

# **THE INTERDISCIPLINARY ALLIANCE FOR CHILDREN**

**THE LEGAL AID SENTENCING AND PUNISHMENT  
OF OFFENDERS BILL 2011**

**THE IMPACT ON CHILDREN AND FAMILIES**

## **CASE STUDIES**



October 2011

## GOVERNMENT PROPOSALS FOR LEGAL AID – THE IMPACT ON CHILDREN AND FAMILIES - CASE STUDIES

**1 Maria was a domestic violence victim with two children aged three and seven years.** She had fled her ex-partner after living with domestic abuse since she was pregnant with her eldest child; she has lived with high levels of violence for over 8 years. Maria had alerted the police to an incident which prompted her to flee to a refuge. The police had carried out a risk assessment but Maria did not meet the threshold for a MARAC (see below) and the police did not investigate further. Maria's ex-partner has applied for contact. Maria would not be able to access legal aid despite living with high levels of physical abuse for over 8 years.

Under the current provisions:

- On financial grounds, Maria would currently be eligible for legal aid.

Under government proposals:

- Maria would not be eligible for legal aid despite living with domestic violence for over 8 years and having fled to a refuge which is not included in the current objective evidence criteria. The criteria for access to legal aid, as set out in the Government's proposals are:
  - There are ongoing criminal proceedings regarding domestic violence offence in respect of the alleged perpetrator
  - The victim has been referred to a Multi-Agency Risk Assessment Conference (as a high risk victim of domestic violence)<sup>1</sup> and a plan has been put in place to protect him/her against violence by the other party; or
  - There has been a finding of fact in the family courts of domestic violence by the other party giving rise to the risk of harm.

**2 Ms M is unable to see her children who live with their father** despite an old court order which states that she is to have contact supervised by either a 'registered social worker or a family support worker with significant experience'. She would have to pay for the supervision and cannot afford to do so because she is on a very low income. There was a history of domestic violence but Ms M felt unable to do anything about it at the time as she did not know what help would be available.

Under Government proposals:

- Ms M would not be in scope for legal aid to vary or challenge the current contact order - an application that would be complex and would require a re-opening of

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<sup>1</sup> Under the proposed changes, to be eligible for legal aid a domestic violence victim must have obtained one of four kinds of civil injunctions or a criminal conviction against the perpetrator. Alternatively, she will qualify if she is being safeguarded by a multi-agency risk assessment conference (a MARAC) or there must have been a fact finding which established domestic violence in a family court. MARACs are used for a few exceptionally serious cases. Findings of fact will be a diminishing category since it is for family courts that legal aid will now routinely be refused. As most people now know from research evidence, domestic violence is grossly under-reported. Most sufferers are too afraid to complain. Few obtain one of the four kinds of civil injunction required by the proposed legal aid rules and few undertake let alone sustain criminal proceedings.

the entire case and an examination of why the supervision was required in the first place

- Without skilled and specialist help from a family lawyer, Ms M and her children would be unlikely to see each other for years to come.

**3 Ann, a mother of twins, moved out of the house she shared with her ex-partner due to extreme levels of psychological and emotional abuse.** She is temporarily staying with her mother but continues to pay half of the mortgage on the house she owns with her ex-partner. Her ex-partner asked for contact which Ann agreed as she could not afford a solicitor to oppose contact.

During contact visits her ex-partner tells the children that he is going to kill their mother and their grandmother and they are going to come and live permanently with him. They were already severely traumatised by the emotional abuse between the parents but now they refuse to go on contact visits and have regressed developmentally. Ann wants to apply for an occupation order so that she can return to her home and provide stability for her children. She has never involved the police in any of the disputes with her ex-partner, despite him having driven his car at her on one occasion during a contact visit.

- Ann would be eligible for legal aid to secure an occupation order. However she would not get legal aid for contact proceedings under the proposed new gateways. Only if she manages to secure an occupation order and/or a non-molestation order, would she be eligible for legal aid under the proposed scheme for contact proceedings
- However resolving contact issues is urgent, and should be dealt with as soon as possible. Ann would therefore have to prepare and make the application to regulate contact herself. Alternatively her ex-partner would have to do that, and as the alleged perpetrator he would be unlikely to qualify under any gateways.

