

**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"><b>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.</b></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](mailto: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 analysis<sup>1</sup> 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 38<sup>2</sup> 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

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<sup>1</sup> 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.

<sup>2</sup> 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 lawyers<sup>3</sup> 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

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<sup>3</sup> 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.slabb.org.uk](http://www.slabb.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 advice<sup>4</sup> 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

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<sup>4</sup> 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 help<sup>5</sup> 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, help<sup>6</sup> 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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<sup>5</sup> 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.

<sup>6</sup> 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 proportion<sup>7</sup> 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.

<b>Protected Characteristics</b>	<b>People with this protected characteristic particularly likely to be affected?</b>	<b>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?</b>
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

<sup>7</sup> 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
<b>Bi) Improved replacement helpline</b> 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
<b>Bii) : NOT a like for like replacement</b> 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.