights under the convention have been violated.

⁶ Article 3 of the 1988 Order

In accordance with Article 8:

“Everyone has the right to respect for his private and family life, his home and his correspondence.”

Article 8 goes on to state:

“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 8 seeks to protect a person’s right to access and live in their home without unnecessary state intrusion or interference. Of course, this right can be interfered with in certain circumstances e.g. statutory grounds for possession. It is therefore important that every effort should be made to ensure that Civil Legal Aid funding is made available to allow individuals to defend the occupation of their home where there is a suspected infringement of Article 8 by a public authority.

3.1.3 Judicial review

We agree that cases where the decisions and actions of the state need to be challenged should be a high priority for Civil Legal Aid funding and should be protected as much as possible. The ability to challenge the state is a fundamental element of a person being able to enforce their statutory rights.

In all of the above, we would reiterate that providing a citizen with a statutory right to protect their home, or to access accommodation if they are homeless, is substantially undermined if they are unable to enforce such rights due to a lack of Civil Legal Aid being made available.

3.2 Self litigants

Already an increasing number of people have no option but to present their own case at court. The Northern Ireland Courts Service has produced a guide, in association with HRS, for self-litigants on how to take a case through the courts.⁷ Cuts to Civil Legal Aid funding will inevitably lead to greater self-litigation. We have serious concerns that many people will be denied access to justice because self-litigation will not be suitable for everyone to

⁷ <http://www.courtsni.gov.uk/en-GB/Publications/UsefullInformationLeaflets/Documents/personal-litigant-guide/Personal%20Litigants%20Guide.pdf>

undertake. Some clients will either be unable or unwilling to face a daunting court environment without the appropriate support.

In their assessment of LASPO, one year after its introduction, the Bar Council for England and Wales has reported on the negative impact to the court system and access to justice which has resulted from the increase in self-litigation.⁸ They have stated that *"Although it is too early to determine the longer-term impact of the Government's transforming legal aid agenda (of which LASPO forms a central part), this early research suggests that much of what we feared has come to pass, including:*

- *A significant increase in litigants in person, especially in the family courts*
- *Increased delays in court and additional burdens on already-stretched court resources*
- *Increased and likely unsustainable pressure on frontline providers offering free legal support, advice or representation*
- *A growing reluctance of solicitors and barristers to take on complex, low-value litigation, denying many access to legal advice and representation, and*
- *A growing number of barristers actively considering the viability of a long-term career at the Bar."*

The report goes on to say, *"Without a properly resourced system of justice many citizens, including some of the most vulnerable in society, will be unable to obtain advice or to access the courts to uphold their legal rights."*

We would urge the Department to consider the negative impact which has already occurred in England and Wales as a result of reducing the availability of Civil Legal Aid for representation at court and tribunals. We believe that Civil Legal Aid should continue to be made available for court and tribunal representation so as to ensure access to justice. However, if Civil Legal Aid is to be reduced in some cases we would ask that the Department considers funding specialist advice agencies, such as HRS, to provide support to clients who are unable to represent themselves.

3.3 Other sources of help

We agree that the courts' time should not be taken up with unnecessary actions. Where other forms of dispute resolution are available then they should be fully explored and sufficiently resourced.

Landlord and tenant disputes are a prime example of where mediation could be used as an alternative to litigation. There has been a huge increase in the number of people living in

⁸ http://www.barcouncil.org.uk/media/303419/laspo_one_year_on_-_final_report_september_2014_.pdf

the private rented sector in Northern Ireland; between 1991 and 2011 there was an increase of 505%.⁹ This trend looks set to continue. Increasing numbers people are also living in mixed tenure buildings; which frequently give rise to disputes and disagreements between owner-occupiers, tenants and landlords. Such cases might very well be dealt with by alternative methods, if they were to be made available. However, where alternative methods are not the most suitable for solving disputes then Civil Legal Aid funding should still be accessible. As mentioned earlier, homelessness and the risk of homelessness can arise from a wide range of circumstances, including neighbour and landlord/tenant dispute. What on the face of it may seem a purely landlord and tenant dispute could actually give rise to a possible notice to quit and risk of homelessness. Therefore, in such cases Civil Legal Aid funding should still be made available.

At present, social rented sector tenants have access to statutory complaints procedures operated by their landlords. Such tenants can also ultimately have their grievance investigated by the NI Ombudsman. The Ombudsman provides a valuable service to social tenants who are unhappy with their landlords' actions or failure to act. However, the remit of the Ombudsman is restricted to issues of maladministration, and due to demands on their services there can be serious delays in the length of time it can take for a complaint to reach its conclusion.