**4 Ms S is the mother of James:** Ms S has very mild learning difficulties; she gave birth to her first child in hospital. She was told by social workers she could not take the baby home to the hostel where she was living and that she should stay with a paternal aunt and the father at the paternal aunt's house. Ms S thought she had no alternative and did this only to avoid having her child removed. On that basis, the social workers took no further action.

After 2 weeks the father told her he only had a relationship with her for the baby and that she had to leave. Thereafter she was allowed to see the baby every day at the whim of the aunt. Ms S eventually went back to the social worker to tell her she now had accommodation and asked to be able to have her baby with her. She was told an assessment of her parenting would be necessary but this was never arranged. Ms S went to a solicitor who wrote to the local authority but had no response and closed the case.

A specialist child care lawyer secured legal aid for Ms S, who was then able to apply for a contact order. The court ordered a parenting assessment which concluded that Ms S was able to care for the child. However, social workers said it was not in the child's interests to be moved as the child had lived with the aunt for nearly a year.

The court decided the child should live with the aunt and mother (weekdays with aunt and weekend with mother). The mother's solicitor appealed that decision on several grounds. On appeal, the High Court ordered that the child should live with the mother and have regular contact with the aunt.

This case demonstrates some of the complexities of private law cases concerning children which demand the skills of specialist child care lawyers. Mediation cannot resolve such complex issues; particularly where the imbalance of power is so marked and the questions demand special skills and knowledge

Under Governmental proposals:

- Ms S would not be entitled to legal aid
- Without legal representation of Ms S this child would have been deprived of being brought up by a perfectly capable and very loving mother
- This mother went on to have a further child with a new partner with a good track record caring for his children with a previous partner, and there are no problems.

**5 Mrs G is the grandmother of 'Richard':** Richard's mum was in prison. Richard had been voluntarily accommodated by the local authority<sup>2</sup> and placed with a foster carer. Mrs G (grandmother) had been having regular contact with Richard (including weekend staying contact) for about nine months when she first consulted a child care lawyer.

The local authority did not know about the unsupervised contact. When told the grandmother wished to care for the child, the authority was extremely slow to assess her, in the meantime saying she should have only supervised contact. The grandmother agreed to this believing it was best not to antagonise the social worker; she thought the social worker had the right to tell her what she could and couldn't do in spite of having written permission from the child's mother.<sup>3</sup>

Eventually Mrs G consulted a specialist family lawyer who obtained legal aid, successfully applied for a residence order in favour of the grandmother, and the child was placed in Mrs G's care.

Under Government proposals:

- Without legal aid this grandmother could not have effectively challenged the decision of the local authority, its failure to plan for the child, and to assess Mrs G
- Richard could well have languished in foster care while his mother served a long sentence when there was a loving extended family available and willing to care for him

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<sup>2</sup> Where a child is accommodated (under s.20 of the Children Act 1989 - provision of accommodation for children in need), this is a voluntary arrangement by a parent(s) in which they do not lose powers contained in parental responsibility and are at liberty to remove a child. Moreover a local authority may not provide accommodation for any child if any person who (a) has parental responsibility for him and (b) is willing and able to (i) provide accommodation for him or (ii) arrange for accommodation to be provided for him.

<sup>3</sup> See note 1 above.

- The provision of legal aid under the current regulations not only allowed a fair and independent assessment and the return of the child to his grandmother giving him a better chance in life, but it also saved the tax payer thousands of pounds funding an unnecessary foster placement.

**6 Margaret is the mother of Alice who is aged nine years.** Alice's father seriously assaulted her mother - almost fatally, leaving Margaret with injuries requiring 18 months hospitalisation and rehabilitation. The father was convicted of attempted murder and deported.

Alice was placed with distant relatives (Tom and Sarah) who were granted a residence order. When Margaret was better, she was granted extended staying contact with Alice, mainly during the school holidays. Sometime later, during one of these school holiday contact periods, Margaret was contacted by local police and social workers. They were making enquiries at the behest of the agencies in the area where Tom and Sarah lived; Margaret was unable to discover the reasons.

