



HOUSING LAW PRACTITIONERS ASSOCIATION

## **Housing Justice Campaign**

### **Case Studies and FAQs**

**Why the government's legal aid reforms  
will leave the most vulnerable at risk**

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# Executive Summary

The government is proposing to bring in changes to the legal aid system, which will have a devastating effect on the provision of housing advice to the most vulnerable in society. This will result in unnecessary evictions, homelessness and unmet housing need.

The Housing Law Practitioners' Association (HLPAs), an organisation representing advice workers, lawyers, environmental health and other housing professionals, all of whom have dedicated their lives to helping those in dire housing need, have launched their Housing Justice Campaign to draw attention to the impact of these reforms.

In this report we have drawn together some case studies, submitted by our members, of work they are currently doing and will no longer be able to do if these reforms are pushed through despite almost unanimous opposition to them. In future, clients with similar problems will find it increasingly difficult, if not impossible to get the help they need.

We have then set out the results of a survey of HLPAs' members about the likely impact of these reforms. The results paint a bleak picture for the future of legal aid. We have then responded to some frequently asked questions about the reforms and about the action the government must take to prevent a crisis of housing advice provision.

In addition to launching its own campaign, HLPAs is supporting both the Access to Justice Alliance and the Law Society's What Price Justice Campaign which also seek to highlight the enormous problems raised by the government's proposed legal aid reforms. Those campaigns are supported by, amongst others, Shelter, the NSPCC, Mind, Child Poverty Action Group, Age Concern England and Citizens Advice.

Vivien Gambling  
Chair, Housing Law Practitioners Association

## What is proposed

Historically legal aid has paid for work done on the basis of fixed hourly rates, linking the amount a provider is paid to the amount of time and effort invested in a case. To prevent overcharging, organisations have been audited and monitored by the Legal Services Commission.

From October 2007 the government proposes to change the system for the provision of housing advice and assistance under the legal aid scheme. Under the new system solicitors will be paid a flat rate fee for each housing case regardless of the amount of time and effort invested in each case.

The proposed system is crude and ill thought out. There is no doubt that advising clients who have a mental or physical disability, those who are in hospital or who are housebound, or who are illiterate or who do not speak English, nearly always takes longer than the average case. Some categories of housing cases, such as homelessness, take longer; the law is complex and the procedure for challenging an unlawful decision by a local authority, for example a decision not to house a homeless person, takes time.

Under the existing system housing advisers and lawyers who have prioritised complex cases and clients who are most in need, i.e. the cases which require the most work, have been paid an amount to reflect the time and effort they have put in. Under the government's proposals all advisers would be paid the same flat rate fee for a case, irrespective of the demands of the case or the needs of the client. In such an environment advisers who continue to focus on more complex cases and to assist the most vulnerable clients will simply not survive.

The proposals will lead to vulnerable people being unable to obtain good housing advice and representation. Specialist housing advisers and lawyers who have until now prioritised the most vulnerable clients will be forced to radically change their practice or give up altogether.

The proposals should be ditched or revised, in order to protect the interests of vulnerable people.

# CASE STUDIES:

## 1) Government Plans would leave the most vulnerable people unrepresented

### Case Study 1

Melissa a legal aid lawyer helped Andy make a homeless application, as he was unable to explain his problems and needs due to his mental illness.

Melissa obtained a psychiatric report about his inability to cope if homeless and helped Andy secure temporary accommodation from his local authority. Initially a negative decision was made on his application and the local authority took steps to terminate his temporary accommodation.

Melissa used the homelessness review process to challenge that decision and ensured that temporary accommodation continued whilst the review was carried out.

The decision was then changed and the local authority agreed to provide long-term housing help under the homelessness legislation. Melissa also advised Andy about his entitlement to incapacity benefit and disability living allowance.

Without Melissa's skilled intervention Andy would have continued to rely on charity, been destitute and at risk of serious harm.

### Case study 2

Mike and his wife shared the bathroom with 10 other people who lived in the same house. The bathroom was upstairs and after Mike became wheelchair bound he could not access it.

Legal aid solicitors helped Mike make a successful homeless application on the basis that it was not reasonable for him to continue to live in the property, as he could not access the toilet and there was not enough space for his wife to manoeuvre the wheelchair.

The local authority agreed to provide carers to Mike as a result of the lawyers' intervention. Mike's solicitors were also successful in applying for a community care grant for Mike and his wife to furnish their new flat and to make necessary repairs.