Generally speaking, no such complaints systems are in place for private tenants; meaning that it is possible that some matters currently being dealt with by litigation could be addressed elsewhere, if alternative means of help were made available.

A good example of where alternative dispute resolution has been introduced to replace court action is the Statutory Tenancy Deposit Scheme. The provision of a dispute resolution mechanism is a core feature of the Scheme which was introduced in 2013. Prior to the introduction of the Scheme, the only means of recourse for deposit disputes was for a tenant to initiate an action in the Small Claims Court.¹⁰ The availability of an alternative method of dispute resolution means that less court time is being taken up by such actions.

We believe that, because of a lack of existing mechanisms for redress, the introduction of alternative methods of dispute resolution in the private rented sector would be a significant improvement in the sector. In 2014, the NI Private Tenants' Forum launched their Agenda for Action (see Appendix 1).¹¹ One of the priorities in the Agenda for Action is the establishment of an independent complaints service to help resolve disputes between private rented tenants and landlords. The Agenda states *"At the moment access to the courts can be a lengthy and expensive process and these issues can clog up the system. We believe a means of redress should be introduced to help resolve these disputes."* HRS and the Private

⁹ Family Resources Survey Northern Ireland 2012/13. Published September 2014. DSD

¹⁰ Tenancy Deposit Schemes Regulations (NI) 2012

¹¹ <http://www.housingrights.org.uk/sites/default/files/Agenda%20for%20action.pdf>

Tenants' Forum would welcome being involved in any discussions which the Department may undertake in looking at this area.

4.0 Reform of Legal Advice and Assistance (Green Form)

HRS agrees that financial and human resources should be targeted in the best way, and that duplication in services should be avoided. It is important that Government ensures that the right people provide the right advice; which could include legal specialists or the advice sector. The main priority should always be that people in need of advice and assistance on legal matters should be able to have access to such services; free of charge or at a reduced cost, depending on their circumstances.

The Department should look beyond the volume of advice services currently operating as a means of replacing Green Form and also look at the quality of advice that they provide. HRS is committed to providing high quality housing advice. This has been independently recognised by the awarding of:

- Lexcel – Practice Management Standard of the Law Society of Northern Ireland.
- EFQM – European Foundation in Quality Management.
- Investors in People (IIP) – Gold standard.

We are concerned that the Department's proposals place too much reliance on the advice sector to provide advice and assistance, on legal matters currently provided by way of Green Form, without also ensuring that it is adequately resourced and that appropriate mechanisms are put in place to ensure the quality of advice giving and, ultimately, value for money.

The consultation document proposes placing extra responsibilities on the advice sector to provide legal advice at a time when their core funding from Government Departments is already at risk.¹² Therefore, we believe that it would be unwise to place too much reliance on the advice sector to carry out the work currently available through Green Form without proactively addressing the issue of resources.

If Green Form for housing, for example, is to be removed, it is essential that the Department considers the impact on already busy advice services. Any funding which may be diverted from Green Form to advice agencies must be in addition to core funding already provided from other Government Departments, and not as a replacement. We would therefore urge the commencement of Article 12 of the Access to Justice (NI) Order 2003 at the earliest opportunity, to allow the Legal Services Commission to enter into funding arrangements

¹² <http://www.dsdni.gov.uk/dsd-draft-budget-2015-16-consultation.pdf>

with the advice sector to provide legal advice services and to ensure that such services are sufficiently funded.

A good example of innovative funding of legal services, outside of the legal profession, is the NI Legal Services Commission's funding of the Housing Possession Court Duty Scheme (HPCDS), operated by HRS. This funding is outside of the Green Form and Civil Legal Aid schemes, and yet enables clients facing repossession and possible homelessness to access legal advice and representation at court, free of charge. HRS welcomed this funding being made available and believes that its real value has been demonstrated during its pilot period.