Margaret contacted solicitors and was assisted under the Legal Help scheme. They pressed agencies and received a letter from the police stating that one of the relatives caring for Alice had been arrested on suspicion of a very serious sexual offence against a female under the age of 13 years.

Alice was however due to be returned to Tom and Sarah but Margaret had no authority to keep her without a court order. Her solicitors were able to act immediately under the current legal aid arrangements. They obtained a court order granting Margaret temporary residence whilst matters were properly investigated. The allegations proved to be very serious, but it was nearly a year before a final order in M's favour could be made.

- In a democratic society it would be hard to find people who would suggest that Alice's mum did not need urgent access to funding to allow her to access legal advice and assistance in getting the issues regarding Alice's immediate care and protection before the court.

Under Government proposals:

- Alice's mum would be unable to obtain legal help in getting agencies to tell her the allegations leading them to check whether Alice was safe and well
- Even if agencies had been persuaded to tell Margaret the nature of the allegations, she would not qualify for public funding because:
  - There were no ongoing criminal proceedings against the relative accused (and no enquiry at all regarding the other relative - who also held a residence order)
  - There was no child protection plan in place
  - There was no relevant finding of fact by a court.
- Alice's mum would have to negotiate the system herself:
  - she would need to know the questions to ask, the people to ask and their statutory duties to respond – and what to do if they failed to respond

- She would need to know what to do in order to protect Alice by lawfully retaining her care
- She would, in effect, have to know it all - and do it all - herself.

## **7 Mrs R and her husband are looking after her seriously disabled nephew**

**'P'**. P's mother has a learning disability and is unable to look after him but she is unable to accept this.

Under current provisions:

- Mrs R is entitled to legal aid for advice and representation in care proceedings.

Under Government proposals:

- Mrs R would still be represented in the care proceedings but she would have to be advised that if the legal aid changes come into force any subsequent legal challenge brought by her sister – such as an application for contact, or for permission to discharge the order placing the child with his aunt - would not be covered by any public funding scheme
- Mrs R would therefore have to deal with this by herself or seek financial assistance from a cash-strapped local authority; in the current economic climate that is unlikely to be forthcoming.

## **8 Lorena met her ex-partner in 2007 and they had a child together.**

Lorena has lived in the UK since arriving on a student visa in 2007. Lorena was subjected to severe domestic abuse, including financial abuse to an extent where she was given an allowance of £10 a week to live on by her partner. Lorena's child lived with her following the breakdown of her marriage due to severe domestic violence. She has been living in a refuge. Supervised contact was arranged between the child and her father at the paternal grandmother's house. After two months of the arrangement working successfully, Lorena's ex-partner did not return the child and Lorena believes that the child has been taken to live 100 miles away with her husband's brother. Even if Lorena agreed to her child staying with her husband's brother, the distance would make it impossible to have regular and frequent contact.

Under current provisions:

- Lorena would qualify for legal aid to help her apply for a prohibited steps order or an emergency residency order, so that her child would be returned to her care.

Under Government proposals:

- Legal aid is retained for international child abduction cases but as Lorena's child has been abducted within the UK she would not be eligible to receive funding to enable her to make an application for the child's return.

## **9 Mrs N has two children.**

She is separated from her partner Mr N. During a recent contact visit he said he planned to take the children for a holiday to his country of origin in central Africa. Mrs N was not happy with this proposal given that Mr N was formerly an asylum seeker in the UK and the situation in his country of origin remains highly volatile. She also believed that Mr N might decide to remain abroad with their

children. Mrs N therefore applied to the court for a prohibited steps order to prevent Mr N from removing the children from her care; she was successful in her application.

Under Government proposals:

- Mrs N would have to apply for approval for this matter to be considered an exceptional case
- There is therefore, a real risk that emergency cases could be subject to unnecessary delay jeopardising the welfare and safety of children in similar circumstances
- If Mrs N cannot prevent the children's removal she faces potentially permanent separation from her children, as Mr N's country of origin is not a party to the Hague Convention on child abduction.

**10 Ms B has two children aged three and four years,** she is a professional and works full time at a strategic level in her company. She split up from her partner Mr I a year ago due to his domestic abuse (mainly comprising emotional abuse and financial abuse leaving her with significant debts). Since their separation, Mr I has harassed Ms B through phone calls, text messages, hand delivered letters to Ms B's house. Ms B is not entitled to legal aid due to her income but did not have to pay a fee for her application to the family proceedings court for a non-molestation order which was rushed through and granted.