Specialist lawyers enabled this vulnerable family to obtain suitable accommodation and support. Without that advice Mike and his wife would have continued to live in grossly unsuitable accommodation.

### Case Study 3

Diego was suffering from post-traumatic stress disorder and spoke very little English. He was on benefits and did not have the resources to find accommodation in the private sector.

Diego approached the local authority's homeless persons' unit and applied for help. The local authority provided some emergency accommodation but then they wrote to Diego telling him his accommodation would be terminated because they had determined that his health problems were not sufficiently serious to render him in "priority need". As a result, he was told that he was ineligible for help.

A voluntary sector group working with Diego recognised that he required urgent, face-to-face housing advice and referred him to a firm of specialist housing solicitors to whom they regularly refer more complex cases. Those solicitors assisted Diego under the Legal Help scheme.

Interviewing Diego through an interpreter was time consuming, so was obtaining detailed evidence to support his application, including a medical report.

The evidence and representations submitted by Diego's solicitors were so strong that the local authority decided it had to reconsider Diego's case. The local authority did so and Diego's application was accepted.

As a result, Diego is no longer at risk of street homelessness.

Diego faced a desperate future as a street homeless man with mental health problems and limited English; he was spared this thanks to his legal team of specialist housing lawyers.

A survey conducted by HLPAs found that a staggering 96 % of respondents thought that under the proposal there will be a disincentive to undertake more complex cases or to assist the most vulnerable clients.

## 2) Adequate funding of legal aid is crucial to prevent homelessness

### **Case Study 4**

Dominic and Carol and their two children gave up their home to move in with and look after Dominic's father in his home. 10 months later Dominic's father died.

The local authority sought to recover the father's home and would not allow the family to continue living there. Consequently they were evicted and made homeless.

When they applied for assistance to the local authority, the family were told that they were not entitled to help as they should not have given up their home to look after Dominic's father. The authority refused to house the family.

Housing solicitors assisted the family and appealed the authority's decision. The appeal was dismissed in the County Court but on a further appeal to the Court of Appeal, the authority conceded that its decision had been unlawful and agreed to accommodate the family.

Homelessness has a particularly profound effect on children. Without specialist advice and assistance from housing lawyers this family would have faced an uncertain future and remained in dire housing need.

### **Case Study 5**

Sally was a local authority tenant who was in severe financial difficulties and had escalating rent arrears. Her landlord took possession proceedings, obtained possession and applied to the court for an order, called a warrant, so that bailiffs would be sent to evict Sally.

Sally managed to have the eviction delayed on several occasions. However, as a result of her repeated applications, the court made an order that no further applications should be made without the court's permission.

The landlord again applied for the eviction to go ahead and Sally made a further application to court on the day before the eviction was due to take place. Without seeing Sally the district judge rejected Sally's application to delay the eviction. Sally was desperate. She finally sought help from a specialist legal aid housing solicitor, but by this time the court was closed.

Sally's new solicitors approached a Barrister who rang the duty judge in the High Court and explained the circumstances. The judge ordered an injunction to stop the eviction and required the parties to attend a hearing the following day. At the hearing the judge agreed that the special circumstances of Sally's case meant that the eviction should not go ahead.

It would be difficult to find a clearer example of a tenant who would be on the streets had it not been for her ability to access specialist, face to face, legal advice.

## Case Study 6

Gareth is a young man with severe mental health problems and finds it difficult to control his behaviour.

Rather than trying to provide him with additional support, Gareth's housing association landlord decided to evict him. The allegations of anti-social behaviour made against Gareth would normally have resulted in an immediate eviction; however Gareth was able to get help from a specialist housing adviser who persuaded the court to give Gareth another chance.

Things started to improve, but two years later Gareth's health deteriorated. At this point Gareth's landlord re-approached the court and obtained an order for Gareth's immediate eviction. As Gareth couldn't cope he was sectioned under the Mental Health Act 1983.

Fortunately, Gareth has very recently been able to access further specialist advice and the eviction is now on hold following an application from his solicitors. Gareth's solicitors have made representations to the local authority for the provision of alternative supported, accommodation in the event that the court decides that Gareth should not be discharged from hospital to his current flat.

Without help from specialist legal aid housing lawyers Gareth would be faced with street homelessness. This would have had catastrophic consequences for his mental health.