In England and Wales, where similar schemes are in place, recent research shows that there can be a significant difference to the outcome of possession hearings in favour of the defendant, (therefore, saving the home and preventing homelessness), where they are able to access legal representation: *"HPCDS advisers play a significant role in assisting occupiers. Frequently this leads to a more favourable outcome, perhaps by agreeing more realistic repayment terms with claimants. Judges consider such schemes to be valuable and yet the emergency legal advice offered by such schemes is not available in all courts, or for all users, when possession lists are heard. Few defendants receive any legal advice prior to the court hearing, and the cuts in funding for legal aid and voluntary advice will make it even harder to receive help before a hearing. It is important therefore that funding for housing possession schemes continues and is extended to enable all courts to offer emergency advice and representation to all those threatened with the loss of a home."*¹³

Funding has also been provided by the Department for Social Development for the Mortgage Debt Advice Service (MDAS), operated by HRS. An evaluation of MDAS shows the cost-benefit of providing advice and assistance to those at risk of losing their home: *"To date MDAS has assisted 180 clients to avoid homelessness. In practice the actual figure could be substantially higher as...a "client" represents more than one person...Taking the average as two people...and taking the average cost of £26,193 from the English and Scottish reports it can be calculated that MDAS has achieved savings to the public purse of around £9.4 million..."*¹⁴

We would query the reference to some of the areas of law deemed as 'lesser priority areas'.¹⁵ Immigration and contract issues, both of which are complex areas of law, should continue to be covered by legal advice and assistance and provided by legal specialists, including those working in the voluntary sector.

¹³ 'Information, Advice & Representation in Housing Possession Cases', April 2014, page 3, https://test-intranet.law.ox.ac.uk/ckfinder/userfiles/files/Housing_Possession_Report_April2014.pdf

¹⁴ Mortgage Debt Advice Service, Final Evaluation Report, MENTOR Economic Developments Limited

¹⁵ See paragraph 8.13 of consultation document

HRS acknowledges that the advice sector may be better placed in some instances to provide advice on some areas of law e.g. social security benefits. Whilst that may be the case, putting additional pressure on already stretched services could lead to a negative effect on the capacity of such agencies to provide advice, and on the quality of the advice given.

In terms of those areas set out which are proposed to be removed entirely from the scope of Green Form, we would argue that some of them should be retained because of their complexity. We would also be concerned that the wider advice sector may not necessarily have the relevant experience and expertise to be solely responsible for advising on some of these areas. In particular, we believe that:

- Contract - this area should be retained by legal specialists as they are best placed with their experience and expertise to advise on this issue.
- Social services – if this is to be removed from Green Form then it should come within the remit of specialist advice agencies, such as the Law Centre (NI).
- Debt – debt is a complex area which can potentially lead to a risk of homelessness. Therefore, we believe that this should be retained by Green Form.
- Landlord/tenant - should be retained by legal specialists, including those working in advice agencies, such as HRS, due to the very serious risk of homelessness which can arise.
- Neighbour disputes - as mentioned earlier, we would ask for clarification on how neighbour disputes are defined. There is the potential for neighbour disputes, which can include harassment and intimidation, to result in homelessness. Therefore, this should be within the remit of specialist agencies or legal specialists in the advice sector.
- Social Security Benefits – this area should be retained within Green Form and there should not be a blanket exclusion of social security issues. Whilst the voluntary advice sector has much experience and expertise in this area, failure to have access to appropriate legal advice could worsen a person's financial situation which could eventually lead to difficulties in affording their housing costs; thereby creating a risk of homelessness. A Housing Benefit issue which could be resolved by early intervention through Green Form could potentially save money in the long run, rather than the matter becoming more complex and ending up as a homelessness case.

The Department should also consider the physical barriers to access to justice which may arise if Green Form is to be reduced. Cuts in funding could lead to people being unable to access appropriate legal advice by virtue of where they live. Most people living in NI are able to access a local solicitor, but may not live near to an experienced local advice agency.

5.0 Reform of the scope of civil legal aid

We are pleased that the Department proposes to protect judicial review and homelessness cases from any cuts to Civil Legal Aid. When it comes to homelessness, we would again urge the Department to employ a wide definition of 'risk of homelessness' so as to capture as many situations as possible as to when a person's home is potentially at risk. HRS would be happy to contribute to any discussions on this topic.

We would encourage the Department to look at including, for example, the following matters within the definition of homelessness cases:

- Landlord and tenant disputes, which can ultimately lead to notice to quit and threat of homelessness,
- Anti-social behaviour should be defined more widely than neighbour dispute. It can also include harassment and intimidation which can end in a threat of homelessness,
- Human rights where there is a potential infringement of the protection of a person's home,
- Breach of contract e.g. harassment carried out by a landlord, or someone acting on their behalf, in breach of the common law principle of peaceful enjoyment and the tenant has to take a personal action.

