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GYPSIES AND TRAVELLERS AND THE PROVISION OF LEGAL AID

Thank you for your letter dated 28 January 2015, to Chris Grayling MP, the Lord Chancellor and Secretary of State for Justice, in which you raise concerns on behalf of No Mad Laws Steering Committee, in relation to the provision of legal aid for Gypsies and Travellers. I have been asked to reply on behalf of the Minister.

The Government has had to face up to tough choices in reforming legal aid scheme. The changes now being taken forward under the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 have redefined the scope of civil legal aid to refocus legal aid for the most serious and highest priority cases. There are several areas that have been removed from the scope of legal aid under the LASPO Act. These include property and housing matters, except those where people's life or liberty is at stake, where they are at risk of serious physical harm or immediate loss of home, or where their children may be taken into care. Legal aid is also available where the lack of public funding would be likely to result in a breach of the individual's rights under the European Convention on Human Rights (ECHR), or European Union Law (EU).

Given the need to prioritise limited resources, the Government's priority is to assist those individuals who are facing repossession or eviction from property or a site where they are residing. However, the Government does not believe that providing legal aid funding is a justifiable use of taxpayers' money where the individual entered, and has remained on, the property or site as a trespasser.

In your letter you state that "Due to the legal aid reforms contained in the legal aid, sentencing and Punishment of Offenders Act 2012, Gypsies and Travellers on rented local authority sites are unable to get advice and assistance..."


However, the Government considers that there are a variety of alternative sources of advice and assistance which individuals can draw on in relation to this area, including Local authority in-house services, and voluntary sector organisations, such as Shelter, and, for complaints, the Local Government Ombudsman and the Housing Ombudsman Service. In addition, legal aid continues to be available in cases of unlawful eviction for lawful occupiers, including claims for reinstatement.

You further state that the changes to "pre-permission should be withdrawn and legal aid re-instated for judicial review". The Government considers that judicial review is an important means by which persons can challenge decisions by public authorities which affect them, and will remain so. However, the Government is concerned that legal aid was previously used to fund applications for permission for judicial review in weak cases which were unsuccessful and which have little effect other than to incur unnecessary costs for the public.

As a result of this, the Government decided that in future providers would need to consider more carefully the strength of the case and the likelihood of permission being granted when deciding whether or not to make the application for permission for judicial review. The procedures in place do not prevent people receiving legal aid for future judicial reviews.

Turning specifically to the concerns you raised in relation to "an urgent radical overhaul of the provision of exceptional funding". The Government considers that the exceptional funding scheme is functioning as intended. Its purpose – as set out in LASPO - is to provide funding where it is legally needed. The Exceptional Funding scheme reflects the context of a civil legal aid scheme which funds only the highest priority cases. It does not provide a general power to fund cases that fall outside the scope of legal aid – that is not its purpose.

I hope that this suitably clarifies the points you raise.



Walton Edwards