### 3) Specialist housing advisors will be forced to change their practice or give up altogether

## Case Study 7

A Council tried to evict John and his son Charlie after John's ex-partner Sandra (who was the tenant) had left the property. In most circumstances John as an unlawful occupier would not have been able to raise any defence.

John knew that he would not be able to stay in the property indefinitely but he was concerned not to disrupt Charlie's education whilst Charlie was studying for his GCSEs.

The lawyers representing John obtained evidence from medical professionals and teachers at Charlie's school that a move would be devastating in general and on Charlie's chances of successfully completing his GCSEs. The lawyers then defended the case on the basis that it was unlawful to seek an eviction order at that time. The court agreed and as a result John and Charlie were able to stay in their home until after Charlie had completed his GCSEs.

Had John not been able to access help from an experienced, specialist solicitor it is very likely that he would have been evicted just before Charlie's GCSEs. The impact on Charlie's future prospects would have been devastating.

## Case Study 8

Paula and her family were evicted from her council house because of rent arrears, as her then husband had failed to pay the rent.

As a result Paula applied for assistance as a homeless person to her local authority. They decided that as Paula was “intentionally homeless” she and her children were not entitled to help.

Unfortunately, Paula did not have access to specialist legal advice at that time and the decision was not challenged.

Eventually Paula rented a house from a private landlord, but she had to apply to the local authority for assistance as a homeless person once again when the landlord decided to sell the house. When she did so the local authority decided that Paula’s last settled accommodation was the council house and not the house she rented from the private landlord, therefore she remained intentionally homeless and she was refused any housing assistance.

Fortunately, this time round Paula obtained advice from an experienced solicitor with expertise in homelessness cases and an appeal against the decision was made. As a result the local authority had to look at their decision again and they agreed to provide long-term housing help.

Andrew Dymond, the barrister who represented Paula in the appeal, believes that the case illustrates the importance of retaining access to experienced housing advisers.

He said:

“I have little doubt that if Paula had been properly advised after the first decision, she would have had a strong argument that she was not intentionally homeless. Significantly, she was able successfully to challenge the second decision because she was able to gain advice from a solicitor who had a good knowledge of homeless law and who was therefore able swiftly to recognise grounds for challenging the Council’s decision.”

HLPAs survey showed that 49 % of housing practitioners do not expect to be providing housing advice in 2 years time and 64 % said that expansion into other areas of social welfare law is less likely as a consequence of the legal aid proposals.

#### 4) Specialist Housing Advisors would not be able to survive under the Government proposals

##### Case Study 9

An unscrupulous mobile home site owner applied to court to evict Tracey, an elderly woman with dementia when she fell into arrears of £200 on her pitch fee for her home in Herefordshire. Tracey didn't understand the letters about the court hearing and hid them behind the sofa so that her son David, who had learning disabilities didn't find them. A possession order was obtained. The site owner then approached Tracey's son David and said that he was about to be evicted.

David visited the local Citizens Advice Bureau who consulted CLS Direct and an application was made to delay the eviction. They did not appreciate that because Tracey had severe mental health problems the court order should never have been granted.

When the court started to hear the case, the judge raised concerns that Tracey may lack mental capacity and referred the case to the Official Solicitor. The Official Solicitor, in turn, referred the case to specialist solicitors, in London, who work with clients who lack mental capacity.

The eviction order was overturned as a result.

What saved Tracey and David was that she was able, eventually, to access specialist help from a solicitor who was prepared to visit her at home and who had experience of representing mentally incapacitated adults in similar cases.

From October 2007, the government is proposing to apply a single, national fixed fee of £171 for work carried out by housing solicitors and advisers. The same fee will apply whether the work is carried out by an unqualified CLS Direct call centre adviser, or a solicitor in a specialist social welfare law practice. Specialist solicitors cannot survive under such a system. Vulnerable people like Tracey will lose their homes as a result.

##### Case Study 10

Robert was a tenant of a council house. The local authority brought eviction proceedings against him. At a hearing which Robert did not attend, the local authority was awarded an eviction order.

In fact Robert - due to problems with his post of which the local authority were aware – had not received notice of the hearing. When he received a copy of the eviction order, via his parents, he quickly took action to obtain legal advice from an experienced housing solicitor and because of this advice the eviction order was set aside and Robert retained his home.