We are disappointed and concerned at some of the other legal areas which the Department is proposing to remove from Civil Legal Aid (as in Annex E):

- Consumer and general contract - we disagree that this area of law should be removed from Civil Legal Aid. People have certain statutory rights to protection under the Consumer Credit Act 1974. It is therefore essential that Civil Legal Aid is available to people who need it to enforce their statutory rights. We would ask the Department to reconsider removing consumer and contract issues from Civil Legal Aid funding.
- Debt - HRS welcomes the funding that it has received from the Legal Services Commission to provide advice and representation through HPCDS to those facing repossession action. All debt matters have the potential to lead to a risk of homelessness and that is why we believe it is vital that 'risk of homelessness' is given a wide interpretation to include admitted debts.
- Discrimination proceedings - we would propose that the Department includes discrimination in the provision and management of housing within the remit of this definition.¹⁶
- Protection from harassment – we support the development of other avenues for the resolution of disputes between neighbours. However, it is important that adequate provisions are made for such services to be a meaningful alternative to legal action.

¹⁶ <http://www.equalityni.org/Employers-Service-Providers/Selling-letting-or-managing-premises>

We would again encourage the Department to include instances of harassment and intimidation of an individual within the definition of neighbour dispute. In many cases neighbour disputes can lead to a risk of homelessness and, therefore, where a homelessness case arises because of neighbour dispute it should not be refused Civil Legal Aid. We welcome the protection of disputes between landlords and tenants. As mentioned earlier, the housing landscape in NI is changing. There is an increasing number of people living in the private rented sector and higher levels of mixed-tenure residential buildings; all of which give rise to new challenges and the potential for disputes; most of which, at present, have very little means of redress other than legal action.

- Welfare benefits – whilst many voluntary advice agencies are more than able to give comprehensive advice on social security benefits, there is concern that removing this area completely from the scope of Civil Legal Aid could mean that early intervention in matters which could eventually lead to eviction and risk of homelessness is lost; therefore, unnecessarily escalating a benefits problem.

6.0 The merits test

6.1 Legal advice and assistance

We, of course, agree that cases should only be progressed where there is merit. In terms of financial eligibility, we understand that reforms have already been introduced in an attempt to simplify the financial recording aspect of the Green Form. We hope that the Department will continue to liaise with legal specialists for further improvements to the current financial recording systems.

6.2 Civil legal aid

In order for there to be true access to justice, mechanisms need to be put in place for challenging the law and the institutions who enforce the law. HRS has serious concerns that under the proposals a case will only be funded if it can show a ‘cost benefit’. This could have a detrimental effect on creating positive change to wider society which can be delivered through the determination of test cases. It is possible that such cases may not come out with a positive rating following a cost benefit analysis to that client; but may have a much wider public benefit.

Rating the ‘prospects of success’ of a case is very subjective and could be influenced by personal opinion. Many cases which at the outset may be described as ‘borderline’ can go on, with appropriate funding, to lead to positive change in the law for many. Under current proposals such cases may not receive Civil Legal Aid funding. This could result in the law not

responding to public interest and failing to develop appropriately. This is surely to be discouraged in a modern democracy.

7.0 Conclusion

HRS is concerned at the removal of so many areas of law from both Green Form and Civil Legal Aid. We believe that the availability of Green Form can help provide early intervention for people with everyday problems; which could otherwise escalate into much more serious issues, leading to the risk of homelessness. We would ask that the Department reconsiders the removal of social security benefits, contract, debt, landlord and tenant, and neighbour disputes from Green Form assistance. On the face of it, these matters may not equate to a serious housing issue. But without appropriately funded advice and assistance they could all lead to homelessness or a risk of homelessness. Any such risk could be easily avoided with the continued availability of Green Form assistance.

Whilst we welcome the proposal that Civil Legal Aid will still be available for homelessness cases, or where there is a risk of homelessness due to mortgage/rent arrears, we would ask the Department to employ a wide definition of homelessness so as to encapsulate as many circumstances as possible that would otherwise lead to actual homelessness; which has a greater negative impact on the individual and society as a whole. As mentioned earlier, the evaluation of MDAS provides clear evidence of the cost benefit to the public purse of providing advice and assistance to those facing homelessness.

