



Access to Justice: call for evidence

1. The Discrimination Law Association ('DLA'), a registered charity, is a membership organisation established to promote good community relations by the advancement of education in the field of anti-discrimination law and practice. It achieves this by, among other things, the promotion and dissemination of advice and information; the development and co-ordination of contacts with discrimination law practitioners and similar people and organisations in the UK and internationally.
2. It achieves this by, among other things, the promoting and disseminating advice and information, arranging seminars and conferences and training, making representations to government and bodies concerned with legal practice and the administration of justice, and the development and co-ordination of contacts with discrimination law practitioners and similar people and organisations in the UK and internationally.
3. The DLA is a national association with a wide and diverse membership. The membership currently consists of some 300 members. Membership is open to any lawyer, legal or advice worker or other person substantially engaged or interested in discrimination law and any organisation, firm, company or other body engaged or interested in discrimination law. The membership comprises, in the main, persons concerned with discrimination law from a complainant perspective.
4. The DLA is concerned with achieving an understanding of the needs of victims of discrimination amongst lawyers, law-makers and others and of the necessity for a complainant-centred approach to anti-discrimination law and practice. With this in mind the DLA seeks to secure improvements in discrimination law and practice in the United Kingdom, Europe and at an international level.
5. The DLA welcomes the opportunity to provide initial brief written submission on this issue. We have previously responded to consultations regarding the removal of Legal Aid for JR claims and attach this to our response. We consider that the availability of funding for challenges to unfair and discriminatory policies and practices of the state remains of fundamental importance.
6. The DLA underlines that the right to legal representation, paid for by the state where necessary, to protect and secure legal rights, without discrimination, is now recognised as fundamental to a fair, just and humane democratic society. Among the international instruments requiring such rights to be made available to all persons are the following:
 - UN International Covenant on Civil and Political Rights - Articles 3, 14 and 26
 - European Convention on Human Rights (ECHR) - Articles 13, 6 and 14
 - EU Charter of Fundamental Rights - Articles 47 and 21

7. The DLA is concerned with the way that claimants who are victims of discrimination are treated by the justice system. We represent members working with claimants in discrimination matters, including have voluntary organisations; trade unionists; private solicitors and barristers; academics and individuals.
8. We are deeply concerned that the impact of cuts in advice service funding; cuts to the legal aid budget and austerity measure more widely have made it almost impossible for many victims of discrimination to gain access to justice or redress for their treatment at all. There has been an effective removal or denial of the access to justice for a significant proportion of victims.
9. Victims of discrimination find it increasingly difficult to gain expert face to face advice; have very little hope of any funding to pursue legal issues without the need for litigation, and face upfront costs in the form of fees which will not necessarily be recoverable if the claim cannot be resolved and court action or an Employment Tribunal claim is needed.
10. The recent joint report of the EHRC and Department for Business, Innovation and Skills, suggested that in the context of maternity and pregnancy alone, as many as 390,000 women a year could be suffering from discrimination in the work place. The research suggested that a significant proportion of them took no action. Our experience and anecdotal evidence is that this is replicated across the protected characteristics in the Equality Act 2010.
11. The fact that poor treatment is because of discrimination is often difficult to identify and a discriminatory motive is not something that most people will admit to. It is very hard to prove and yet the impact on people's lives and livelihoods can be devastating because of damage to health; careers and earnings. The legal measures protecting people from discrimination are complex and difficult to enforce and the responsibility for addressing discrimination rests wholly on the individual who is affected. There needs to be a reassessment of the approach to discrimination as a solely private legal matter, and recognition of it within the legal system as a social ill and one which society takes some responsibility for addressing.
12. The way that publically funded legal advice is provided to individuals and the operation of the legal system needs to take far greater notice of the particular circumstances of those who are disabled, pregnant or victims of racial or discrimination or discrimination on grounds of sexuality for example. People who are already marginalised because of race or disability for example often find the legal process of dealing with their treatment humiliating, distressing and injurious to health as well as complex; time-consuming; expensive and potentially unaffordable.
13. The failure of the courts and tribunals to adequately enforce awards made in successful cases is well documented. This must be addressed. Access to justice is as much about ensuring that there is an effective remedy, which is actually enforced.

14. We have a particular concern about the removal of Employment from scope of any form of legal assistance. Whilst litigation was rarely covered by Legal Aid or its successors, the provisions of initial advice enabled many claims to be explored with an expert, and resolved without the need for litigation. The commission will be aware of the evidence submitted to government consultations regarding the cost benefit of legal help for employment and discrimination claims.
15. The increase in fees to the ETs and the lack of availability of public funding and advice and support has led to well recognised increase in litigants in person before the courts. We are concerned that those who seek to bring claims of discrimination face additional difficulties because of the complex nature of the issues and the complexity of the applicable legal provisions.
16. In the context of discrimination law and to address the issues identified above the DLA consider that the following measures would assist with improving access to justice in discrimination matters:
 - i. the removal or significant reduction of Employment Tribunal Fees;
 - ii. the reintroduction of public funding for an initial 2 hours minimum expert legal advice on a face to face basis;
 - iii. The reintroduction and extension of powers of Courts and Tribunals to make binding recommendations for discriminatory organisations to implement improvements and make changes to practices;
 - iv. an obligation to ensure provision of legal services which are accessible in practice to all members of the community regardless of geographical location or protected characteristics. This should involve a reassessment of the mechanisms for delivering publically funded legal services, and the re- evaluation of the utility of restrictions on delivery of advice and assistance resulting from contracting;
 - v. the reconsideration and implementation of the *Public Sector Duty Regarding Socio Economic Inequalities* as contained in section 1 of the Equality Act 2010; with adequate resourcing to be considered;
 - vi. the reintroduction of a pre litigation procedure for discovery of information for discrimination claims as set out but not implemented in section 138 of the Equality Act 2010.
17. The DLA would be interested in responding in greater detail to some of the questions set out in paragraph 5 of the call for written evidence raised from the point of view of the discrimination claimant following consultation with our members. In particular we are consulting our members about proposals currently being considered for the reform of the Civil Courts and the greater use of technology. We have concerns for example that many people who are either disabled; older people, or marginalised groups for example will not be better served by computerisation and the growth in technology and that the proposals do not take sufficient account of the very specific complexities of discrimination law for claimants.

END

Discrimination Law Association
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