

HOME OFFICE

POLICY EQUALITY STATEMENT (PES)

Name of Policy/Guidance/Operational Activity

INFORMATION, ADVICE AND SUPPORT FOR DISCRIMINATION AND HUMAN RIGHTS MATTERS – UPDATED IN RESPECT OF DECISION NOT TO PROVIDE TRANSITIONAL FUNDING WHEN EHRC GRANTS CEASE IN MARCH 2012


Policy aims and objectives

The overarching aim is to deliver a new system of information, advice and support for potential victims of discrimination and human rights abuses that is high quality, timely, focused on the individuals who need it and cost-effective. The underpinning objectives are to:

- **Ensure access to justice:** the provision of information and advice should continue. Government is committed to trying to resolve problems wherever possible early and informally i.e. before the need to resort to formal legal proceedings
- **Public service reform:** Government is seeking to deliver services that in the past have been provided through the public sector through civil society organisations and the private sector
- **Promoting modern regulation:** Government is committed to regulatory enforcement as a means of last resort. The focus of regulators should be on working in partnerships with organisations in civil society and the private sector to improve understanding of the minimum standards required for compliance with legislation as well as the business benefits of going beyond it. More specifically, Government intends that the EHRC should become a more focussed regulator
- **Achieve cost effectiveness/value for money.**

Summary of the evidence considered in demonstrating due regard to the Public Sector Equality Duty.

- Information, Advice and Support on Equality and Human Rights Issues – A report by the Government Equalities Office
<http://www.homeoffice.gov.uk/publications/equalities/government-equality/review-information-advice?view=Binary>
- Engagement events and workshops and meetings with key players, consultation and analysis of information provided by recipients of EHRC legal grants (see attached paper for details).
- Information provided by EHRC in response to our request for details of how many grant recipient clients' latest cases were at the following stages: informal action, alternative dispute resolution, preparation for

legal proceedings and representation.			
SCS sign off		Name/Title	Charles M Ramsden
<p align="center">I have read the available evidence and I am satisfied that this demonstrates compliance, where relevant, with Section 149 of the Equality Act and that <u>due regard</u> has been made to the need to: eliminate unlawful discrimination; advance equality of opportunity; and foster good relations.</p>			
Directorate/Unit	GEO	Lead contact	
Date	December 2011	Review Date	

Retain the completed PES for your records and send a copy to SDAT@homeoffice.gsi.gov.uk and your relevant business area Equality and Diversity Lead.

Information, advice and support for discrimination and human rights matters: what effect do our proposals have on eliminating unlawful discrimination, advancing good relations and fostering good relations?

Introduction

1. Section 149 of the Equality Act 2010 requires public authorities, when they exercise their functions, to have due regard to the need to:

- Eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- Advance equality of opportunity between people who share a protected characteristic and people who do not share it

This paper summarises how we have done so in respect of policy decisions on the provision of funding for legal advice and representation for discrimination cases when deciding whether to replace the EHRC's legal grants programme with a like for like scheme and the nature of the new service providing information, advice and support to individuals following the upcoming closure of the EHRC's helpline by June 2012. It sets out the steps we have taken to do so and the main findings of our analysis. We have approached our assessment of the equality effects of our proposals by looking at two options for

a) any future central government funding for legal advice and representation (beyond that provided by the civil legal aid scheme)

b) a new advice and support service.

2. We have updated this paper in relation to the questions whether or not to provide any transitional funding after March 2012 when the legal grants programme ends for clients whose cases are ongoing at that time.

Policy aims and objectives

3. The overarching aim is to deliver a new system of information, advice and support for potential victims of discrimination and human rights breaches that is high quality, focused on the individuals who need it and cost-effective. The underpinning objectives are to:

- **Ensure access to justice:** the provision of information, advice and support should continue. Government is committed to trying to resolve problems wherever possible early and informally i.e. before the need to resort to formal legal proceedings
- **Public service reform :** Government is seeking to deliver services that in the past have been provided through the public sector - through civil society organisations and the private sector
- **Promoting modern regulation:** Government is committed to regulatory enforcement as a means of last resort. The focus of regulators should be on working in partnership with organisations in civil society and the private sector

to improve understanding of the minimum standards required for compliance with legislation as well as the business benefits of going beyond this

- **Achieve cost effectiveness:** achieving value for money at all points.

Options

A – on public funding for legal advice and representation for discrimination cases

Ai) No like for like replacement for the EHRC's legal grants scheme and no replacement of the current EHRC helpline

Aii) Replace EHRC's legal grants scheme with a similar grants programme, and have a more basic service or one similar to current EHRC helpline service

Aiii) No like for like replacement for the EHRC's legal grants programme but have an enhanced advisory and support service (see Biii) below).

B - scope and performance of new Equality Advisory and Support service

Bi) Improved replacement for EHRC helpline: This will also include a digital service and information about cases on and trends in discrimination.

Bii) A new advisory and support service that provides more in-depth help and support targeted on the most disadvantaged and which provides some basic lay pre-claim support on discrimination cases for those with access to neither civil legal aid or any reasonably accessible source of legal advice.

On transitional funding we considered whether or not to provide it and two options for doing so – across the board to all legal grant recipients or targeted only on those clients whose advice would cease at a critical point in their case.

Evidence

4. The policy decisions on any future central government funding for legal advice and representation (over and above that provided by the civil legal aid scheme) and the shape of the new service are linked. They have a common evidence base, although there is some specific material which relates more directly to one or the other. Between August to October 2010, the Government Equalities Office carried out a Review of information, advice and support on equality and human rights and the report was published in March 2011 along with two separate equality impact assessments relating to the decisions taken in the context of the 2011 Spending Review and which precede the policy decisions now at issue. These were to cease providing funding to the EHRC for a helpline and running a grants programme, of which funding for legal advice and representation for discrimination cases was one element.

5. Since then we have assembled further evidence through

Feedback from four engagement events An account of the feedback from the engagement events is at Annex A

Responses to the consultation document *Building a fairer Britain: Reform of the Equality and Human Rights Commission* A summary and analysis of the response to the consultation questions is at Annex B.

Other stakeholder engagement - we held client mapping events and some bilateral meetings with partners which including Acas, Unions, Citizens Advice, the Law Centres Federation, the British Institute of Human Rights, the Scottish Human Rights Commission and the EHRC amongst others. We also held an event for potential suppliers of the new equality advice and support service. This engagement enabled us to test the operational feasibility and robustness of the emerging design of the new service and how it can effectively work with other bodies that operate in the landscape, so that it adds value rather than duplicates existing activity.

Analysis of a sample of data on EHRC legal grants to fund casework and litigation

We were able to carry out some analysis¹ on how the EHRC's legal grants funding has been used to support individual clients using information provided by grant recipients to the EHRC. The methodology and statistical analysis are set out in Annex C. We have looked at the information provided by grant recipients about the cases they dealt with in the third quarter of 2010-11. Information was available for 38² of the 60 organisations listed as receiving grant in 2010-11 covering 620 clients. Although the information provided in the returns was often incomplete or recorded inconsistently across grant recipients, and any findings must be treated with caution, this analysis has enabled us to get an impression of the nature of the casework the legal grants programme has paid for.