Without the availability of public funding for access to experienced housing solicitors, Robert would have been unable to gain representation; this representation worked for him at court and in negotiating behind the scenes.

**A survey conducted by HLPAs showed that due to the legal aid proposals 58 % of housing advisors are considering leaving publicly funded housing work or have colleagues who are doing so.**

# HLPA SURVEY

In December 2006 and January 2007 HLPAs conducted a survey of its members in order to assess reaction to the proposals of the LSC/DCA following Lord Carter's review of legal aid procurement.

## Consultation

- None of the respondents felt that Lord Carter's team had sufficiently consulted housing advice providers or sufficiently understood the challenges facing housing practitioners.

## Quality

- All the respondents who achieved a rating of "excellent" at peer review had a higher tailored fixed fee (the amount they have until now been paid by the Legal Services Commission for each housing advice and assistance case) than those who achieved a rating of "competence plus" or "threshold competence". This suggests, contrary to assertions by the LSC, that higher fixed fees do indeed produce a better quality of service.
- 91% of respondents say the proposals threaten quality.
- None of the respondents are satisfied with the LSC's assurances that price competitive tendering will not compromise quality.

## Standard fees

- 82% of respondents are opposed to the introduction of a national fixed fee.
- 65% of respondents expect their income to decrease by more than 10% and 38% expect their income to decrease by more than 25%.
- 96% of respondents say that under the proposals there will be a disincentive to undertake more complex cases or to assist the most vulnerable clients.
- 64% of respondents say that expansion into other areas of social welfare law is less likely as a consequence of the proposals.
- 89% of respondents are opposed to the LSC's proposal to control the ratio of certificated cases (for representation at court) to legal help cases (for housing advice and assistance) as this will compromise practitioners' ability to grant funding certificates where required in order, for example, to represent their clients at court hearings in possession proceedings.
- 96% of respondents are opposed to competitive tendering.

## The future

- 58% of respondents are considering leaving publicly funded housing work or have colleagues who are doing so.
- 49% of respondents do not expect to be providing housing advice in 2 years time.



## LEGAL AID REFORMS: FREQUENTLY ASKED QUESTIONS

These FAQs explain why the government must significantly amend its proposals for the reform of legal aid for housing problems and why, if the government fails to do this, there will be a sharp rise in evictions, homelessness and other housing problems experienced by the most vulnerable in our society.

For more information about the reforms and about the Housing Justice Campaign see <http://www.hlpa.org.uk>

### 1. Why is legal aid for housing problems so important?

Poor housing conditions, eviction and homelessness cause huge distress. They have an effect on health and on children's education. They can also have enormous knock on social and economic costs if they are not effectively resolved. Sometimes these problems can be resolved without resort to specialist advice workers and lawyers, but frequently they cannot be. The legal aid system currently enables those on low incomes to get access to specialist help. If the government proceeds with its current proposals, access to specialist help will disappear.

### 2. Is the cost of providing legal aid for housing problems spiralling out of control?

No. Between 1999-00 and 2005-06 the amount spent on the two main types of legal aid for housing cases has, when aggregated and adjusted to take account of inflation, decreased.

### 3. If the cost of legal aid for housing cases is not increasing, why does the government say there is a need for reform?

There is a broad consensus that the cost of legal aid for some criminal and family cases has increased dramatically in recent years and needs to be brought under control and the government is proposing to do this by switching to new fee systems. However, the government has also decided to take this as an opportunity to radically reform housing legal aid. The rationale for doing this is unclear; but the likely outcome, according to the Constitutional Affairs Select Committee's report on the legal aid reforms, is very clear – the most disadvantaged will find it even harder to access the help they need.

#### **4. What changes are proposed from October 2007?**

The first major change, currently planned to take effect in October 2007, will be that those needing advice and assistance with housing problems will have the amount of legal aid they are entitled to capped by the introduction of a new national fixed fee. The proposed fixed fee system will mean that advisers and lawyers who provide housing legal aid will be paid only £171 per case regardless of the time spent, the complexity of the case, and the circumstances of the client. In what are considered to be exceptional (higher cost) cases (exceeding 3 times the standard fee) the supplier can make a claim based on actual time spent, but this does not meet the fundamental objections and inequities of the proposed fixed fee scheme. Under such a system the most literate, capable clients with simple problems will continue to be able to access the basic advice and assistance they need; but those who have complex and difficult housing problems (and who tend to be the most vulnerable and the most in need of help) will find it impossible to access the specialist help they need.