Under Government proposals:

- If the proposed narrowing of the definition of domestic violence were in force at the time Ms B made her application, she may not have been successful in obtaining this order.

**11 Helen is the mother of Anne and Peter - both under five years of age.** Mr Z was the ex-partner of Helen but not the biological father of either child. Helen and Mr Z had recently separated; he was pestering Helen to restart the relationship. Helen sought advice under the Legal Help Scheme to stop his harassment. She said there had been no physical violence from Mr Z and no police involvement in matters.

At the initial meeting it transpired Mr Z had persuaded Helen to sign a parental responsibility agreement form for each child; he then took Helen to the family counter of a local County Court and arranged parental responsibility forms to be lodged with the Principal Registry of the Family Division. This action gave Mr Z parental responsibility for Anne and Peter despite not being their biological father.

Helen has no understanding of the significance of the parental responsibility agreement nor did she understand that a non-biological father could not enter into such an agreement. She was therefore advised that an application should be made to the court to discharge these agreements and a warning letter be issued to Mr Z asking him to refrain from contacting her.

Helen's solicitors obtained public funding to apply for an order to discharge the parental responsibility agreements. Just prior to that hearing Mr Z issued an application for a residence and a contact order - relying on the parental responsibility 'agreements'.

Just before the first hearing a social worker contacted Helen indicating she had serious child protection concerns regarding Mr Z which she could not disclose unless the court ordered her to file a statement. At the hearing on application from Helen's solicitor, the Court discharged Mr Z's parental responsibility agreements, his applications for residence/contact were opposed, and leave was sought to obtain information from the social worker. Mr Z opposed this but the court ordered the social worker's statement. It identified very serious child protection issues concerning Mr Z and an older male with whom Mr Z lived.

On the basis of that statement, Helen's solicitors sought disclosure of various papers from the Local Authority in respect of Mr Z including various expert risk assessments of him. Despite objections from Mr Z, the Court granted Helen's application. A significant quantity of documents were then disclosed; these revealed that Mr Z had been known to several Local Authorities since childhood and there was a detailed risk assessment of him which stated that he was a significant risk to children, and that he had seriously distorted fantasies in relation to children of an age similar to one of Helen's children.

At the next hearing (but at the door of the court) Mr Z finally withdrew his application, giving an undertaking to the Court not to have any contact with Helen or her children.

Under current provision:

- Anne and Peter's mother required the help of an experienced family lawyer using legal aid to untangle what had happened to her and to instigate legal protection for them
- It was clear from disclosed documents demanded by Helen's advocate that Mr Z was a serious risk to Anne and Peter.

Under Government proposals:

- Helen would not have had access to advice under the Legal Help Scheme because she would not satisfy the criteria for assistance for victims of domestic violence
- Helen would not have had access to advice regarding the legality of the parental responsibility agreement and its implications for her children
- Without this advice, Helen would not have been aware of the need to apply to the court to discharge this agreement
- Mr Z would have retained parental responsibility for Anne and Peter and could have readily obtained access to them by showing any official that he held parental responsibility
- Even if Helen had been able to obtain appropriate advice about the parental responsibility agreement, she would not have qualified for public funding to go to court to discharge it because:
  - There were no ongoing criminal proceedings against Mr Z
  - There was no child protection plan in place
  - There was no relevant finding of fact by a court.



- The children – both under five years - would have had no protection, and would have been at the mercy of a predatory paedophile and his associates.

**12 Miss M is the mum of Jason aged 10 years.** She was served with an application by Jason's father (Mr T) to be heard at court in two weeks. Jason's father was applying for a residence order and permission to remove Jason permanently to New Zealand. Jason's father was originally from NZ; he has lived in UK for 16 years but now wishes to return as his own mother is ill. He wants his son to move with him.