Of those 478 clients whose sex was recorded, more were women (58%) than men (42%). A large majority of the cases where the relevant information was recorded were about discrimination in the workplace (83%) with only 16% about discrimination outside the workplace and a handful of other types of cases. More employment discrimination clients were women (61%) than men (39%) of the 444 clients about whom the information was reported. The protected characteristic with the largest share of cases was disability (36%), followed by race (29%), with sex and pregnancy and maternity some way behind at 13% each. This distribution between protected

¹ The information there is on how legal grants funding has been used is held in paper form by EHRC at their offices in Manchester. It comprises those reports that grant recipients have submitted. The scope for analysing and drawing conclusions from this information about how many individuals have benefited from advice funded by the legal grants programme is limited by a number of factors. The Annual Report and Accounts for 2009-10 states that EHRC did not maintain proper records for the programme in 2009-10. Management responsibility for administering the programme was switched to the Director of Finance in October 2010 and proper record keeping was established in November 2010. Such records that exist for the period leading up to these changes are incomplete and inconsistent with the records collected since, the earliest of which are for the third quarter of 2010-11. Consecutive data on a consistent basis is not available over the minimum period of one year needed to reliably estimate how many individuals have benefited from grant-funded legal advice. Grant recipients provide information on a quarterly basis and do not state how many clients they have carried out case work for in total. Instead they record their activity for the quarter in question, meaning that a single case may appear in more than one return. This factor means it is not possible to estimate how many clients have been supported. The analysis we have done covering the third quarter of 2010-11 is the most reliable and robust that can be carried out using the information available.

² Of these four are in Wales and one in Scotland

characteristics did not vary greatly between discrimination in work and outside the workplace, although there were fewer cases about disability at work (32%) than elsewhere (55%) and sex and pregnancy and maternity discrimination was predominantly a workplace matter.

Of the 571 cases for which there are records, 53% involved informal action, 5% dispute resolution, 38% preparation for legal action and 4% legal representation (see Annex C for definitions). Informal action was more common for discrimination outside the workplace (71%) than at work (49%) with the position reversed for help with preparing for legal proceedings (43% of workplace cases, 18% of the others).

This analysis highlights that the number of people who are helped via legal grants is only a very small proportion of those with discrimination problems. During this quarter employment tribunals accepted nearly 12,000 discrimination claims and in 2010/11 the employment tribunal service referred almost 21,000 discrimination cases to Acas for conciliation. As more than half the cases involved informal action, it also suggests that a significant number of clients can be helped without requiring the services of qualified lawyers³ to prepare for legal proceedings. Using qualified lawyers for informal action necessarily limits the number of people that can be helped with taking forward legal proceedings. Finally the analysis reveals that only a small proportion of grant-funded clients are represented in county court or a tribunal (compared with 58% of claimants who have a representative as reported in SETA 2008). The new service should be accessible to clients across the whole of GB.

To help establish the scope for targeting any transitional arrangements, we invited EHRC to review the latest returns from grant recipients, looking at the number of clients whose cases fell into four categories: informal action, dispute resolution (conciliation/mediation), preparation for legal proceedings, representation. We would have liked to have known how many individuals cases were close to trial in a tribunal or court and what proportion of these were eligible for legal aid. It was not possible to establish either from the information provided by EHRC, who proposed transitional funding of £1.8 million over 15 months – sufficient for all current cases from start to trial based on the average wait for an employment tribunal hearing. We also considered the implications of this information for the decision on whether to replace legal grants – please see Annex D. We considered whether to approach individual grant recipients directly seeking details of their caseload, but decided that doing so was not feasible.

Key steps taken in the light of the additional evidence

6. We changed our service design to include journey 4 and 5 (defined below) because we think the original scope would have duplicated activity which could be best provided by other helplines, for example, Acas advisory services. Journeys 4 and 5 address more complex problems, where the individual needs more help and support

- **Journey 4** A more complex issue about discrimination that is suitable for informal resolution i.e. before laying a claim and/or has not yet been considered for formal alternative dispute resolution. For work-related discrimination enquiries, we would expect partners such as Acas to

³ Or caseworkers under the close supervision of a qualified lawyer

refer these types of calls to the new service. A complex issue would be defined as one where the client needs additional support. Therefore, for client journey 4, the individual will need additional help and support to resolve an issue. The advisor may need to speak with a local advice agency, for example, and utilise their local social capital to support the individual in resolving their problem while it remains at the informal stage. As already indicated, there is an important difference in how the new service provider needs to treat discrimination problems related to work and those about other areas such as services, education or accommodation. For the former, at the point at which the next step is direct interaction with the employer, if the client is willing, then the case should be referred to Acas pre claim conciliation services. For the latter, the advisors could directly contact the other party to identify whether and how the situation could be resolved without the need for further escalation.

- **Journey 5** (discrimination only) Where it is not possible for the problem to be resolved informally:
 - i) To help the individual find out if they are eligible for civil legal aid (through assisting them to use the online civil legal aid eligibility calculator, where necessary). If they are, to refer them to the Community Legal Advice line or in the instance of Scotland to the Scottish Legal Aid Board helpline or to its website - www.slab.org.uk, which provides an online calculator.
 - ii) If they are not eligible for civil legal aid to refer them to a source of accessible legal advice⁴ or;
 - iii) If there is no reasonably accessible source of legal advice available, then to provide some basic pre-claim support to help the individual to be able to represent themselves. This will vary on a case by case basis, depending to some extent on the personal circumstances of the individual and the availability of local legal advice. GEO and the new service provider will work together to define what we think falls within the definition of 'reasonably accessible'.

7. Following the feedback received from the engagement events we:

- obtained a clearer understanding of the need for the new service not to be expensive for callers to access and for it to be available in a wide range of languages as well as the Welsh language through dedicated Welsh speakers
- revisited the proposed opening hours and extended them to include Saturdays

⁴ This is defined as legal advice that only a professionally qualified lawyer can provide or a caseworker working under the close supervision of a lawyer.

- Integrated outbound calling to enable advisers to call back people who are unable to make inbound calls themselves or unable to get through during busy periods.

The availability of information, advice and support in different languages is important for people with the protected characteristic of race. Cheap calls may be beneficial for people with certain protected characteristics (e.g. people with disabilities and certain BME groups are more likely to have lower incomes).

8. The EHRC’s proposed approach to transitional funding was considered as part of the decision making process.

Summary of high-level assessment

9. The following factors are common to the decisions on both any future central government funding for legal advice and representation (over and above that provided through the civil legal aid scheme) and the nature of the new advice and support service.

The measures:

- apply to all people irrespective of which and how many of the protected characteristics they have, so there is no direct discrimination;
- will not give rise to the possibility of harassment or victimisation
- do not breach a non-discrimination rule or equality clause
- will not entail a failure to make reasonable adjustments. Best practice policies on accessibility can be applied to all the options.

10. We have also considered how each of the measures may impact on eliminating conduct prohibited by the 2010 Act, advancing equality of opportunity and fostering good relations.

A – public funding for legal advice and representation

Options	Eliminate conduct prohibited by the 2010 Act	Advance equality of opportunity	Foster good relations
Ai) No like for like replacement for the EHRC’s legal grants scheme, no enhanced equality advisory and support service	This would have a negative impact on individuals who share relevant protected characteristics who would have benefited from the current services. Negligible wider impact.	Little impact (as only few individuals have benefited from free legal advice (as evidenced by the analysis in Annex C)	No impact (as affects only few individuals who would have benefited from free legal advice)
Aii) Replace EHRC’s legal grants scheme with like for like grants programme, a more basic or similar to current helpline service	No impact – status quo is maintained	No impact - status quo is maintained	No impact status quo is maintained

<p>Aiii) No like for like replacement for EHRC's legal grants scheme, but an enhanced equality advisory and support service</p>	<p>Overall Neutral. Around two thirds of those who would have received free legal advice have been helped by informal action or dispute resolution so will, in practice, be able to receive similar help⁵ via the new service. The ending of legal grants will affect those individuals who are ineligible for civil legal aid. However based on data (from one quarter in 2010-11) from EHRC legal grant recipients showed that in over half of cases, people who were being helped through the legal grants programme were receiving support to assist informal resolution of problems or dispute resolution. These people will, in practice, be able to receive similar, if not equivalent, help⁶ via the new service we have recommended (albeit via telephone rather than face to face). Of the cases where clients received legal advice funded by the EHRC legal grants programme, some would have been eligible for civil legal aid (which includes representation in country courts but not employment tribunals). The remainder of</p>	<p>Positive as Biii)</p>	<p>Positive as Biii)</p>
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⁵ We estimate that the new service will give around 12,000 people bespoke advice, help a further around 18,000 pursue informal resolution or formal dispute resolution and a help further 8,000 people whose problems cannot be resolved informally to establish if they are eligible for legal aid for their case and if not to refer them to an accessible lawyer or provide some pre-claim support to help the individual represent themselves.