#### **5. How does this differ from the current system?**

Until 2004, a housing advice worker or lawyer providing advice and assistance was paid according to the amount of time and effort invested in each case – so for a straightforward case taking only one hour they received around £45, but for a complex case taking ten hours they received around £450. The result: more needy clients with more difficult cases could access an appropriate level of help.

From 2004, a hybrid payment system has meant that most suppliers have been paid a fixed amount for each case based on the amount of time they have historically spent on each case. So a high skilled, specialist provider in Central London or elsewhere (e.g. a 20 year experienced solicitor) might be paid £350 per case, whilst a low skilled supplier (e.g. a non legally qualified paralegal working in a CLS Direct call centre based in the North of England) might be paid only £75 per case. This hybrid system has not been ideal, but it has meant that the most vulnerable clients with the most difficult cases have still been able to find advisers who are able to provide them with the advice and assistance they need.

However, under the flat rate payment system proposed from October 2007, there will be an overwhelming economic disincentive against suppliers agreeing to do more complex and time-consuming cases. This will inevitably mean that the most vulnerable clients with the most difficult problems will no longer be able to access the help they need to permanently and effectively resolve their housing problems – and that means more evictions, more homelessness and more unmet housing need.

## **6. Did the old system of payment by hourly rates encourage inefficiency?**

No. For most suppliers, providing advice and assistance in housing cases under the old hourly rates system was a loss-making exercise because the hourly rates were so low – so the more time spent on each case the bigger the loss (a loss cross-subsidized by doing other types of legal aid and non legal aid work). So the fact that some suppliers were nonetheless willing to spend many hours on an individual case had nothing to do with them milking the system (as the government has implied), and everything to do with their dedication and commitment to helping those most in need.

## **7. What determines the amount of time spent on providing advice and assistance in housing cases?**

The government's primary rationale for introducing a single fixed fee in all advice and assistance housing cases appears to be that these cases are all broadly similar and that a supplier's "efficiency" is the main factor determining how long a case will take. However the government has not published a shred of evidence to support this and the reason suppliers are so angered by these reforms is because they know that a supplier's efficiency is rarely the sole or even the predominant factor in determining how long a case takes. Instead, there are a broad range of factors including:

- **The characteristics of the client.**

Dave is fit, healthy and articulate. John is a wheelchair user with a low IQ and speech difficulties. Both need advice about a former landlord's failure to return a deposit. John will need a home visit and it will take much more time to interview him. He may also need more help negotiating directly with the landlord and other third parties. The supplier who chooses to help Dave and resolves Dave's case in half the time it takes to resolve John's case is no more efficient; so why pay that supplier the same as the supplier who invests twice the amount of time and effort helping John?

- **The conduct of the opponent.**

Marie lives in a town with a very well run housing benefit department. Sally lives in an inner city with a housing benefit department that has been contracted out to Capita. They each have identical complaints about an incorrect housing benefit decision that have resulted in some rent going unpaid and their landlords are both warning that they will evict unless the problem is sorted out quickly.

Marie's solicitor sends a letter of complaint. The housing benefit department realises its mistake, responds quickly and the risk of eviction is averted.

Sally's solicitor receives no response at all. She writes again. No response. She telephones and spends 30 minutes on hold before being cut off. She has to make a formal complaint about the failure to respond to the initial complaint. Several weeks later she finally gets a response, but the housing benefit decision is still wrong. She has to request an appeal. This takes several months. She then goes to the appeal hearing with Sally. The appeal is successful and finally the housing benefit problem is resolved. But the landlord is so fed up with the delay he has started eviction proceedings. Yet more work is necessary to sort this out.

- **The complexity of the problem.**

Rajani wants to complain about the failure to fix a defective washer on the tap in her council flat. Gupta wants to make a complaint about a council policy that means that thousands of residents, like Rajani, are having problems getting the council to sort out day to day repairs.

Rajani's advice worker sends a letter of complaint and the washer is immediately replaced.

Gupta's advice worker writes a detailed letter of complaint and spends a few hours going through each stage of the council's internal complaints procedure. Finally the complaint reaches the council's Chief Executive who rejects it. Gupta's advice worker perseveres and makes a complaint to the Local Government Ombudsman. This takes 6 months and requires several hours work by Gupta gathering supporting information and responding to the Ombudsman's comments and observations about the complaint. But in the end it's worth it because the Ombudsman upholds the complaint and the council agrees to change the policy. Gupta and thousands of other tenants benefit as a result.