Miss M and Mr T have been separated for 8 years. Jason has lived with his mother all his life; since they separated he has stayed with Mr T every weekend from Friday evening until Sunday evening by agreement. Jason's mum says she is and has always been his primary carer; Mr T says they share care. Miss M says Jason is happy in school, settled in his home with a good circle of friends and her family are all in the UK. He does not want to move but does not like to tell his father for fear of upsetting him. Jason is shy and may not express his true feelings to the CAFCASS officer.

Mr T is an IT consultant and earning a good wage – he is paying solicitors to represent him. Miss M, Jason's mum, is dyslexic. She is distraught at the idea of proceedings and the thought of Jason being removed from her care to the other side of the world; she would never be able to afford to visit him.

Under current provisions:

- Miss M's solicitor can grant emergency funding as Miss M is financially eligible
- Miss M does not work as she is carer for her eldest son (not a child of Mr T) who is now adult but has learning difficulties so she is on Income support
- Her solicitor can represent her at court, help prepare her statement, investigate her witnesses, advise on the law and if necessary employ a barrister to represent her at the final hearing.

Under Government proposals:

- Ms M will not be entitled to any legal aid for advice or representation in court
- She will not know what to do, how to defend her case or how to write a statement; she does not have a computer
- She would have to represent herself at court, face cross examination by the father's no doubt experienced solicitor or barrister. In practice Jason's mum would present little opposition and would be 'walked all over'
- She would not be able to quote cases or highlight the significant body of case law in this area.

**13 Laila is 20 years of age.** She holds an introductory tenancy from a local council. At the time she sought help, a possession order had already been made and the council had applied for a warrant of possession. She had rent arrears in excess of £1,000. She is a vulnerable young adult who had secured accommodation with the council having applied as homeless. Laila had to leave home when she was 15 and at that time was secured accommodation by social services. She was abused by her stepfather. She subsequently suffered a miscarriage and began self harming. She

was fully estranged from her family and also suffered with dyslexia. She had real issues with trusting people in authority.

Under current provisions:

- Laila met with an experienced housing solicitor who was able to build up a rapport. Laila arrived at the appointment with a bag full of documentation and it was from this documentation that the solicitor was able to ascertain that Laila had had numerous difficulties in the past and was a vulnerable young adult
- Laila was reluctant to speak about her experiences but with some skilled support was able to open up to the solicitor to provide information which proved to be relevant to resolving her case
- The solicitor concerned subsequently made detailed and in depth representations to the council which persuaded the council not to proceed and eviction was avoided. Due to the solicitor's knowledge of the local authority arrangements were also set in place for Laila to receive tenancy support.

Under Government proposals:

- It is highly unlikely that Laila would have achieved this result if her only way of getting assistance from a solicitor was through a telephone gateway
- An already abused and vulnerable young adult would be likely to be homeless through no fault of her own, and without the resources to protect herself from further exploitation.

**14 Sunita is in her early twenties and lives with her six year old son and 18 year old cousin.** Sunita suffers with marked anxiety symptoms, social and emotional difficulties and a personality disorder. Her GP considers Sunita's chaotic lifestyle puts her at risk (her lifestyle being chaotic because of her mental health difficulties).

Sunita's accommodation is a one bedroom council flat on the fifth floor of a tower block. She has previously attempted suicide by trying to jump off the balcony at the property. Sunita had applied for a transfer but was assessed as not being a priority; no medical need points were awarded.

Under current provisions:

- Sunita's solicitor intervened and representations were made based on knowledge of the council's allocations and transfer policy
- Within a short period of time Sunita's transfer application was reassessed and placed on the priority transfer queue.

Under Government proposals:

- Sunita would not get legal help with this matter as re-housing has been placed out of scope.

**15 Mary is in her fifties and has been a housewife all her married life (25 years).** Her husband is a successful business man running a few companies. He has started an affair with his 25 year old secretary. He wants to divorce Mary and for her to

move out of the home so he can start afresh with his secretary. Mary and her husband have three children; they all now live independently. Mary has no income of her own.

The home is in her husband's sole name as is the savings account and the investments. She also thinks he has wealth off shore but does not know the details. Her husband says he is looking forward to giving up work in 5 years when he will be comfortable on his pension. Mary has no pension. Her husband says that even if she goes to court they will not be able to find his assets. Mary has no income to pay for representation or advice. She will not even be able to make a claim as she doesn't know what to do, where to go or what form to complete, and she could not pay the court fee involved.