⁶ We estimate that the new service will give around 12,000 people bespoke advice, help a further around 18,000 pursue informal resolution or formal dispute resolution and a help further 8,000 people whose problems cannot be resolved informally to establish if they are eligible for legal aid for their case and if not to refer them to an accessible lawyer or provide some pre-claim support to help the individual represent themselves.

	<p>individuals who received legal advice but were not eligible for civil legal aid, and who did not have an alternative source of accessible legal advice, would still be eligible for pre-claim support delivered by the new service. The overall impact is further limited by the fact that the number of people who are helped via legal grants is a small proportion⁷ of those with discrimination problems.</p>		
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Effects on people who share relevant protected characteristics

11. Our analysis of legal grants returns has shown that the majority of individuals who receive advice or representation do so in respect of disability (36%) or race (29%) discrimination. Pregnancy and maternity (13%) and sex (13%) are also significant.

Protected Characteristics	People with this protected characteristic particularly likely to be affected?	Will any action be taken to mitigate for any adverse impact as the result of the decision not to provide public funding for legal advice and representation following the removal of legal grants?
Age	Negligible– very few clients with age-based cases	N/A
Disability	Yes - Individuals who would have received help with disability cases (perhaps around one third of cases) will no longer do so.	Yes. Enhanced advice and support service as in Biii) , specific measures set out in paragraph 10 will help people with disability discrimination matters
Gender reassignment	Negligible – no clients with gender reassignment cases	N/A

⁷ To illustrate the difference in scale, during the quarter for which we have sample legal grants data (covering 620 clients) employment tribunals accepted nearly 12,000 discrimination claims and in 2010/11 the employment tribunal service referred almost 21,000 discrimination cases to Acas for conciliation. Only around 4% of the grant-funded clients were represented in court or a tribunal in contrast to the 58% of all claimants who have a representative in employment tribunal cases.

Pregnancy and maternity	Some - Individuals who would have received help with pregnancy and maternity cases (perhaps around one sixth of cases) will no longer do so.	Enhanced advice and support service as in Biii) will help people with pregnancy and maternity discrimination matters.
Race	Yes - Individuals who would have received help with race cases (perhaps around one third of cases) will no longer do so.	Yes. Enhanced advice and support service as in Biii), specific measures set out in para 10 will help people with race discrimination matters
Religion or belief	Negligible – very few clients with religion or belief cases	N/A
Sex	Some - Individuals who would have received help with sex discrimination cases (perhaps around one sixth of cases) will no longer do so.	Enhanced advice and support service as in Biii) will help people with sex discrimination matters.
Sexual orientation	Negligible – very few clients with sexual orientation cases	N/A

B – New advice and support service

Options	Eliminate conduct prohibited by the 2010 Act	Advance equality of opportunity	Foster good relations
Bi) Improved replacement helpline same level of service as Bi) but in addition would include: (a) a digital as well as a telephone service; (b) the sharing of management information and data within the EHRC and; (c) measuring client satisfaction with the service.	No change to status quo	No change to status quo	No change to status quo
Bii) : NOT a like for like replacement for the EHRC helpline but a new advisory and support service. would focus on: (a) providing more in-depth help and support to the most disadvantaged and (b)	Positive impact because of the additional support being provided	Positive impact because of the additional support being provided	Positive impact because of the additional support being provided

providing some basic lay pre-claim support on discrimination cases(to people with neither legal aid nor access to a reasonably accessible source of legal advice.			
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No data is available on the protected characteristics of callers to the existing EHRC helpline. The EHRC were unable to provide the information needed to identify this.

Possible transitional arrangements

12. No data is available as a basis for varying our main assessment of the impacts on the three limbs of the equality duty or on people who share relevant protected characteristics in respect of any transition arrangements.

Mitigations to limit or offset disadvantageous effects

13. The general mitigation for the ending of legal grants will be through the enhanced new advisory and support service. The analysis we have undertaken suggests that some 60% of individuals benefit from informal action or dispute resolution. Support of this type will continue to be available from the new service. Of those 38% of individuals who receive help with preparing for legal proceedings, we can expect some to instead benefit from informal resolution or dispute resolution. Others may be eligible for civil legal aid for their case, or, if not, be able to benefit from the lay pre-claims assistance that the new service provides. We are also taking the following measures directly aimed at people with all protected characteristics with issues related to access, language, and who are particularly vulnerable. The new service will

- deliver information advice and support through a number of communication channels, predominantly inbound phone (including text phone), email, digital, outbound calling, paper correspondence and faxes, as a minimum to cover most concerns regarding access.
- provide advice in British sign language as well as advice in a wide range of different languages for non English speakers
- be fully accessible to those living in Scotland and Wales. Any information, advice and support on discrimination and human rights will reflect devolved functions within Scotland and Wales. The new service will develop its own welsh language scheme and offer its services bilingually (i.e. in the welsh language)
- provide targeted support in helping the most disadvantaged and vulnerable to be able to resolve their problems while they remain at the informal (pre tribunal stage). The service will be focused on those who are not able to resolve their problems informally themselves through the provision of some basic information and bespoke advice
- provide some basic pre claim support (i.e. assist individuals in representing themselves). This goes some way towards assisting potential victims of discrimination pursue their claims, and therefore access justice, which is over and above simply providing one off pieces of information or bespoke advice
- provide some face to face support via an advocate for clients who, for example, because of learning disabilities, are unable to understand advice over the phone

and clearly need some face to face support. We propose this new service could purchase some independent lay advocacy for those individuals who clearly need some face to face support from a locally based independent lay advocate.

14. We expect that legal grant recipients will want to adjust their activities in a sensible way in the light of the end of the legal grants programme and there are steps they can consider to mitigate the impact on clients whose cases have reached a critical stage. These include transferring any outstanding cases to another advisor in the same organisation, including by prioritising cases that are well advanced in terms of legal proceedings over those that might be addressed through informal resolution or alternative dispute resolution, who may be helped by the new service. Where this is not possible, clients who are eligible for civil legal aid can be referred to a local legal aid provider or to the CLA if none is available. For individuals well into legal proceedings but not eligible for civil legal aid, help may be available from the pro bono bar unit /Free Representation Unit.

Procurement process

15. The procurement of the new Equality Advisory and Support service is being managed through the BravoSolution e-Tendering portal which meets the requirements of the Equality Act 2010.

Conclusion

16. On the basis of the evidence and the analysis we have undertaken, we are satisfied that our decision to commission a new advisory and support service, as in option Biii), will significantly mitigate the ending of legal grants. This new Equality Advisory and Support service is aligned with Government's policy objectives to ensure access to justice, to open up services to the private sector/civil society organisations and to achieve value for money. On possible transitional arrangements, we concluded that it was not possible to target funding on those clients whose cases have reached a critical stage and that the costs of the alternative across the board arrangements, were not justified.

Annex A

Feedback from Engagement events

Background

1. The Government announced in March 2011 that it proposed to commission a new service providing high quality information and bespoke advice (but not legal advice by professionally qualified lawyers) to potential victims of discrimination and human rights breaches. To help shape its vision for and design of the new service, develop its related aims to foster awareness about and understanding of discrimination and human rights and get a better understanding of whether discrimination cases differ from cases in other legal-aid funded areas of civil law, Government has engaged extensively with organisations involved in providing information, advice and support on discrimination and human rights. Set out below are some of the key points made by participants at the four engagement events that were held in Edinburgh, Port Talbot, Liverpool and London. It is organised by theme and the boxes contain comments recorded at the engagement events.