Rajani's advice worker got the council to change a washer. Gupta's advice worker got the council to change a policy that benefits thousands of tenants and should result in a reduction in the number of tenants needing legal aid in order to ensure that routine repairs are carried out. Neither the input nor the outcome are equivalent and yet the government proposes to pay the same fixed fee in each case. That doesn't encourage efficiency, it does precisely the opposite.

- **The skill and commitment of the supplier**

Jimmy and Chris are both sleeping rough in London. Both decide to get some advice. Jimmy is advised by an unqualified paralegal in a call centre in Sunderland. Chris is seen by a solicitor in London with twenty years experience of homelessness cases.

Jimmy's adviser spends 20 minutes going through a pro forma checklist with Jimmy and then sends Jimmy a letter which explains that he isn't entitled to housing under the homelessness legislation.

Chris' solicitor can see that it's a difficult case but he can also see how important it is for Chris to have a roof over his head and is aware that this particular local authority has committed itself to proactively resolving rough sleeping and that this policy can be used to bolster Chris's case. Chris' solicitor therefore helps him to make a homelessness application. It is rejected but Chris' solicitor then helps Chris with the internal review procedure. This takes 8 hours work, but its worth it because the review officer agrees that Chris is entitled to help and Chris finally gets a stable home.

Jimmy's adviser completed Jimmy's case in a fraction of the time spent by the solicitor working on Chris' case and yet the government says that Jimmy's adviser should be rewarded with a fee of £171 for 20 minutes work, whilst Chris' solicitor finds he is paid £171 for 9 or 10 hours work.

**8. How would the clients in these examples be likely to fare under the new national fixed fee system?**

Dave, Marie and Rajani will fare very well: they have simple cases which can be resolved quickly and suppliers will need to compete with one another to get clients like this through the door if they want to survive. By contrast, those like John, Sally and Gupta are going to find it much more difficult to get the help they need because, no matter how efficient the supplier, their problems will invariably take significantly more time to successfully resolve. As for Chris, he should count himself very lucky because solicitors who work like his will not survive on a £171 fixed fee. By contrast, Jimmy's experience will be much more common as suppliers who adopt this low skilled model of advice provision will thrive.

**9. The government has said it will introduce measures to prevent suppliers "cherry picking" easier housing cases. Will these measures work?**

No. The national fixed fee system creates an overwhelming incentive for suppliers to avoid doing time-consuming cases and to only do the quickest and easiest cases. It is the only economically rational response to such a crude system – and the government is being disingenuous when it suggests that that will not be the case. As to the government's suggestion that it can neutralise this overwhelming incentive by including provisions within suppliers' contracts telling them not to avoid doing difficult cases, as the Constitutional Affairs Select Committee's report acknowledges, unless individual clients complain (and the most vulnerable clients are the least likely to do so), it is impossible to see how compliance with these contractual provisions could be enforced.

**10. Will the "exceptional case" provisions sufficiently alleviate the difficulties vulnerable clients will face in getting specialist advice for complex cases from October 2007?**

No. The exceptional case provisions (cases in which the old hourly rate payment rules will apply) will, by definition, affect only a very small percentage of housing advice and assistance housing cases. The number of cases that will be exempted will be so low that there is unlikely to be any significant impact on the overwhelming economic incentive to avoid doing difficult or complex cases, which is an inevitable consequence of a flat rate, fixed fee system.

**11. Will legal aid users experience a drop in the quality of the advice and assistance provided under the new fixed fee system?**

Yes. The Legal Services Commission assesses the quality of advice provided through a peer review system. Between May 2006 and April 2007, the average housing case cost for a peer review category 1 supplier (excellent) was £288.72, for a category 2 supplier (competence plus) it was £250.49, for a category 3 supplier (borderline competence) it was £186.19 and for category 4 and 5 suppliers (firms classed by the LSC as incompetent) it was £157.16. Given that the proposed national fixed fee is set at only £171 per case, a fall in quality of advice is inevitable.