Under Government proposals:

- If either party makes an application to court Mary would have to deal with it herself
- However, she would not know how to complete the Form E financial statement
- She would not know what information to request from her husband or his advisers
- She would not understand pensions, indexations, Cash Equivalent Transfer values, pension share orders or pension offsetting discounts
- She would not know how to do a statement covering the S25 factors and she would not be able to articulate her case and claims in court
- She faces losing her home and poverty in her old age
- Even if she had been told that she could apply for a 'legal services order' at an early stage of the financial remedy proceedings (Clause 45-50 of the Bill), she would have to make the application for the 'legal services order' herself, unrepresented; she would have to try and demonstrate (in the face of opposition from her husband represented by a skilled lawyer) that there were assets which could be divided at that stage in order to fund her representation.

**16 Joan has not worked during her 20 year marriage;** she sought help in relation to divorce and ancillary relief. Her husband had admitted to committing adultery on a number of occasions and this had caused her to have a breakdown and to be hospitalised under a section of the mental health act. Her husband had left the home and filed a divorce petition on her behaviour. She was in a distressed state and vulnerable. She has no family.

Joan's husband is wealthy; he owns a business with valuable business premises, two properties with a former business partner and nine investment properties. The matrimonial home is jointly owned, but close to negative equity. The husband has stopped paying the mortgage and possession proceedings are pending. The husband refuses to pay maintenance or any outgoings on the property. Joan has been forced to apply for income support.

Under current provisions:

- Joan is entitled to legal help under a full legal aid certificate: she is thus able to cross petition for adultery (the divorce proceeded on cross decrees) and make

an application to the court for ancillary relief, including an application for interim maintenance

- The housing department in her solicitor's practice was also able to assist her with the possession proceedings and at the hearing it was agreed that the husband would repay the mortgage arrears and continue to pay the mortgage and outgoings on the property
- This was a complex case where the husband failed to disclose his assets in his initial Form E and it was not until after investigations had taken place and there had been a questionnaire and two schedules of deficiencies that the true position came to light
- During this process Joan became unable to cope with the procedure and was admitted to hospital under a section of the Mental Health Act
- However, this case is now concluding and Joan will receive sufficient capital to re-house and has spousal maintenance. Out of this she will be able to repay her legal aid costs in full.

Under Government proposals:

- Without legal aid Joan would have been unable to take action
- She has for a period during the case lacked capacity but even when this was regained she would not have had the ability to negotiate her way round the rules, understand how to take matters forward, complete the documentation or be able to negotiate a settlement that would be within the parameters of what a court might order
- The likely outcome after 20 years of marriage and without legal advice and legal aid would be that she would be on the streets.

**17 Nadia married in Pakistan and moved to England to live with her husband;** between them they built up a very successful food business and bought three properties. They also had capital in the bank. Nadia lost three babies and on the pretext of arranging a holiday the husband took her back to Pakistan where he left her returning to England with a new wife.

When Nadia eventually returned to England a couple of years later she found that the husband had fraudulently transferred property out of joint names into his name and removed her capital from her bank account. She had no money and no asset in her name and was in receipt of benefit. Nadia required an interpreter and found the legal procedure and terminology extremely difficult.

Under current provisions:

- Nadia was entitled to legal assistance; she issued divorce proceedings which progressed to a decree nisi and an application for ancillary relief
- The husband then claimed that he had divorced her in Pakistan some years back and produced documentation that was clearly forged
- This became an extremely difficult and complex case, which eventually resulted in the divorce proceeding to decree absolute in the English courts, and a consent order providing the wife with a lump sum sufficient for re-housing
- This is a case where the statutory charge applied. A charge was registered against the client's property, which will ultimately be repaid in full, plus interest.

Under Government proposals:

- Without legal aid Nadia would be unable to put her case as to her entitlement to a share in the joint resources – and to which she contributed and would have been destitute.

**18 Mrs GM is a grandmother who had real concerns about the safety and well being of her granddaughter, 'A'.** 'A' lived her mother, who was a chronic alcoholic. Mrs GM stepped in and approached social services who told her that she should apply for residence and a special guardianship order so that A could live with her.