Findings engagement events on information, advice and support for discrimination and human rights issues run by Government Equalities Office (GEO)

2. An invitation to the engagement events, including a short paper on the Government's vision and preliminary thinking was sent to:
 - representatives from the voluntary and community sector (VCS) which represent disadvantaged groups
 - organisations delivering information, advice and support to potential victims of discrimination and human rights abuses
 - the Equality and Human Rights Commission (EHRC)
 - business and the private sector more generally
3. At each event there was a presentation by GEO and COI covering policy and operational issues respectively and the participants divided into small groups to discuss the issues in more detail.

Key messages

Context

4. 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;
- voice 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;
- as a consequence of the above, outlined their concern that the remit and role envisaged for the new service would be significantly narrower than the demands placed on it as existing services ceased to be available;
- 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 (bearing in mind the broader context that they outlined above). Participants currently receiving funding from the EHRC's legal grants programme in particularly 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.

(i) **The system as a whole**

5. Participants at the engagement events considered the overall landscape of organisations working in the field of discrimination and human rights. These had different functions ranging from a non-specialist first point of contact through to providers of specialist legal advice and legal representation. They were also unevenly distributed, in the different countries and regions of Great Britain, with none or very few in some areas.

Participants' views

- **Independent 'Advocacy was a crucial part of the landscape**
- **Loss of funding leading to loss of organisations and services in the next year**
- **Currently no clear networks of intelligence**
- **Advice deserts in some areas**
- **Local networks in Scotland would not be accessible from a service with only one physical base in England**
- **Support was needed for moving referrals from being made on the basis of personal relationships to strategic institutional relationships**
- **Offering mediation could help prevent disputes from escalating**
- **Need to better understand how the most disadvantaged and vulnerable access the system**
- **Informal resolution is not necessarily the best thing in each case.**
- **Important role of employers**

6. The main points made by participants about the overall system and where the new service should fit within were:

- a) there needed to be an **effective network**, where the new service added value **rather than duplicating the work of local services** that existed in some

local areas, which were well known and to which individuals were likely to turn in the first instance;

- b) **organisations playing a vital role** which needed to shape the design of the new service included **community based independent (non-legal) advocates** and **independent advice agencies**. The new service would need to work efficiently and effectively with advocates representing individuals. It was emphasised that some independent advice agencies (e.g. race equality councils) often provided a one-stop shop service offering information, advice and support all the way through to legal advice from a professionally qualified lawyer and representation in court or tribunal;
- c) it would be crucial for **the new service to have effective working relationships with established local organisations**. These links will help enable people in vulnerable situations to get the help they need. These individuals are more likely to visit a person or, organisation (which may be a community-based organisation rather than an advice agency) than call a helpline number. Local groups may also be better placed to solve a problem informally with a local employer or service provider than a national service.
- d) the new service must be able to meet the **specific advice needs of users in Scotland and Wales**. These included laws that applied only in the specific country, different responsibilities and arrangements for running and regulating public services such as health and education and, in Scotland, a different system of civil courts and a separate Human Rights Commission. Remoteness of users and difficulties of access were also important factors.
- e) in some areas **local government funding** enabled **legal advice to be provided free of charge** to anyone with a meritorious case regardless of their means. **Pro-bono legal advice was rarely available outside London** and it would be useful to consider what might be done to change this.
- f) the **'social policy' role** this new service might have could involve:
- identifying current problems and trends on discrimination and human rights from its work with clients;
 - influencing to try to resolve problems locally;
 - publicising successful outcomes, something that would help the service build trust.

Public education of individuals/first points of contact

Participants' views

- **Public understanding of Human Rights is low. People raise their rights as people rather than as potential human rights breaches.**
- **'Presently high lack of understanding of social dignity and respect'.**
- **People do not themselves recognise they have experienced discrimination. What an individual considers, a consumer rights issue may involve discrimination or human rights breaches**
- **Some groups are hard to reach – travellers, for example, needed someone to proactively go to help them**
- **The closure of 'first point of contact' services such as libraries risked undermining public trust.**
- **Importance of public education starting at an early age**
- **Not a good or clear understanding of what discrimination actually is**
- **Online channels might reach young people but could fail to reach disadvantaged groups**

7. The main points made by participants were:

- a) it would be useful to **cover discrimination and human rights and where to go for advice on them, in school.**
- b) **education for first points of contact**, who people tended to approach when faced with a problem, **could be very beneficial.** These could be, for example, priests, mid-wives, local council staff, local libraries. Frontline organisations need support in developing the capability to be able to identify discrimination and human rights breaches, particularly in their early manifestation, and to know who to refer people to for further advice and support.

Types of information and advice

Participants' views

- **Artificial distinction between legal and non-legal advice**
- **Need better definitions of general advice on the one hand and legal advice on the other.**
- **Need to understand what is meant by generalist casework**

7. Participants expressed views on the differences between information, generalist advice, generalist casework and legal advice and casework. This was mainly through identifying questions and issues that Government needed to consider in deciding the design of the new service. These included the following:

- a) it was important to be **clear** about the definition of **information**, distinctions between **awareness-raising and targeted public education**, between **first tier advice and the type of advice** the new service was intended to give, between **this type of advice and legal advice** on the one hand **and conciliation** on the other and between this **type of advice and the type of casework** the new service might carry out.
- b) agreement was needed on when the **advice given or casework carried out by the new service ends and formal proceedings – either legal or alternative dispute resolution – begins.**
- c) there was a risk that **the new service would be looked to, to provide everything** from basic information to legal representation if existing local services ceased to exist.
- d) **face to face advice** was the best way to effectively **handle sensitive issues** of this type.

8. Participants expressed views on the role the new service should play on human rights issues. These included:

- a) it was important to raise public awareness about human rights and tackle myths;
- b) more generally, the **level of awareness of human rights obligations amongst those exercising public functions was low** and more training needed to be available.

(ii) **How the new service should work as part an overall system**

Participants' views

- **Must avoid circular information paths – where potential users end back where they started. This results in referral fatigue**
- **On localisation: it would be vital to fund organisations to deliver a local dimension. Question of how national organisations can make local referrals and utilise local social capital is crucial. There was a balance to be struck between the national/regional and local/community based services**
- **Must have the ability to develop a locally responsive service**
- **Quality as well as value for money. Getting referrals right might cost in the outlay but in the longer term saves money.**
- **Strong view that a centralised (England) service will not meet the needs of people in Wales. The new service must be able to understand Welsh specific issues**
- **Strong view that a specific Scottish component was required for the new service**
- **Some felt that the threat of legal action must be there from the start to enable informal resolution to stand a chance. Others felt that conciliation is better than taking forward legal proceedings**
- **A lack of flexibility will mean worse outcomes for users (i.e. one size will not fit all)**
- **Should build on existing casework and referral systems where these are already delivering**

9. Participants made a range of points about how the new service should interface with other organisations that dealt with discrimination and human rights, either as an important part of their remit or as part of their first point of contact activities. These included:
- a) **effective referral relationships with local groups, public services professionals such as GPs, regional bodies, and national helplines and legal advice providers.** The new service should **build on existing networks and referral systems;**
 - b) to be able to deliver a service with a local dimension, the new service would need **current, up to date information about local providers** and should provide **data and feedback** to these organisations about the outcomes for individuals they had referred to the service;
 - c) the client's **full story would need to be captured and passed on as part of a referral** so the client doesn't have to repeat their story;
 - d) it would be vital to **safeguard data protection and confidentiality** when referring clients between organisations and when advocates were involved.