## **12. Will the “peer review” system be enough to prevent a drop in the quality of the advice from October 2007?**

No. Peer review simply provides a periodic assessment of the quality of the suppliers still in the system; it will do nothing to stop specialist suppliers dropping out because they can't survive under such a crude flat rate payment system, and it will do nothing to increase the ability or willingness of generalist suppliers to plug the gap by taking on more difficult and complex cases. Generalist (non-specialist) suppliers will simply carry on doing simple cases (it would be economically irrational to do anything else) and clients with complex cases and who need specialist help will not get it.

## **13. What impact will national rather than regional fixed fees have?**

Bizarrely, the proposed £171 fixed fee for housing advice is the same for a supplier in Central London as for a supplier in Hull or Sunderland. It is hard to find any other part of the public sector where the government does not acknowledge the need for some form of London weighting. Given that in every other part of the current legal aid remuneration system there is a London weighting, the government's rationale for excluding any form of London weighting for fixed fees is hard to fathom. Housing suppliers in London already report huge levels of unmet need. Given that the £171 fixed fee represents a pay cut for 63% of housing suppliers by an average of 18%, the majority of London suppliers will have to close and the situation for those needing housing legal aid in London from October 2007 is likely to reach crisis point.

## **14. Isn't the government doing something right if more people are now being helped under the Legal Help scheme than ever before?**

30% of housing suppliers have left the legal aid system over the past 7 years, and yet the government's response to any talk of a crisis in legal aid is met with headline statistics about record numbers of people being helped. But if you look at the detail behind the headline statistics you see that the apparent increases in the number of people being helped aren't quite what they seem. First, as the government accepts, there are problems with double counting. Second, the figures don't relate to the number of people assisted but the number of “acts of assistance”. And third, the headline statistics refer to the number of cases the government paid for and say nothing about the amount of help provided and the number of positive outcomes – and a system that provides lots of people with only a very little bit of general advice (which is the system the government is moving towards) is of little use if the underlying legal problems aren't resolved – and the limited evidence that is currently available suggests that that is exactly what is happening (see, for example, *Rough Justice Fears Over Helpline*, Observer August 6, 2006).

**15. What is going to happen if the government ignores the almost unanimous condemnation of these proposals and pushes ahead with these reforms?**

According to the Constitutional Affairs Select Committee “We see a risk to the national supplier base in the current proposals for the civil legal help fee proposals. Imposing national fixed fees on large swathes of legal aid work that rapidly force unit cost cuts in a significant proportion of providers is an exceptionally risky strategy. These providers will be faced with a stark choice between cutting or reducing staff costs and the time spent on cases or leaving the legal aid market. A full analysis of the likely effects of the fee structure and levels of the new proposals is needed as a matter of urgency”. We would agree entirely with that analysis and with the urgent need for research and/or piloting before these half-baked proposals are rolled out on a national scale. If that does not happen the effect on those needing specialist housing advice will be disastrous.

**16. Are the disabled, the mentally ill and other very vulnerable groups going to be most detrimentally affected by these proposals?**

Yes. It is a point Citizens Advice, whose Citizens Advice Bureaux are reporting increasing difficulties in being able to refer on clients in need of specialist help, are particularly concerned about: “...these proposals will impact most on the most vulnerable clients, such as those who have mental health problems, language problems, or disabilities, which means that advising them is more time consuming, and those who have the most complex cases....Neither Lord Carter nor the LSC has researched why some cases take longer than others, so the LSC does not have the information it needs to structure the scheme in a fair way.”

**17. What are the likely knock-on effects in other areas of public expenditure if people are not to get proper housing advice?**

If people are evicted and become homeless because they weren't able to get the advice they need the knock on costs to other areas of public expenditure such as social services, schools, health services, and the police, prisons and probation services, are likely to be very significant. MPs and councilors can also expect to start spending far more time trying to help those in housing need who are no longer able to access specialist, housing advice.

## **18. What should the government do?**

First, the government should concentrate its effort on reforming those areas of the legal aid system where costs are rising. Housing law is not one of those areas.

Second, the government should follow the Select Committee's recommendation and postpone the proposed introduction of a flat rate fixed fee for all housing cases from October 2007 - at least until a full analysis of the likely impact of such a system has been carried out. There is nothing to be gained by rushing into an untried and almost universally criticised reform and a great deal to be lost; particularly by the most vulnerable people in our communities and for whom access to specialist housing advice is so important.

Third, the government should reconsider whether the high output, low cost model of housing advice provision really achieves value for money for the tax-payer or whether, as we believe, it will simply result in poor advice and more not less people being unable to effectively enforce their housing rights.

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