

Government urged to lift barriers to legal aid in discrimination cases

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An inquiry into the legal aid system has uncovered deep flaws in the way free legal representation is appointed and eligibility decisions are made for discrimination cases. The Equality and Human Rights Commission (EHRC) found that the current system allows victims of discrimination to be denied their fundamental right to justice and perpetrators to go unchallenged. Therefore, the EHRC is calling for the government to change the financial eligibility threshold and clarify its guidance on discrimination claims to ensure more people have access to the right kind of legal representation. Ryan Bradshaw, associate at Leigh Day, agrees with the EHRC, expressing concern that 'the ongoing inability of individuals to access quality legal advice means that the current system for enforcing rights, under the Equality Act 2010 (EqA 2010), is not fit for purpose'.

Key findings

The inquiry found that no workplace discrimination cases between 2013/14 and 2017/18 received legal aid funding for representation in the employment tribunal, and only one in 200 cases taken on by discrimination specialists received funding for representation in court. This, the EHRC concluded, was due to a number of barriers, most notably rules which effectively limit funding to cases with high compensation awards. These rules, the EHRC [said](#), 'miss the point when it comes to discrimination cases', because they are about challenging unacceptable behaviour and upholding rights rather than obtaining financial awards.

Indeed, Bradshaw emphasises that 'it is essential that expert legal advice is available to those who wish to bring [EqA 2010](#) based claims in order to avoid delays, stress and increased costs', but this is made difficult by the complex procedural rules which differ between each court or tribunal.

Calls for government action

The EHRC calls on the government to address these barriers to legal representation, including:

- change its guidance to ensure that discrimination claims are not assumed to be simply a claim for damages
- change the financial eligibility threshold to expand the number of people that receive legal aid

Bradshaw calls the current legal aid model 'plainly unsuitable' due to the overly strict eligibility criteria and the delays caused by the Legal Aid Agency's complex internal appeals process which is incompatible with cases 'where there are tight time limits and potentially significant costs consequences if the claim is unsuccessful'. He points out that when Legal Aid was first created in 1947, 80% of the country qualified for assistance, and that figure is now at less than 20%.

Face-to-face discrimination advice

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The EHRC has also recommended that the government follows through on its commitment to reinstate face-to-face legal advice and ensure there are enough providers, so that it can be a genuine option for anyone who needs it.

Bradshaw criticises the Legal Aid Agency's recent decision to put out to tender contracts for face-to-face discrimination advice and to pass all but a tiny proportion of requests for face to face advice 'through the much criticised telephone gateway but also the Legal Aid Agency's chosen telephone provider' until at least Spring 2020. These decisions will add 'an additional layer of complexity for vulnerable people to navigate before accessing the advice they need', Bradshaw argues, who looks forward to how the Ministry of Justice will tackle the growing issues surrounding legal aid.

Source: [Access to legal aid for discrimination cases](#)

Written by Samantha Gilbert.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.

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