Staff knowledge, skills and training

Participants' views

- **Advisers to be trained to/able to give the full range of advice up to and including legal advice. They must be aware of legal rights and remedies and time limits. Giving general advice required a clear understanding of the legislative context for discrimination and human rights issues**
- **Important to be able to tailor the advice to the individual's specific situation i.e. to provide bespoke advice, and to be able to identify where a problem did not constitute discrimination as defined in the law**
- **It was vital that clients felt listened to and believed. Empathy is essential.**

10. Messages from participants included:

- a) advisors needed training in and to be able to advise on the legislative infrastructure for discrimination and human rights. It would be **important to be able to cover all the protected characteristics effectively**;
- b) the need **for softer skills** to be able to deal with distressed or emotionally vulnerable callers.

Telephone calls and technology

11. Participants had views on a range of issues around telephoning the helpline and how it should use technology. These included:

- a) **strong support for the service being free to users.** Ideally the helpline should be free to call, including from mobiles which many potential clients were likely to use. Some participants thought there may be a role for call-back in ensuring the service was free to users, so long as the commitment to call back was honoured. Some participants stressed the importance of **offering call-back as a choice** and, more broadly, enabling clients to **choose the channel of communication that works for them**;
- b) **concerns about the use of integrated voice recognition (IVR).** Distressed people needed human contact quickly and multiple levels and long menus could be difficult to negotiate. There was some acceptance that IVR could be useful for information requests, choice of languages and directing callers to the service's website.

Availability

12. The strong message from participants was that the helpline should be available outside standard working hours; later and/or Saturday mornings.

Access – for people who are disabled, Welsh-speakers and non-English speakers

Participants' views

- **Must cater for people for whom English is not their first language and for people with disabilities**

13. Participants were clear that the service must be fully accessible to:

- a) **people with disabilities**, particularly people who were deaf or hard of hearing,
- b) people who speak **Welsh** and people whose **first language was not English**.

Quality assurance, standards and evaluating outcomes

Participants' views

- **Must be a good evaluation process in place to be able to identify outcomes**
- **The evaluation criteria for the helpline needed to be based on successful resolution of the problem, not throughput. To establish this will require following up cases.**

14. Participants at the events thought that:

- a) **relevant quality assurance standards should apply** – for advice and telephone services;
- b) the question about **how best to be able to measure outcomes** was an important one, particularly when an issue had been resolved informally. It was important that the user was satisfied and satisfaction might be achieved through information in a leaflet just as much as through more extensive advice and support. The **user perspective was key** and mystery shopper surveys might be a helpful tool;
- c) **independent evaluation** of the service was important.

Website and digital communications

15. It must be possible to print out information from the new service's website so that it can be taken away, that online channels might fail to reach disadvantaged groups and that younger people were likely to be interested in instant messaging.

Management information/data and intelligence

Participants' views

- **Useful to have data about types and volumes of calls – trends could help organisations to focus their resources.**

16. It was important for the EHRC, as the regulator, to continue to have comprehensive and up to date information about the discrimination challenges people were facing. The general feedback from participants was that this information could be valuable for other organisations – national, regional and local (level).

The procurement process

Participants' Views

- **Procurement must be based on high levels of quality and not be based purely on the cheapest bidder**
- **Process must ensure that it is possible for consortia of interested parties to form and bid**

17. Concern was also expressed about the position of Scotland and Wales. There was some support for separate services for those countries and concern that Scottish and Welsh potential suppliers might be at a disadvantage through a GB wide competitive procurement process.

(iii) Legal advice by professionally qualified lawyers and discrimination

Professional legal advice

Participants' views

- **Current level of supply is inadequate and unevenly distributed and there were some advice deserts**
- **There was no source of funding for organisations that deal with discrimination cases apart from that provided by the EHRC**
- **Dearth of sources of legal advice for people eligible for legal aid**
- **Shortage of specialist lawyers in discrimination law**
- **Pro-bono is a useful way of engaging the private sector, but can't be the only source of legal advice**
- **Some advice agencies take on clients without means-testing**
- **Some local authorities fund free legal advice for people regardless of their means**

Specific features of discrimination cases

Participants' views

- **It was not easy to recognise discrimination. It could be wrapped up in many different types of problems – with work, housing, or services – and not immediately apparent. What an individual felt was a consumer rights issue, for example, may involve discrimination or human rights**

- There was still a need for extra funding outside of the civil legal aid scheme because of the peculiarly debilitating effect of discrimination and the complexity of cases
- If a client was in full time employment but on a very modest income they would be ineligible for civil legal aid but would not be able to afford the services of a private solicitor.
- There is a strong emotional element for both sides
- Cases were scheduled to last several days, making securing pro bono representation more difficult and burdensome

18. The messages from the engagement events included:

- a) although perhaps **90% of discrimination took place in an employment context**, it was a problem in **housing** and was likely to be **underreported in other services**;
- b) as cases were **complex**, no win no fee **lawyers generally did not take on** discrimination cases;
- c) as discrimination cases tended to be both emotive and complex, **individuals with no access to representation were at a disadvantage compared to employers** who could generally afford representation. Some participants questioned the efficiency of funding legal advice without following it up with representation, while others favoured funding preparation for the hearing;
- d) other reasons for **funding above the legal aid minimum** included the likelihood of the individual being vulnerable because of their protected characteristic and lacking in confidence, the complexity and novelty of the law, clients being more likely to need reasonable adjustments and the challenges of engaging with members of marginal and isolated communities.

Civil Legal aid for discrimination cases

Participants' views

- **Fixed fee for face to face legal advice for employment cases with discrimination element needs to be much higher. Private sector lawyers may charge £100 an hour as well as additional payment to Counsel**
- **Risk of more discrimination cases if qualifying period for unfair dismissal is increased**
- **Concern that if employment is removed from the scope of civil legal aid, in practical terms it would no longer be possible to provide legal advice on discrimination, even if discrimination remained within the scope of civil legal aid**

19. Participants made points about existing legal aid arrangements and the proposals for reform. These included:

- a) **state-funded voluntary and community sector legal representation was very good value for money compared with the private sector** and that the hours the fixed fee covered for face to face support were insufficient for employment discrimination cases because of the complexity of the cases;
- b) scepticism and concern about **how legal aid funding for discrimination could work when related aspects of law were no longer eligible**, the impact on supply of legal advice;
- c) concerns about the **practical difficulties** of attempting to separate a (paid) discrimination case from an (unpaid) say employment case when the facts were the same.

Annex B – summary of Consultation responses

Q7: 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?

Main criticism of how current helpline operates:

Many respondents criticised how the current helpline operates. Some highlighted the problems with existing helpline in delivery, EHRC being bureaucratic and inaccessible. A few respondents stated that the EHRC was biased and poor value for money and did not believe that the helpline could be reformed.

A number of individual responses wanted the EHRC abolished and that the money planned for a new service be given instead to the Citizens Advice Bureau to provide such advice or delivered through existing networks which already have the experience of providing such services.

Responses agreeing with the proposal

A few respondents agreed with the proposal to commissioning out the helpline. They however emphasised that this should be done in a transparent way and that there are clear links with the GEO and EHRC.

Some of those who agreed also highlighted the importance of the new service being properly resourced in terms of funding and skilled personnel who should have the relevant competence, capacity and capability. Some respondent recommended that it should be run by equality and human rights specialist and must be independent and free from political interference.

Responses disagreeing with the proposal

Many of those who disagreed with the proposal for a new system of information, advice and support were concerned that the proposed system would not provide effective service to the public.

A number of responses opposed outsourcing as the new provider might lack specialist knowledge and experience that the ERHC has. They feared that the service would offer a poorer service largely based on signposting which also would have no guarantee of political neutrality/independence like the EHRC.

