

Who gets legal aid and why?

The news a Premiership footballer earning £40,000 a week has been awarded legal aid to defend a disorderly conduct charge has provoked fury among commentators.

El-Hadji Diouf, of Bolton Wanderers, was granted the funding at Teesside Magistrates' Court, where he is fighting claims he spat at a fan during a match.

But MPs of all parties claimed it was an abuse of the legal aid system and that he could afford to fund his own defence.

So how does the legal aid system work, who is entitled to it and how fair is it?

If someone is given legal aid, officially known as a representation order, their lawyers' fees will be paid by the state.

Justice delayed

A set amount of money is put aside each year by the government to pay for the scheme - currently more than £1.1bn.

Until a few years ago, every person applying for legal aid had to prove they had insufficient funds to pay their own fees - and that funding them would be in the interests of justice.

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Professor Gary Slapper

But the system of checking applications became so cumbersome and expensive and caused so many delays to the courts that it was abolished in 1999.

In reality, only a small percentage of applications in criminal cases were ever refused.

Since 1999, applicants in criminal cases have only to prove that granting them legal aid would be in the interests of justice.

Albert Square

Legal expert Professor Gary Slapper, of the Open University, says: "The thinking behind this is that criminal cases are often much more serious in their impact on people's lives than civil cases.

"Even if they do not result in someone going to prison, just being convicted could lead to someone losing their job or their life being ruined.

"This is something the state has to take very seriously, therefore the default leans towards offering representation in criminal courts to anyone who can show it's in the interest of justice."

He adds: "The state is very big and powerful, with good resources and it is working to try to convict someone who is small and weak most of the time.

"Most people who end up in court are more like the inhabitants of Albert Square than the inhabitants of Dallas.

"As such, the thinking is they should have representation, which I think is a very good principle."

To decide which cases deserve funding, magistrates look at a series of criteria.

Generally, cases deserve legal aid in any of the following circumstances:

- A conviction would have serious implications for the defendant, such as imprisonment, loss of livelihood or serious damage to their reputation
- The proceedings would be difficult for the defendant to understand or to defend in person
- The case involves an important question of law
- A lawyer is needed to protect a victim or witness against personal cross-examination by the accused.

Organised crime

In Diouf's case, the court decided a conviction could lead to him losing his livelihood.

Magistrates also decided, as he did not speak English, he would have difficulty understanding the proceedings.

Prof Slapper says: "That counts very seriously because, as most people appreciate, it would be wrong to allow bad things to happen to someone who didn't understand how best to make their defence."

Occasionally there is a case where you think that is obviously an awful liberty
Professor Gary Slapper

Crown courts, where more serious cases are heard, can make people pay back legal aid in exceptional circumstances, for example if the accused is proved to be a member of a wealthy criminal gang.

And in civil cases, means testing is used to make sure only those unable to pay get legal aid.

It is hard to tell if the criteria are being applied consistently, as they are decided case by case in hundreds of separate courts.

Prof Slapper says: "Occasionally there is a case where you think that is obviously an awful liberty."

However, he says the whole system need not be changed just because of a few controversial cases.

To do so could end up hurting the thousands of ordinary people who need legal aid to get a fair trial every year, he adds.

"People do not want to be prosecuted. It's not a scam. People aren't getting free trips to France. They usually do anything to they can to avoid ending up in a magistrates' court."

The Queen's Speech, earlier this month, outlined plans to reintroduce means testing for legal aid.

But Prof Slapper says the current system works fairly in most cases.

When means testing existed in the past, he said it cost nearly as much to run (£5m in 1997-8) as the amount of money it saved (£6.2m) by making a few people pay for their own legal fees.

It also caused lengthy delays to court cases, which he says did not serve justice.

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