

Consultation responses

Consultation and engagement

The consultation document *Building a fairer Britain: Reform of the Equality and Human Rights Commission* set out proposals for new arrangements for providing equality information, advice and support. These proposals were made in the light of the Government's decision to cease providing funding for the Equality and Human Rights Commission's (EHRC) helpline and legal grants programme at the end of 2011-12. That decision was taken in the context of the Spending Review 2010, in the light of the findings of a review of the Commission's equality information, advice and support which found that the helpline and the legal grants programme (along with the strategic grants programme) neither represented value for money nor supported EHRC in carrying out its core regulatory functions. The Government proposed

- to commission an improved and better value for money service providing information, advice and support about equalities matters
- a programme of public education about discrimination and human rights, targeted to those who are most disadvantaged
- that state funding for legal advice on discrimination cases is delivered solely through legal aid.

The consultation document asked four specific questions seeking views on these proposals. These were:

- Do you agree with the proposals set out to provide a new system of information, advice and support? If not, what changes to the system would you recommend?
- What should a new citizen-focused, cost-effective information and generalist advice service look like?
- How can government best provide public education on discrimination and human rights, targeted on the most disadvantaged groups?
- Is there anything that distinguishes discrimination cases from other cases eligible for civil legal aid that would justify further public funding for support?

The responses to each of these questions have been carefully considered in the decision-making process including as evidence for the policy equality statement and were taken into account in the design of the new service. A summary is set out below.

A minority of respondents agreed with the proposals for a new system. There was recognition that the current helpline is not providing a consistently high quality service to victims of discrimination. There were a number of concerns about the way the current service is delivered; including the fact that it is overly bureaucratic and difficult to access.

Respondents thought that a new system should be properly funded and staffed by experts able to provide high quality advice on all protected characteristics as defined in the Equality Act 2010. The service's performance should also be reviewed regularly to ensure standards remain consistently high. Some respondents were concerned that it may become profit focused if contracted out to a private sector organisation. There was support for commissioning a new service as long as it is commissioned in a transparent way and with clear links with the Government Equalities Office (GEO) and EHRC.

The responses emphasised the clear need for information and advisory materials to be made available through a variety of channels such as by telephone, email, and post and in a range of community languages to ensure accessibility particularly for vulnerable or disadvantaged victims of discrimination. There should also be an accessible and up-to-date website. Some respondents wanted to see a new service run by an equality and human rights specialist and emphasised that it must be politically independent. A number of individual respondents wanted the EHRC to be abolished and proposed that the funding planned for a new service go to Citizens Advice who could operate through their existing network of bureaux.

Whilst overall there was recognition that improvements must be made to deliver a quality service, a majority of respondents, including a large number participating in a Public and Commercial Services Union (PCS) campaign disagreed with our proposals for a new service. The campaign wanted the EHRC helpline to continue to operate, with changes to address its problems. Areas for improvement raised in responses were internal management, structures, systems and priorities, cost-effectiveness and marketing. Respondents disagreeing with our proposals were concerned that there would not be an effective and expert service to the public. There were concerns about the potential loss of face-to-face advice and the impact this may have particularly on vulnerable victims of discrimination. Respondents in the devolved administrations emphasised the need for the service to cater for the specific needs of people living in all three nations. Respondents emphasised the need for advisors to be trained on the law and legal processes in Scotland and Wales; there was concern that a new generalist service would not be sufficiently knowledgeable on the legislative context in these countries. On public education and discrimination about human rights respondents expressed a range of views. Some wanted the subjects to be addressed in schools and others via media campaigns. Some thought education should be for the public in general while others recommended working with organisations who already work closely with disadvantaged groups. A significant number of responses including those under the PCS campaign saw this as a role for EHRC and a few did not want any funding for public education about discrimination and human rights.

On the question of whether discrimination was a special case for which public funding other than legal aid was justified, respondents put forward several arguments. These were that discrimination cases were more complex than other types of case, that the other party was often a business or organisation that had access to legal advice, that the experience of discrimination was damaging and emotive and its impact particularly harmful, meaning that people needed extra support. Other arguments included the importance of legal cases in advancing equality, the difficulty of finding a no win no fee or legal aid lawyer willing to take on discrimination cases and a moral case for protecting vulnerable individuals. A

minority of respondents did not support additional public funding for legal advice about discrimination. Their arguments included that it was unaffordable, should not on principle be funded by the state, mainly benefited lawyers and that there were other ways of resolving discrimination problems. Some respondents were concerned about the impact of the ending of legal grants on their particular client group and there was also scepticism that legal aid only funding would be sufficient.