A few responses wanted the EHRC to carry on with the helpline since it fell within the remit of its discrimination and human rights functions which is an EU requirement as well. Some of those who wanted it to remain within EHRC further recommended that there was also a need to review and make changes to internal management, structures, systems and priorities as well as better and targeted publicity to make it work better and more cost effective in the long run. Several responses, notably from the PCS campaign stated that changes are made to address some of the problems

identified in the review rather than the helpline service being removed from the EHRC.

A few responses from organisations also raised concerns over the removal of funding for face to face discrimination advice and casework. They were worried about fragmentations and the impact on the most vulnerable members of the society e.g. the mentally ill and disabled who would need face to face advice rather than a telephone helpline service.

Most responses from the voluntary sector organisations in the devolved administration raised concerns that generalist services are unlikely to take account of the specific needs of devolved administrations. An example is the specific needs of Wales, the Welsh language and devolution.

Recommendations for new service

In summary, the conclusions that can be drawn from responses indicating the need for a new form of service recommend that:

- The new service must have effective referral contacts and make use of existing networks and resources as well as provide intelligence to EHRC;
- The new service must cater for the devolved or have a separate service for them. This was recurring in the responses from Wales and Scotland;
- The new service should also be available to public bodies/organisations;
- The new system should also provide face to face support and support local organisations to deliver casework;
- The new services should have the provision of access for Deaf BSL users;
- The new service should make better use of the internet;
- The new service should retain certain features – free helpline, helpline staff expert in equality issues and processes who give immediate information and advice, effective record keeping saving having to re tell the situation each time.

Q8: What should a new citizen-focused, cost effective information and generalist advice service look like?

Many respondents were keen that the service was accessible not only by telephone but also that face to face advice be given with clear referral mechanism to a fully funded service. This was with particular concern for the vulnerable and most disadvantaged sections of the community who will include those who are unable to access a computer or telephone, for example the mentally ill and the disabled. The new service should not homogenise disadvantaged groups.

On the other hand, some respondents wanted the new service to be accessible in a variety of ways which include telephone, email, textphone, webcam, letter and a more accessible internet/website which had all information available and updated regularly. Any supporting documents/literature should be in a language/format which is clear, concise, plain, jargon free and uses simple English (where the English

language is used). They emphasised the importance of the new service being staffed with well trained advisers with specialist knowledge and experience, capable of giving accurate, quality advice on rights and obligations, with tools to empower individuals to pursue complaints. It was also stated that they should have excellent links to the EHRC and to organisations that can provide advocacy such as law centres.

The Welsh respondents wanted it in a medium applicable to the Welsh language as well as BSL and other community languages to ensure the ability to communicate and receive information in a format they can understand. They would also like the EHRC to continue running the “Equality Exchange Network” which is a key forum in Wales which allows public sector bodies and voluntary organisations to share and gather information on how to improve equality and human rights citizen focused services. Advisors should also be well trained in Welsh and Scottish laws and legal processes. Only a handful of individual responses were opposed to the service being made available in any other language but English. They are of the opinion that anyone needing the service should be made to learn English to enable integration.

A number of responses were concerned that outsourcing to the private sector would lead to a focus on profit rather than individual outcomes. Some responses, from both individuals and organisations, expressed the view that the helpline should be independent of government, business and other bodies and it should be delivered by a non profit organisation. The organisation should also have considerable existing expertise in discrimination and equality laws. There was recommendation that it should be cost free at point of delivery to the people calling.

A few respondents from voluntary organisations would like to see a new service which can effectively signpost specific services for ALL the different strands within the act. There was recommendation that staff should undergo regular training in all the protected characteristics so that they are able to give adequate advice on any or all characteristics without being seen as partial or bias.

A number of responses highlighted the need to have a review mechanism built into the new service to regularly review performance and effectiveness. They wanted clear outputs set with robust but flexible monitoring methods to include Equality monitoring.

A few responses were of the opinion that the service should be provided by The Citizens’ Advice Bureau due to established local presence, trust and experience. Some responses on the other hand recommended active collaboration and consortium approaches.

A few responses also restated their views against outsourcing the EHRC helpline. They recognised that the helpline was in need of improvements and believe that equipping the EHRC with the right resources will enable it to be a more effective and efficient helpline which meets the needs of its users. They argued that the EHRC are the specialist body for equality, diversity and human rights and are therefore best placed to continue in the delivery of this service.

The responses also made clear that there was a need for the new service to be well advertised through a variety of mediums to raise awareness.

The PCS led campaign would like to see the EHRC specialist helpline retained. They state that the specialist helpline provided advice to union officers and

representatives, caseworkers and other advisers dealing with discrimination cases. For the EHRC to focus more on taking forward strategic cases and analysing data from third party providers as recommended by the review, PCS expressed concern and the need for more clarity over the proposed cuts in resources to the EHRC and transfer of funds to GEO in the next four years which may hamper them in doing that.

Q9: How can government best provide public education on discrimination and human rights, targeted on the most disadvantaged groups?

One of the key areas identified by many responses from individuals, voluntary and community organisations was the need to raise better awareness and education right from an early start in schools and in the school curriculum. This was echoed through different forums that has made an impact through early education and interventions especially in the most disadvantaged areas. On the other hand, many responses recommend that such education should not only target the disadvantaged groups but also the wider society to encourage societal change.

A number of responses highlighted the importance of media publicity through the press, radio, TV companies and marketing firms. A few respondents raised the point that although media publicity is important, it has to steer clear of being biased or negative media which tend to generate hate crime. There was also a suggestion of getting free publicity advert designed by leading private marketing firms and TV companies. Some others said the government had a responsibility to conduct a regular national public awareness campaign and also support NGOs in local areas to deliver targeted education and support to the most disadvantaged groups they support on a day to day basis.

A few responses recommend raising awareness through publicity posters in public areas or public service contact points for example local council offices, community centres, GP surgeries, civic buildings. Some also emphasised that a well informed public is more likely to be in a position to assert and enforce the legal rights to fair and equal treatment whether within the workplace or in the wider society.

A lot of responses recommended working with current groups which already have system in place in reaching the disadvantaged groups and consulting the stakeholders in the strategic planning. Scotland and Wales recommend the range of resources be made available in a range of formats and in easily accessible language.

A majority of the PCS campaign led responses supported the provision of public information through EHRC with EHRC working in partnership with those likely to reach such groups. They also supported educating organisations and businesses about their legal responsibilities and good practice on discrimination and human rights. They also highlighted that the EHRC has produced a range of excellent statutory and non statutory guidance on the Equality Act 2010 which was tailored to the needs of individuals, businesses and public sector organisations. They recommend that this should be disseminated through partnerships with other organisations.

Some other responses also supported the documents produced by the EHRC and found them to be very helpful. However they found some concentrated too much on the law and failed to make clear the important all encompassing principle that lies behind equality legislation and human rights. Other respondents would like to see more clear accessible guidance on all aspects of the legislation, rights and obligations, and how to pursue claims.

Some independent responses support the EHRC continuing to have a primary duty to independently promote understanding of equality and human rights. There was recommendation that that the Commission provides regional events, training and workshops on discrimination and human rights.

A few responses did not agree with the Government funding of education on discrimination. Some opinions were based on the perceived failures of the EHRC.

Analysis of question 10 – is there anything that distinguishes discrimination cases from other cases eligible for civil legal aid that would justify further public funding for support?

Many respondents, particularly equality organisations, legal bodies, trades unions and public sector bodies stressed that discrimination cases were the most complex (relying heavily on domestic and European legislation and case law), most likely to involve representation as the issues in play required legal skills to marshal and present and the most expensive type of cases to bring. Discrimination cases tended, for example, to last three times as long as other types of employment case. It was exceptionally difficult to win a discrimination case and that they often required specific sectoral support.

