

# Independent Strategic Review of Legal Aid



## About Shelter Scotland

Shelter Scotland has supported people in Scotland for nearly 50 years to address their housing and homelessness issues. In 2016/17 we helped over 21,000 households through providing case work, over 800,000 unique visits to our Get Advice web pages. We focus on providing advice and advocacy for people in housing need across Scotland alongside support for those who need it, policy and campaigning work. We have locally based teams of advisers who provide advice and advocacy who can then refer more complex cases to our Housing Law Service who can take the case on. During 2016/17 the team took on 450 cases with a very strong success rate of supporting clients to enforce their rights.

Shelter Scotland welcome the Independent Review of Legal Aid as a positive step in considering a sustainable future for ensuring the most vulnerable in our society have adequate and appropriate support to enforce their rights. We are currently concerned that too few people have adequate advice and assistance to engage and challenge both rental and mortgage arrears cases and enforce their rights under homeless legislation. We regularly represent individuals in court and observe other cases without professional representation where people are unable to enforce their rights and have a poorer outcome as a result. We would like to see a system that enable increased access to professional assistance either through lawyers or lay representation. With world leading homelessness legislation individuals seemingly require continual assistance to enforce these rights and legal aid is an important underpinning to allow individuals to achieve social justice.

## Overview

At Shelter Scotland our Shelter Housing Law Service is a firm registered to provide Civil Legal Advice & Assistance and Legal Aid. We are also in receipt of grant funding from the Scottish Legal Aid Board and the Scottish Government. Both sources of income allow us to provide legal

advice and representation to our clients who are in housing crisis. The great majority of the casework we undertake concerns defending summary cause proceedings for ejection due to rent arrears.

Alongside our work in defending eviction proceedings, our solicitors are also called upon to advise clients who have been wrongfully turned away from local authority homeless services. In those cases our housing advisors have tried to resolve the issue extra-judicially, however judicial review, or rather the threat of judicial review is required for our client's rights to be enforced.

Housing law in Scotland is currently going through a period of significant change: a new tenancy is due to be introduced to the private rented sector in December 2017; private rented sector disputes will soon be heard in the new Housing and Property Chamber of the First-tier Tribunal; the introduction of Simple Procedure for heritable cases and changes to the law covering eviction for antisocial behaviour in the social rented sector. Given the scope and scale of these changes it is essential that those who are at risk of eviction, experiencing bad housing and homelessness get the help and advice they need; for complex cases for people with low or no income this will necessitate publicly funded legal representation.

Our law service sits within our broader Advice Services who are able to provide people with digital, telephone and face to face advice through our four Community Hubs. This model allows us to help as many people as possible and allocate our resources appropriately dependent on the skills required. Our law service also advises our policy team on bills and draft guidance, as and when required.

## **Achieving positive outcomes**

### **Preventing Homelessness; improving housing conditions; securing accommodation**

At Shelter Scotland every home we save and every homeless person we are able to secure accommodation for we consider to be a positive outcome. We have represented clients at 100s of court hearings last year, successfully opposing requests by landlords for eviction orders. We have advised and advocated on behalf of clients who have unlawfully been turned away from homeless services, some of whom present to us as suicidal.

### **Expert legal advice**

We are able to not only provide general advice but expert legal advice on housing. For example, we have successfully challenged numerous landlords who have raised incompetent actions, getting those actions dismissed. We have defended actions on the basis of the landlord's obligations under the Equality Act 2010 and their contractual obligations to carry out repairs.

### **Relevant Skills & Training**

Whilst most preventative work can take place through our online and telephone advice services, certain types of housing advice can only be actioned by a solicitor: - for example Judicial Review of a local authority's failure to comply with its statutory obligations to a homeless person.

### **Accessibility of Legal Advice & Representation**

Our law service is presently funded to provide legal advice and representation to people in housing need throughout Scotland. We are unique in being a national service, however we cannot meet the demand for our services. We are aware that very few private practice solicitors are prepared to take on housing work, leaving us as the main source of legal advice and representation in areas such as Falkirk and Stirling.

It is important to note that without the grants we receive from SLAB and the Scottish Government, we would not be able to achieve these positive outcomes. The present legal aid rates for defending summary cause actions are not sustainable. As outlined below this is particularly concerning in light of the recent increase in eviction actions raised in court.