The order was granted and there were several subsequent hearings. Mrs GM supported A's contact with her mother, then A's father joined the proceedings. The father had a personal vendetta against A's grandmother and did not have A's best interests at heart. He applied for a residence order and for leave to temporarily remove A from the jurisdiction; both applications were unsuccessful.

A is Muslim and her father is a Catholic. During contact sessions A's father encouraged her to go against her Muslim faith by attending mass, eating pork etc. A became very disturbed and her behaviour at school deteriorated resulting in several exclusions from school. She remained living with her grandmother for a year, during which time she was given extra support at school and was referred to a child and adolescent mental health unit (CAMHS). Her grandmother fought endlessly to have A's voice heard. Following the mother's rehabilitation, the grandmother supported the return of A to her mother's full time care; contact was ordered for the father and the grandmother.

Under current provisions:

- A's grandmother was eligible for legal aid for advice and for representation in the proceedings.

Under Government proposals:

- A's grandmother would not have been entitled to legal aid
- A would have remained with her mother and her wellbeing and safety would have been in serious jeopardy
- Alternatively she would have entered the care system, which would have cost much more than these legal proceedings, in terms of financial costs and emotional costs for all involved.

**19 The mother of a young girl made an allegation against the father** that he had inappropriately touched the child (while the mother was present). The father accepted he had tapped the child's leg, but vigorously denied the mother's version of events. Private law Children Act proceedings followed, the father's representation funded by legal aid and the mother privately funded.

Contact went ahead while the proceedings were ongoing, but only so long as it was professionally supervised. The court ordered a multi-disciplinary assessment; that

concluded that, due to the likelihood of the incident having taken place, and for various other reasons concerning the father's psycho-sexual history, father should have a further year of therapy, supervised contact for another year, followed by a further assessment and review.

At the final hearing, the judge ruled that the incident as described by mother did not take place and that the assessment was flawed and that no reliance should be placed upon it. The judge ordered unsupervised contact to resume immediately.

- Legal aid enabled the father to challenge not only the original allegation, but also the assessment and its recommendations
- It enabled him to re-establish unsupervised contact with his daughter
- Without legal aid the future for him and his daughter would have been catastrophic
- Without court directed and controlled investigation further contact would have been highly unlikely
- Neither parent could afford to pay for supervised contact and therefore in reality contact would not have taken place if it had to be professionally supervised
- He would also have had untested allegation of abuse hanging over him forever because he was unable to pay for representation to clear his name.

**20 William is the father to two children.** After the parties separated, the mother refused to make any firm plans with regard to William's contact with his children and at times has refused to make them available for contact. William made an application for a residence order in respect of the children due to the mother's long history of drug and alcohol abuse which seriously affected her parenting.

There were also serious concerns that the mother's destructive relationship with her new partner was adversely affecting the children. Both children were excluded from mainstream school due to their behaviour and the elder child was convicted in a youth court of violent offences and criminal damage. The parties attempted to resolve matters through mediation; it was agreed that in the event that the mother's drinking and drug taking deteriorated she would encourage the children to go and live with their father.

The mother did not adhere to this agreement and William's solicitor made an application for a residence order on William's behalf. The local authority children's services were heavily involved and recommended that William be granted a Residence Order.

Complicated proceedings ensued and issues with regard to the mother's capacity were raised, various reports directed, papers from the mother's criminal proceedings for assault (not against members of the family) were disclosed and the parties ordered to file statements. Ultimately the father's application was successful.

Under current provisions:

- William was entitled to legal aid and able to pursue his application for care of his child.

Under Government proposals:

- William will not get legal aid to obtain advice and representation
- He is unlikely to have made his application for a residence order
- This would be to the detriment of his children who would have been left in the care of their mother with possibly tragic consequences
- If William issued proceedings in person, he would struggle to represent himself in the proceedings, write a statement or indeed cross examine the mother in court.

**21 Mohammed is the Father of two sons.** He is originally from Bangladesh and his English is limited. Allegations of sexual abuse were made against him by his step daughter. Police and Social Services investigated the matter. Social Services took no further action once Mohammed had moved out of the family home that he shared with his wife, step daughter and two sons.

