

Current government proposals mean that in future there will be a severe reduction in funding for face-to-face advice on discrimination. Any discrimination advice that is available will only be accessible by telephone

Tackling discrimination at work

Sian worked as a carer for an agency on a zero hours contract. When she told her employers she was pregnant, her hours were drastically cut. This caused her financial difficulty, at a time when she needed money to prepare for the arrival of her new baby. With the help of her local EHRC-funded advice agency, she challenged this as pregnancy discrimination. In the tribunal her employer falsely attacked her personal character, saying she was 'prone to criminality', 'a liar' and 'aggressive'. She found this extremely distressing. The presence of her adviser was invaluable as it meant she was able to rebut these very personal attacks. The tribunal found in her favour. Without EHRC grants, Sian would not have got the specialist help she needed as representation at tribunal is not covered by legal aid and Sian's low-paid job put her above the income threshold for legal aid."

Since 2009, the Equality and Human Rights Commission (EHRC) has administered a programme of grant funding for the provision of face-to-face legal advice on discrimination.¹ This funding will come to an end in March 2012. The Government Equalities Office (GEO) has announced that it will stop funding the EHRC to deliver this programme² and so far has given no indication that the funding will be replaced. However, GEO has published proposals for a new outsourced telephone helpline.³ This service will provide information on discrimination issues but no legal advice or representation.⁴ At the same time, following the Ministry of Justice's (MoJ) consultation on the future of legal aid, whilst legal aid will still be available for discrimination cases, it will only be accessible through a mandatory telephone gateway⁵ and most advice will be provided over the telephone.

This briefing is endorsed by:



supporting blind and partially sighted people



The voice of learning disability



to information, advice and counselling



For better mental health



Black & minority ethnic Advice Network



If EHRC grants for legal advice on discrimination are not replaced, this will mean that in future there will be very limited national funding for face-to-face discrimination advice and casework. This will result in a sharp reduction in access to justice for those who suffer discrimination.

This raises the following concerns:

1. Access to advice for those eligible for legal aid

Those who are eligible for legal aid will have to seek advice via the mandatory telephone gateway. This raises serious concerns about the accessibility of advice. People who experience discrimination often face disadvantage. This could be as a result of:

- learning difficulties
- low levels of literacy
- little spoken English
- mental health problems
- hearing and speech difficulties
- only having access to a pay-as-you-go mobile

Research⁶ has shown that telephone advice is not suitable for people with these characteristics. The lack of direct access to face-to-face advice will simply serve to further exclude them and deny them the means by which they might address the prejudice and discrimination they face.

2. Access to advice for those not eligible for legal aid

Holding to account

John is black and suffers from mental health problems. He was subjected to racial harassment by his neighbour on a number of occasions and was eventually the victim of a serious violent attack. The police were called but despite the history of racial abuse and the fact that there were many willing and independent witnesses to the attack, John was arrested while the neighbour was only cautioned. With the help of an EHRC-funded advice agency, John complained to the police about what had happened to him. The complaint resulted in a disciplinary hearing for the police officer concerned, during which he admitted racial discrimination. At the same time, the advice agency worked constructively with the local police force to improve its understanding of unlawful discrimination and develop relevant policies and staff supervision. None of this work falls within the scope of legal aid.

Legal aid is means-tested and is therefore not available for many who experience discrimination. Recipients of EHRC grants have used their funding to help those who are ineligible for legal aid but in low paid employment and therefore unable to afford legal advice. Such help will no longer be available. In addition, as legal aid does not fund most tribunal representation, EHRC grants have been used to provide representation to those who have

suffered the most serious discrimination. The Government states that people will be able to act on their own behalf to pursue informal solutions.⁷ However, this fails to take into account that:

- without legal advice, many people do not recognise their problem as one of discrimination
- discrimination law is not straightforward and requires knowledge and understanding of complex statute and case law
- those perpetrating discrimination frequently ignore complaints from unrepresented individuals
- those accused of perpetrating discrimination usually have access to in-house legal teams or have the means to pay for solicitors and barristers to represent them

Without access to advice, there is almost no chance of achieving a level playing field in cases of discrimination.

The impact of EHRC grants

Agencies funded by the EHRC have used the money to help clients to access their rights under equalities legislation. They have employed a variety of methods including litigation, mediation and legal education. Their work has effects well beyond individual clients and therefore helps to address societal prejudice and to create a fairer, more equal society. Cases have resulted in:

- Improved disabled access to banks
- Reduction in disproportionate numbers of innocent black people being stopped and searched by police
- Employees resolving discrimination matters with employers and thereby keeping their jobs.⁸

Improving disabled access

Louisa had difficulties accessing her local bank's counter facilities in her wheelchair. She contacted her local EHRC-funded advice centre. Over the next year, the advice centre represented her in her struggle to persuade the bank to improve its disabled access. Following a threat of litigation, the bank finally agreed to take part in mediation. This resulted in the bank agreeing to redesign its queueing and counter services to accommodate wheelchair users. This design has been rolled out to other branches around the country. Louisa was just above the financial limit for legal aid, therefore, without EHRC funding, she would have received no legal assistance. She was frequently ill and was physically unable to write so without help she would have given up.

End of grants

So far, no arrangements have been made to bring the current grants to an end in an orderly manner and without prejudicing existing clients. There is a risk that if no arrangements are made to allow caseworkers to finish existing cases, clients will be left unrepresented while their cases are ongoing and with no further access to advice. Some of these clients will have tribunal deadlines and hearing dates pending.

What should happen now?

EHRC grants should be extended for 12 months while the GEO develops a comprehensive plan for the future of discrimination advice. The plan should take into account the MoJ's proposals for the future of legal-aid-funded discrimination advice and build on those to develop a complementary scheme of face-to-face and telephone services.

Justice for All is the campaign for free legal advice. For more information visit www.justice-for-all.org.uk or contact campaign@justice-for-all.org.uk

¹ Over the past three years, the EHRC has funded 60 voluntary sector agencies to give advice and carry out casework on discrimination. These grants will come to an end in March 2012. The value of these grants is £3.2m a year.

² Government Equalities Office *Building a fairer Britain: Reform of the Equality and Human Rights Commission* March 2011, para. 2.10.

³ Government Equalities Office *Draft New Equality Advisory and Support Service Specification*.

⁴ Government Equalities Office *Draft New Equality Advisory and Support Service Specification*, para 2.11.

⁵ Ministry of Justice *Reform of Legal Aid in England and Wales: the Government Response* June 2011 paragraphs 142-155.

⁶ Jill Hobson and Peter Jones 'Telephone Advice Pilot' in *Report on Evaluation Research on Alternative Methods of Delivery* Legal Services Commission July 2004.

⁷ Government Equalities Office *Information, Advice and Support on Equality and Human Rights Issues* March 2011, page 22.

⁸ This coincides with Government aims as set out in *Resolving Workplace Disputes: A Consultation*, January 2011, Department for Business, Innovation and Skills and the Tribunals Service.