We discussed the proposed new arrangements for information, advice and support – at four engagement events - one in Scotland, two in England and one in Wales. Participants included voluntary and community sector organisations who represent or advise people particularly at risk of discrimination, the EHRC, trade union representatives and technical experts. The events explored the landscape of organisations working in the field of discrimination and human rights, the provision of legal advice by qualified lawyers about discrimination and whether discrimination cases differ from cases in other areas of civil law funded by legal aid and helped shape the vision and design of the new arrangements. The main messages emerging from the events were that participants:

- welcomed the opportunity to engage in face to face dialogue with GEO;
- agreed on the need to take a systems based approach rather than looking at the helpline, legal grants and other developments in isolation;
- stressed that a balance needed to be struck between individuals' needs for information, advice and support, with a variety of channels to be used;
- were keen to ensure that any new service added value to information, advice and support being provided at the local level;
- voiced strong support for the particular needs of Wales and Scotland to be recognised;
- recognised that knowledge and use of EHRC's helpline and legal grants system was patchy.
- emphasised the need to recognise the context within which the new service would be operating. Participants stressed that it was a challenging time for the VCS and the not-for-profit advice sector, particularly from 2012-13 onwards when they believed that local and central government funding would be very constrained;
- were concerned about Government's decision to cease funding the EHRC to deliver its legal grants programme, once the current three year programme came to a natural end. Participants currently receiving funding from the EHRC's legal grants programme in particular expressed this view;
- at the Port Talbot engagement event, emphasised that they felt the EHRC helpline in Wales should continue to operate. Participants at the other engagement events (other than those receiving funding from the EHRC legal grants programme) appeared not to be fully aware of the EHRC helpline's remit and role.

Legal aid reforms

Work will be starting in good time to put in place new arrangements for funding claims in contravention of the Equality Act 2010 through legal aid when the changes to the scope of legal aid are implemented. This is intended to be in April 2013, subject to Parliamentary approval of the Legal Aid, Sentencing and Punishment of

Offenders Bill. The Ministry of Justice and the Legal Services Commission have already begun initial scoping work in advance of informal soundings with key parties. In line with the well-established process for legal aid contracts, there will be formal consultation which will take place after Royal Assent to the legislation.

The mandatory telephone gateway, proposed for implementation as part of the reforms to legal aid, will not end the provision of face-to-face advice for those people in most need. People applying for civil legal aid for discrimination claims, relating to a contravention of the Equality Act 2010, will usually be expected to apply via the gateway - although four exceptions to this requirement will apply. The gateway call operator will then assess the specific needs of all callers on a case-by-case basis and will, as appropriate, refer them to a face-to-face advice service if this is considered necessary. The current Community Legal Advice helpline, through which callers can now access civil legal aid, already deals with discrimination cases in the areas of employment, education and housing.

The exceptions to contacting the gateway are:

- in emergency cases;
- where the gateway operator has in the previous 12 months assessed the caller as requiring face-to-face advice and they have a linked problem;
- callers who are in detention; and,
- children under 18 years of age.

Where these exceptions apply, a person has the option of contacting the gateway, or approaching face-to-face provider direct.

Supporting the not-for-profit advice sector

The Government wants people to continue to have access to good quality free advice in their communities. It is supporting the not-for-profit advice sector through the Advice Services Fund and is undertaking a review of free advice services. The Advice Services fund, which was announced on 21 November, will help deliver essential services. The new Advice Services Fund has been open for applications since 28 November 2011 and is being managed by the BIG Fund. It is for not-for-profit advice providers in England. Applicants must:

- provide advice in at least one of the following priority areas: debt, welfare benefits, employment and housing; and
- be able to evidence public funding cuts of at least 10% for the specified advice service areas from central and local government sources in 2011/12.

Priority will be given to organisations with higher levels of reductions in funds. How applicants plan to use their grants, their plans for the future (including ways to improve efficiency) and how the quality of their advice services help meet local needs, will also be taken into account. The deadline for applications is 22 December 2011.

The Advice Services Fund will provide grants of £40,000 to £70,000 to be spent on service delivery. The review of free advice services will conclude in the New Year. It is looking at the future funding for these services and likely levels of demand, and will focus on what government can do to help the sector.

New service help for people who are not eligible for civil legal aid

The new service will provide referrals to a qualified lawyer or, where one is not reasonably accessible, will provide some support for the individual to help them pursue a claim themselves. This would be through, for example, explaining and helping with completing forms, taking a brief case history and advising the client on what documentation to assemble.