Ultimately, we all benefit from the outcomes of test cases which have a strategic aim of improving the law. Under the proposed 'prospects of success' ratings, many such cases may be regarded as 'borderline', and so may be at risk of losing Civil Legal Aid funding. This is a cause for alarm, as the taking of test cases to challenge the prevailing law is fundamental to any modern democracy. We are concerned about the subjective nature of the prospects of success test and would ask that the Department provides sufficient safeguards so that test cases with potential outcomes to wider society are not denied funding.

Finally, if Green Form and Civil Legal Aid are to be removed from some areas of law we would urge the Department to consider looking at what funding may be made available to the voluntary advice sector to cope with the additional demands which will be placed on it. Whilst there is much expertise and experience in the voluntary advice sector, particularly in some areas of law, funding in this sector is not secure. In addition to resources, the Department should also look at ensuring the quality standard of the advice services which may come to be relied upon. If the Department is determined to provide access to justice, then they must make sure that the voluntary advice sector can deal with any additional stressors placed on it. HRS would be happy to engage in any future discussions about the provision and quality standards of advice services.

We will be pleased to provide additional information in support of this response. For further information contact:

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Private Tenants' Forum Agenda for Action



As a group of private renters in Northern Ireland, we believe our housing rights should be properly protected just like owner occupiers and social tenants. We believe our homes should be safe and properly managed with existing rights properly enforced.

As part of the forthcoming Department for Social Development's review of regulation in the private rented sector, we hope the views of private tenants can be represented in a stakeholder consultation group.

We believe the following key issues need to be considered by policy makers in order to improve the private rented sector.

(Agenda for Action page 1)

1. Better information and education

Most tenants are unaware or unsure about their rights and more could be done to inform them about their responsibilities. We believe government should introduce a requirement for landlords to provide an information pack for all new tenants in their properties. Schools and colleges could also do more to alert young people about the benefits and pitfalls of private renting.

2. Affordability

Those financial barriers that currently limit access to private renting should be minimised. We believe there is a case for banning, or at least limiting, the charging of upfront fees by letting agents.

3. Compulsory licensing of private landlords and letting agents

The current Landlord Registration scheme is very limited and is not much use for tenants. A system of landlord licensing should be introduced as the next step. Also, as the lettings industry is largely unregulated, we believe that letting agents should also be licensed before they are allowed to operate.

4. A standard tenancy agreement

At the moment landlords and letting agents use a wide variety of tenancy agreements - some of which are unfair and misleading. These versions create confusion and uncertainty. Common usage of a standard Northern Ireland tenancy agreement would greatly improve standards. Tenants, landlords and letting agents should be involved in sorting out this issue.

5. Security of tenure

Private tenants are paying significant rents for short tenancies offering no long-term security. At the moment the default tenancy term is only 6 months and many tenants would welcome greater security of tenure, particularly those with children and who wish to put down roots in their local community. We would like to see more landlords offering longer tenancies to tenants after an appropriate 'probationary period' is satisfactorily completed. Along with greater security of tenure, we believe tenants also should also be protected from victimisation for making complaints and generally asserting their rights. Legislation against retaliatory eviction should also be introduced to protect private tenants from vindictive landlords.

6. Improve health and safety standards

Private rental homes should be safe, secure and decent. Poor conditions are putting our health and safety at risk. The fitness standard used for assessing private rented properties is a very basic one. For example, a suitably located socket in a room is considered sufficient to meet the 'adequate provision for heating' requirement. We believe conditions need to be raised and, in particular, there should be a requirement for carbon monoxide and smoke alarms to be installed and maintained in all private rented accommodation, not just Houses in Multiple Occupation (HMOs).

(Agenda for Action pages 2 & 3)

7. Repairs to be carried out within specified timescales

Landlords should be required to properly repair and maintain their properties, particularly to ensure health and safety for their tenants. As is the case with social housing, repairs should be completed within a reasonable period and to an acceptable standard. We believe a 'right to repair' should be included in legislation and a stakeholder group involving landlords and tenants should be set up to consider this issue.

8. An independent complaints service to help resolve tenancy disputes

We would like to see an accessible complaint handling service set up to specifically sort out disputes between landlords and private tenants. At the moment access to the courts can be a lengthy and expensive process and these issues can clog up the system. We believe a means of redress should be introduced to help resolve these disputes.

More information

The Private Tenants' Forum will be pleased to provide any additional information as required in support of this agenda.

Please contact Housing Rights Service for further information.

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W. www.housingrights.org.uk/private-tenants-forum

housing
rights
service

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