

## LEGAL SUPPORT FOR CHILDREN AND YOUNG PEOPLE

### Legal support is essential for children's rights to mean anything

Children face legal problems. Decisions are made about them within complex administrative and legal frameworks. They are too often let down by the systems that they rely on for support and the rights and protections that the law provides them are too often not realised in practice.

Coram Children's Legal Centre represented EAT, a toddler with sickle cell anaemia. She and her mother were homeless. Social services accepted that she was undoubtedly a child in need and provided accommodation. Days later, they said that they would terminate support.

Not only does legal support matter for the child concerned, issues at stake in children's legal cases can be of wider public importance and can have implications for the treatment of children and young people more generally.

Coram Children's Legal Centre was involved in the case of SM and four other children, who were all aged between six and ten. All were born in the UK. The Home Office accepted that they should be allowed to stay in the UK and granted them a temporary period of leave in the UK instead of granting them indefinite leave to remain. The Home Office's policy on children in this situation was held to be unlawful because it failed to provide for consideration of the welfare and best interests of children before deciding the period of time for which leave should be granted.

There have been urgent, cross-party calls for more to be done to ensure that children and young people can access legal support, including from the Joint Committee on Human Rights, the Justice Committee and the Children's Commissioner for England.

### WHAT NEEDS TO CHANGE?

- 1. Commitment at the highest levels of Government to, and cross-party support for, ensuring that children, young people and those who care for them are provided with accessible, properly funded legal services.**
- 2. The Department for Education should commit to long-term funding for Coram Children's Legal Centre's Child Law Advice Service and other legal advice services necessary for the public to obtain information on children's rights.**

### Children, young people and families are facing legal issues alone following cuts to legal aid

Following the cuts to legal aid in April 2013, thousands of children, young people and families are struggling without the legal support that they need in family, education, immigration, housing, social security, prison and other areas of law. CCLC's Child Law Advice Service (CLAS), funded by the Department for Education, is one of the only sources of preliminary free legal advice in out-of-scope family and education law. The line has seen an exponential increase in demand.

The seven-year-old son of a caller to the CLAS was in the process of diagnosis for autism and pathological demand avoidance syndrome. He had been excluded for one day from his academy school. This was the twentieth exclusion in the last two years. The school recognised that he might have special educational needs but had not taken any further action.

A caller to the CLAS left her son's father when the baby was a few months old. The relationship was abusive. The caller, who had a residence order in her favour, has been taken to court by the father 22 times in the previous four years for variation and enforcement of contact orders. The caller reported that she had accrued a large debt as a result of having to go to court several times following the legal aid cuts. She was in debt to solicitors she hired shortly after the legal aid cuts came into effect and was struggling to make the payments. She had hired the solicitors as she has post-natal depression and PTSD, and could not face representing herself in court.

CCLC's Migrant Children's Project advice line, funded by charitable grants, is the only resource of its kind providing free initial legal advice on the rights of children and young people who are subject to or affected by immigration control. Through this service CCLC sees the impact on children and young people who cannot get immigration legal representation.

The mother of a 17-year-old young person contacted the advice line about her son who was in a youth offenders institution. He came to the UK at the age of five. After waiting for seven years for a decision from the Home Office, he had been granted indefinite leave to remain (ILR) when he was 15. The rest of his family also had ILR and one younger sibling was a British citizen. While serving his sentence, he heard that the Home Office was considering revoking his ILR and deporting him to Jamaica. He did not know that this could happen. He had no access to any legal advice. The mother had medical issues but was working part time. She could not afford to pay privately for a solicitor to represent her son.

#### **WHAT NEEDS TO CHANGE?**

- 1. Where civil legal aid remains available, it must be publicised and accessible. All local authorities informing parents and carers of a child's exclusion from school should contain the Civil Legal Advice telephone gateway number.**
- 2. The Legal Aid Agency must reform the exceptional case funding system. In the immediate term, a question should be added to the CIV ECF1 form to ask about the rights and interests of any affected children. Where the applicant is a child, there should be a presumption in favour of a grant. The Legal Aid Agency should pay providers for applications, not just those that succeed.**
- 3. The Government has committed to reviewing the impact of civil legal aid cuts. This review must include a detailed assessment of the impact on children and young people.**
- 4. The Ministry of Justice should use its civil legal aid underspend to address some of the worst effects of the cuts. The Ministry of Justice should urgently reinstate legal aid in separated children's immigration cases. In private family law, the Ministry of Justice should bring back funding for an initial consultation with a lawyer to equip parties with a better understanding of the mediation option and the process.**

## **There is a danger that legal aid will be restricted further for some of those most vulnerable to violations of their rights**

On top of the April 2013 cuts, the Government proposed to introduce a 'residence test' for civil legal aid. The Ministry of Justice produced no evidence of any financial savings from this policy. If this policy were brought in, lawyers would have to ask every client to produce documentation to prove that they are lawfully resident in the UK and they have been lawfully resident in the UK for a continuous period of 12 months at some point in the past. A child coming to CCLC for help may not be able to do so because she has no legal status, or because she is newly arrived, or because, even though she meets the requirements, at a time of crisis she simply cannot produce the paperwork required. Even a group of 145 Treasury Counsel – the Government's own senior lawyers – warned that this policy is 'unconscionable' and 'impossible to reconcile with the rule of law'.

This proposal is now on hold because in July 2014 the High Court ruled that the proposed policy was unlawful and that the Government did not have the power in law to bring it in. The judges held that discrimination between cases of equal need was unjustifiable, emphasising that 'what is at stake is the protection which domestic law affords to all who fall within its jurisdiction'. However, the Government is appealing the ruling and it has not been conclusively abandoned.

CCLC represented a child in a community matter. The child had been brought to the UK with an adult who claimed to be a family member and then disappeared. The child had no status in the UK. Social services placed the child in foster care but the placement broke down and social services failed to identify a suitable alternative placement, including failing to consider whether she should be united with a potential caregiver in another EU member state. The matter was resolved by the community care solicitor. Had the residence test been in place, the child would have had no legal support.

### **WHAT NEEDS TO CHANGE?**

- 1. The Government must not pursue its appeal against the High Court's residence test judgment and abandon the policy.**
- 2. The Labour Party has already committed to scrapping the policy. This position must be maintained.**

### **Public family law cases are not adequately funded**

Public family law has been mostly protected from legal aid cuts and legal aid is available without a means or merits test in care proceedings. However, there are some important gaps in legal aid provision. These are cases where the decisions that the court is being charged with potentially could have the effect of separating a child from her/his birth parents, but they are not technically care proceedings.

### **WHAT NEEDS TO CHANGE?**

- 1. Legal aid must be made available in any case where the outcome could be the separation of a child from her/his birth parents.**