### **Supporting delivery**

**Partnership Working:** We have a good working relationship with the Civil Legal Assistance Offices. We have previously entered into arrangements with CLAO where they have assisted with court representation where we would have made a loss in instructing a local agent: the average local agents fee is £48. If we were having to instruct agents under Regulation 18(b) cover, we would only recover £21.11 from the Scottish Legal Aid Board.

**Financial Verification:** In relation to our work in challenging local authority practices in homeless cases, we are often in a position where by virtue of our client's state of homelessness they are unable to provide financial verification. They present in crisis and require urgent legal advice and assistance. In such cases we have to choose between not accepting instructions or carrying out the work with the risk that it will not be paid by legal aid. As a housing charity we are not comfortable with refusing assistance in such cases, where our housing advisors have

been unable to resolve them extra-judicially. This model of working however is not financially sustainable in the long term. These financial verification requirements hinder the achievement of successful outcomes for this particularly vulnerable group of clients.

## More Effective and Person-Centred

The legal aid system is meant to operate a safety net for those who are most in need of assistance to enforce their housing rights. With so many individuals left with no representation for rent arrears cases the system is not working to ensure that individual have adequate support and representation.

The current legal aid system has a level of administration required on the behalf of the board, the firm and the client which in a time of near permanent austerity might better be invested in front-line assistance to individuals. Clearly this approach might work differently for different types of cases however our experience of legal aid for housing cases is that we require grant subsidy to be able to take on cases in the first place as the fees being paid via legal aid are too low to cover our costs of providing representation.

## Values & Ethos

### A Human Rights based approach to Housing

Article 8 of the European Convention for the Protection of Human Rights and Fundamental Rights provides '1. Everyone has the right to respect for his private and family life, his home and his correspondence. '

- The European Court of Human Rights has ruled that **'The loss of one's home is a most extreme form of interference with the right to respect for the home'**<sup>1</sup>
- The European Court of Human Rights has also ruled and reiterated that the Convention is 'intended to guarantee not rights that are theoretical or illusory but rights that are

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<sup>1</sup> McCann v United Kingdom EHRR 2008 at para 50

practical and effective<sup>2</sup>. The Airey case remains a leading case on the provision of legal aid in civil actions.

### **Rights which are Practical & Effective**

- The Civil Justice Statistics for 2014-15 report that 92% of eviction actions were undefended<sup>3</sup>.
- Many of our clients suffer from poor mental health; report feeling too intimidated and anxious to properly represent themselves; do not have English as a first language and do not feel confident in representing themselves.
- The present legal aid rates for eviction cases, coupled with the financial requirements and conditions set for a grant of legal aid mean that very few high street firms undertake this work.
- Housing law also remains a complex area of law where legal expertise is required properly represent a tenant in certain types of cases. The changes to the private rented sector and planned changes to the social secure tenancy, do not change our assessment of complexity and requirement for specialist legal services.

**Equality of Arms:** in our experience landlords in both private rented and social rented sector have more resource to pursue or defend actions.

**Demand vs resources:** Shelter Scotland has recently published a paper<sup>4</sup> on the increase in social rented sector evictions. This paper notes a 25% increase in number of evictions which have taken place between 2013/14 and 2015/16. The Civil Justice Statistics for 2014/15 show that in that period there were 13,800 actions for eviction raised which is a 17% increase over one year<sup>5</sup>. We expect this trend to continue, particularly given the impact of welfare reform on both tenants and landlords. Notwithstanding our funding, which employs four solicitors, a principal solicitor and two part-time lay reps, we are unable to meet the present demand on our services.

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<sup>2</sup> Airey v Ireland (1970) A 32, para 24

<sup>3</sup> <http://www.gov.scot/Resource/0049/00497242.pdf> at page 34

<sup>4</sup>

[http://scotland.shelter.org.uk/professional\\_resources/policy\\_library/policy\\_library\\_folder/evictions\\_by\\_social\\_landlords\\_in\\_scotland\\_2012-2016](http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/evictions_by_social_landlords_in_scotland_2012-2016)

<sup>5</sup> <http://www.gov.scot/Resource/0049/00497242.pdf>