The Crown Prosecution Service concluded that due to lack of evidence they would not prosecute Mohammed. Following the parties' separation Mohammed attempted to establish contact with his two sons. The children's mother was opposed to this; an application to court for contact was made.

Throughout proceedings the children's mother made a number of serious allegations against Mohammed including that Mohammed raped her throughout the marriage, sexually abused her daughter and touched their sons in an inappropriate manner. The Mother of the children made 27 allegations against Mohammed.

The proceedings have been lengthy and have been adjourned several times due to difficulties with evidence and listing the case. The documentation is voluminous and there is a large amount of police disclosure and ABE interviews of the children. A seven day fact finding hearing took place and a video link was used for some of the evidence. Judgement is awaited. Mohammed has been having supervised contact at a contact centre (paid for by himself). The contact notes have all been very positive.

Under current provisions:

- Mohammed works but has a limited income and is in receipt of legal aid
- English is not his first language and interpreters have been used throughout these proceedings.

Under Government proposals:

- Mohammed would not get public funding to obtain advice and representation
- He would find representing himself extremely difficult in such complex proceedings; He would be unable to prepare evidence himself or cross examine the other parties, or cite appropriate case law
- Mohammed would almost certainly never see his children again if legal aid was not available to him.

**22 'Melanie' is the mother of three children in contact proceedings.** Three years ago there had been care proceedings which ended with a residence order to the father and a supervision order to the local authority. A contact order was granted to the

mother. Just before the supervision order expired the father stopped the mother's contact. The local authority initially did nothing to help the mother get contact reinstated - eventually after a couple of months the local authority tried to hold a meeting between the mother and the father but that was unsuccessful because the father simply refused to consider the resumption of contact for the children with their mother.

His concern was based on her previous neglectful parenting which had resulted in the children being removed. The father raised no new concerns and no reasons for his current stance although he had previously consented to the contact order. There was some delay getting legal aid due to the mother's complicated means situation as she had just started working but was not yet in receipt of working tax credits etc. By this point the mother also had a younger child, this child remained in her care with some monitoring by social services; no concerns had been raised.

It had always been the intention at the end of the care proceedings that the mother would have contact with her three older children and that in time contact could be reviewed with a view to increasing it. In practice, there had never been any increase or even any review.

Under current provisions:

- The mother's solicitor obtained legal aid; the mother was thus able to make an application for enforcement of the contact order and/or variation of it
- The case has been ongoing for many months; incremental increases to the mother's contact had been granted by the court at each hearing - each in the face of the father's opposition
- The case ended with the three children having fortnightly contact for six hours with their mother.

Under Government proposals:

- The mother would not have been entitled to legal aid and could not have fought this case
- Three children would have been denied contact with her in circumstances where the court considered contact with her was in their best interests.

**23 Mr B married and had three children and for the past 10 years managed to lead a stable life.** He is however a convicted paedophile with a very serious criminal past dating back to 1970s when he was a teenager. More recently his offending has been limited to non-contact internet child pornography. His wife knew nothing of his past and only discovered his history when he was arrested for internet offences. He was convicted and a sexual offences prevention order (SOPO) imposed.

The couple divorced but care proceedings began because of mother's inability to come to terms with all that had happened. The court made supervision orders with regard to the children, further ordering no face to face contact be permitted with the father. The father appealed that decision. The evidence was that he was a good father and the children loved and missed him. He argued that they should be permitted to see him with the risk managed through supervision. The appeal was dismissed.



- However, in say 2 years time, the father could complete his necessary treatment and re-open the question of contact. By that time under the Government's proposals, any application by the father for contact would be out of the scope for legal aid (for the father as applicant or the mother as respondent)
- The local authority will no longer be involved and the mother will have to deal with this on her own - as the supervision order would have lapsed
- This case is not appropriate for mediation – serious child protection issues arise requiring expert evidence as to risk
- There is the additional risk of the stress on the mother affecting the children and their well being.
- An additional question is who will organise and pay for any risk assessment if the parents are both unrepresented.

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**For further information** contact **Julia Higgins** - Administrator on behalf of the Alliance - 0208 224 7071 ([admin@alc.org.uk](mailto:admin@alc.org.uk)); Press Officer - **Barbara Hopkin 07970 620 156**