A variety of respondents pointed out that “respondents” in discrimination cases were likely to be businesses/organisations who could pay for their own legal advice and representation over a prolonged period (point made by Law Society Scotland and Disabled Persons Transport Advisory Committee). Unison said that their experience in representing their members at Employment Tribunals showed the need for effective legal representation and support where discrimination is involved. It was also pointed out that funding representation in ET cases can speed up proceedings, taking up less of the tribunal’s resources. Courts and tribunals could be very daunting, meaning that individuals needed support through the process.

Discrimination differs from other types of cases in that it is about who people are rather than their abilities or behaviours. Cases often involved making difficult and personal allegations and asking very personal and intrusive questions. Retelling incidents could be very distressing and individual may be anxious or depressed as result of discrimination. These factors could make it particularly difficult for an individual to conduct his or her own case and the sensitive and personal issues at stake could be better handled by lawyers or others at one remove from the circumstances.

The impact of discrimination on the individuals who experienced it was seen as particularly harmful. Equality groups in particular pointed to the exclusion from society that discrimination could lead to, some seeing this as a factor that distinguished it from other types of cases covered by legal aid. People were likely to suffer in silence. The severity of the impact was seen by some respondents as a justification for public funding in addition to legal aid, with a prominent recent case of targeted discrimination and harassment with tragic consequences highlighted as an example. Some saw the insidious nature of discrimination meaning that it was so important to tackle it that further public funding was justified.

Respondents mentioned that additional support may be needed to give people who had been badly damaged by their experience the courage and confidence to make a claim. It was emphasised that discrimination anyway tended to affect the most vulnerable and disadvantaged individuals who faced the biggest challenges and required the greatest support to bring a claim.

Many responses made the point that an individual's discrimination case may bring major benefits for others far beyond the individual claimant, especially now that it could be argued that antidiscrimination cases constitute a general public benefit which should receive special support. This was different from most civil cases which tend to be centred on individual agreements or subjective judgements about which party to the case is acting most reasonably. Respondents mentioned the importance of cases in tackling discrimination and advancing equality and also in encouraging further individuals to bring claims. This was particularly so soon after the coming into force of the Equality Act 2010. Discrimination cases also offered guidance and insight – which could be of great significance locally even if not test cases as such. Some respondents saw the difficulty in securing a legal advisor in a discrimination case as a reason for continued public funding. No win no fee lawyers do not take discrimination cases and many victims not eligible for legal aid, so would be denied access to justice. Some were concerned that legal aid reforms would result in there being no practitioners to take on discrimination cases, especially in smaller organisations. Many law firms did not have discrimination specialists and many discrimination specialists were not funded by legal aid. Legal aid certificates often unavailable for discrimination cases because the level of damages is too low or because the prospects of success are uncertain. Standard legal aid-funded lawyers could be less well placed to address the specific needs of clients who may be from a minority ethnic community or disabled. Concern was also expressed that taking other types of case out of civil legal aid will, in practice, make it very difficult to pursue the discrimination claims with which they are often linked. Reforms to legal aid were mentioned by some respondents as justifying further public funding and support for discrimination cases. One respondent mentioned their success in securing legal support through corporate social responsibility initiatives under which law firms provided pro-bono support to civil society groups but recognised that this would not be possible in every area.

Some respondents commented specifically on funding for landmark or test cases, which was not the subject of this consultation question as this EHRC function will continue. Those mentioning it thought there should be funding for (carefully selected) landmark cases or for cases where there is a public interest factor but private funds are not available to pursue them. The strategic impact of

discrimination cases on employment and service delivery practices was seen as justifying further public funding for them.

A minority of respondents saw no distinguishing factor about discrimination cases which merited additional public funding but some also argued that the ending of the EHRC's legal grants and the legal aid reforms would have disproportionate impact on the most vulnerable in society. One respondent thought that the route for funding was irrelevant provided the supply of both funding and good advice was sufficient. Another mentioned that additional funding might be justified to support groups in protecting their values in discrimination cases.

Few organisational respondents said that no additional funding should be given. Various individual respondents said that further public funding could not be justified in the current financial climate or opposed the principle of public funding for discrimination cases, including through civil legal aid. Reasons given for this included seeing the main beneficiary as lawyers and discrimination not being a problem in the UK. Other points made were that many cases could be resolved through mediation and that the EHRC should be abolished and the money given to Citizen's Advice Bureaux.

A handful of individual respondents saw a case for additional public funding. One was to support cases to send important messages, for example that the practice of offering free drinks to women in night clubs but not men should not be tolerated. Another was discrimination cases often involved people from socially-economic deprived backgrounds and another that equality under the law will be hollow if people were in practice unable to enforce it.

Numerous respondents, including almost 200 from individual members and branches of the PCS, put forward a moral case for funding as protecting most vulnerable and essential to tackling discrimination and advancing equality – PCS round-robin response. It was stressed that discrimination is against the law, legal aid was created so that people had the capacity to challenge illegalities and that that capacity should not be compromised by the lack of money. One respondent saw failure to follow up discrimination cases in the employment tribunal or courts as potentially damaging to UK values and its way of life as well as to the individual concerned. Another argued that it was a government function to ensure that society is as fair as possible, justifying additional funding to support people. State funding for discrimination cases also signals that it is to be taken seriously.

Some respondents expressed concern about impact on their particular client group – eg from women's organisations and about the disproportionate impact of changes to civil legal aid, cuts in public funding generally and ending of legal grants on vulnerable people (all sorts of respondents). There was also scepticism that legal aid only funding would be sufficient.

Annex C – Statistical analysis of grant recipients

Methodology

Organisations in receipt of grants from the EHRC are required to submit quarterly returns providing some information as to how that money was used. Although EHRC recently [check when] introduced a standard proforma for these returns, recipients do not necessarily complete them in a consistent way and the level of detail recorded varies significantly. The return rate is also significantly less than 100%. GEO was nevertheless able to use these returns to carry out a basic statistical analysis to assess the circumstances in which individuals were benefiting from the grants. To provide a representative possible sample this was carried out using all the available returns from the third quarter of 2010/11, as it was for this quarter that the greatest number of returns had been submitted. Of the 60 organisations listed as recipients of EHRC grants, records were obtained for this period for 38⁸ organisations, covering 620 individuals (see **Annex C**, table 8). These 38 organisations received approximately 66% of the total grants awarded by EHRC in 2010/11. No records were available for the period for the other 22 organisations listed as receiving grants. This is likely to be primarily because either EHRC had not been sent them or that the organisation was not receiving grant funding for that particular quarter.

The information in the returns enabled us to ask :

1. Was the individual receiving advice or support for an employment related matter, more general discrimination, or something else?
2. What was the protected characteristic underlying the discrimination that the individual had received advice or support for?
3. Which of the following best classified the advice or support given to the individual?
 - Informal action
 - Dispute resolution (conciliation/mediation)
 - Preparation for legal proceedings
 - Representation
 - Other
4. What was the gender of the individual in receipt of advice or support?

Definitions

See below definitions used in analysing records of clients given advice or support by organisations in receipt of grants from EHRC:

Type of case

General discrimination: *discrimination outside the workplace, primarily services and public functions but also housing and education*

Employment: *discrimination related to work*

Type of casework

⁸ Including four in Wales and one in Scotland.

Informal action: includes help with writing letters, lodging a grievance etc. It excludes starting work on a court or tribunal case or on dispute resolution such as conciliation by Acas

Dispute resolution: A formal means of resolving a case other that does not entail legal proceedings

Preparation for legal proceedings: initiating a tribunal or court case, preparing the necessary legal documentation, evidence etc

Representation: speaking for the client in court or a tribunal

Tables

Table 1 – Sex of clients

	Frequency	Valid Percent
Male	201	42%
Female	277	58%
Missing/Unknown	142	
Total	620	

Source: GEO analysis of EHRC records, third quarter of 2010/11

Table 2 – Type of case

	Frequency	Valid Percent
General discrimination	95	16%
Employment	482	83%
Other ¹	5	1%
Missing/Unknown	38	
Total	620	

¹ Includes case work about neither general nor employment discrimination but where the nature of the case has been specified, for example human rights or employment other than discrimination

Source: GEO analysis of EHRC records, third quarter of 2010/11

Table 3 – Recipients of grants and support by gender & wide area of law

	General discrimination	Employment	Other ¹
Male	48%	39%	*
Female	52%	61%	*
Total	100%	100%	*
	Frequency		
Missing/Unknown	176		
Total	620		

¹ Includes case work about neither general nor employment discrimination but where the nature of the case has been specified, for example human rights or employment other than discrimination

* This is considered as negligible as the number of cases in this category is so small

Source: GEO analysis of EHRC records, third quarter of 2010/11

Table 4 – Basis for case by protected characteristic

	Frequency	Valid Percent
Age	27	5%
Disability	211	36%
Human rights	5	1%
Pregnancy and maternity	75	13%
Religion & belief	12	2%
Race	171	29%
Sex	75	13%
Sexual orientation	5	1%
Gender Reassignment	0	0%
Marriage and civil partnership	0	0%
Missing/Unknown	39	
Total	620	

Source: GEO analysis of EHRC records, third quarter of 2010/11

Table 5 – Distribution of different type case by protected characteristic

	General discrimination	Employment	Other ¹
Age	3%	5%	*
Disability	55%	32%	*
Human rights	3%	0%	*
Pregnancy and maternity	0%	16%	*
Religion & belief	1%	2%	*
Race	34%	29%	*
Sex	2%	15%	*
Sexual orientation	2%	1%	*
Gender Reassignment	0%	0%	*
Marriage and civil partnership	0%	0%	*
Total	100%	100%	*

	Frequency
Missing/Unknown	42
Total	620

¹ as above

* is negligible

Source: GEO analysis of EHRC records, third quarter of 2010/11

Table 6 – Type of support to client

	Frequency	Valid Percent
Informal action	300	53%
Dispute resolution	27	5%
Preparation for legal	219	38%

proceedings		
Representation	24	4%
Other ¹	1	0%

Missing/Unknown	49
Total	620

¹ Includes support recorded but not in any of the categories above:
Source: GEO analysis of EHRC records, third quarter of 2010/11

Table 7 – Type of support to client by type of case

	General discrimination	Employment	Other
Informal action	71%	49%	*
Dispute resolution	0%	5%	*
Preparation for legal proceedings	18%	43%	*
Representation	12%	3%	*
Other ¹	0%	0%	*
Total	100%	100%	*

Frequency	
Missing/Unknown	79
Total	620

¹ As above

* is negligible

Source: GEO analysis of EHRC records, third quarter of 2010/11

Table 8 – Number of clients per organisation (those included in sample)

	Number of clients in sample
Avon & Bristol Law Centre	44
Barking and Dagenham CAB	17
Birmingham Law Centre	52
Bedford Race Equality Council	13
Bradford Law Centre	26
Citizens Advice East Sussex (CAES)	4
Castlemilk Law & Money Advice Centre	22
Central London Community Law Centre	3
Cheshire, Halton & Warrington Race & Equality Centre	11
Coventry Law Centre	13
Cross St Law Centre	12
Denbighshire CAB	15
Disability Law Service	6
Ealing Racial Equality Council	8
Flintshire CAB	13
Greenwich Community Law Centre	15
Gloucester Law Centre	39
Harrow Association of Voluntary Services	8

Ipswich & Suffolk Council for Racial Equality	11
Leicester Community Law Service	5
Luton Law Centre	14
Newport CAB	21
Northamptonshire Racial Equality Council	25
Oxford CAB	8
Preston & Western Lancashire REC	14
Royal Association for Deaf People	5
Race Equality First	3
Rochdale Law Centre	24
Stevenage Citizens Advice Bureau	12
Slough Equalities Commission	15
Sheffield Law Centre	21
Stoke on Trent CAB	14
South West London Law Centres	19
Trafford Law Centre	3
Tameside Rec Ltd (operating as Equality & Diversity Centre)	12
Wolverhampton CAB	35
Working Families	31
Wiltshire Law Centre	7
Total	620

Source: GEO analysis of EHRC records, third quarter of 2010/11

Information provided by EHRC on legal grant recipients' current cases

1. We invited EHRC to review returns from grant recipients, to provide information to help establish the scope for targeting any transitional arrangements on clients whose cases had reached a critical stage as at 31 March 2011 (i.e. in the middle of or approaching a trial within a very short time) . We asked how many clients' cases fell into each of four categories: informal action; dispute resolution (conciliation/mediation); preparation for legal proceedings; representation, over a three month period. These were the categories used by GEO in the analysis it carried out to inform decisions about whether to put in place a like-for-like replacement for the legal grants programme (see paragraph 5 of the main paper and annex C).

2. EHRC's figures were for the quarter ending 30 September 2011 and there appeared to be a marked difference in the overall number of cases to the number obtained in our own analysis of a different quarter's figures. In its analysis, the EHRC used a different methodology to that used by GEO. In particular it altered the categories into which cases were divided and defined terms in a very different way to GEO – the results thus produced were also different from the analysis GEO carried out in the summer.

3. Although the methodology was very different, we considered whether EHRC's analysis and the apparent difference in overall cases affected the conclusions we drew from our own analysis to inform the decision, in relation to replacing legal grants with a like-for-like scheme and whether we needed to give any consideration to reviewing that decision. We also considered whether the figures gave any help in determining whether targeted transitional funding was feasible.

4. We noted that:

- as in relation to GEO's own analysis, the raw data has limitations (e.g. we cannot identify who is in receipt of legal aid, or track individual case progress from one quarter to the next), thus limiting the usefulness of any analysis as a basis for policy decisions. In particular this meant that the data was of no assistance in identifying how many individuals would be at a critical stage in their case at any given time.
- the very different definitions of categories – most notably EHRC had elided the two categories "preparation for trial" and "representation" so that some activities that we had placed in the former category in our figures were placed in the latter in theirs. Our definition of representation referred to advocacy in a trial, whereas EHRC's definition also included a number (though not all) of pre-trial activities. This means that the results of the two analyses are not comparable.
- as with GEO's own analysis, EHRC's information was not able to inform the key consideration of the decision about the future funding of legal advice on discrimination cases – that of fairness, particularly the need to target Government funding for legal advice on those in greatest need. This was because of the lack of information about how many clients are eligible for legal aid.

- the limitations of the data meant it was not possible to provide robust estimates of the total level and nature of support provided by the legal grants programme. Even if we took the higher number of cases shown in the EHRC figures as some indication of this, it was certainly helping only a very small proportion of all people with discrimination problems. When providing representation in employment tribunals, this help was in a way that conflicted with Government policy.
- subject to the same caveat about the limitations of the data, EHRC's figures also gave some support to our conclusion that some of the activities undertaken by legal grant recipients did amount to pre-claim assistance – which is an activity that the new Equality Advisory and Support service will be able to carry out.
- any further analysis of the data would take a considerable time. There was a balance to be struck between the value of seeking and analysing further information and the impact this would have on the timetable for informing grant recipients of Ministers' decisions.

5. Overall we concluded that in view of the limitations of the raw data it was highly unlikely that any significantly more helpful information would be obtained by undertaking further analysis. We are also confident that GEO's earlier analysis of a different quarter's figures was carried out in a sensible and proportionate way and are satisfied that EHRC's analysis does not undermine our conclusions. There was no reason to revisit the earlier decision not to replace legal grants with a like-for-like scheme. In addition, the benefit of any small additional insights of further analysis would be significantly outweighed by the disadvantage to grant recipients of a delay in informing them of the outcome.