

Civil Justice Advisory Group Consultation
Consumer Focus Scotland
Royal Exchange House
100 Queen Street
Glasgow
G1 3DN

24 September 2010

Dear Sir/Madam,

Ensuring effective access to appropriate and affordable dispute resolution: consultation

The Equality and Human Rights Commission (the Commission) has statutory duties to promote equality, build good relations and encourage compliance with equalities legislation and in reserved matters, human rights. The Commission has responsibilities in seven areas of equality: age, disability, gender, race, religion or belief, sexual orientation and gender reassignment.

This response is restricted to those matters in the pro forma response which we consider relevant for the Commission and addresses the requirements of the public sector duties.

The Commission welcomes the principles underpinning the review, in particular that the system should be fair in its procedures and working practices and that it should be accessible to all and sensitive to the needs of those who use it.

**Equality and
Human Rights
Commission**

The Optima Building
58 Robertson Street
Glasgow G2 8DU

Tel: 0141 228 5910

scotland@equalityhumanrights.com

The consultation questions:

a) Structure and processes

Drawing on the principles underpinning the review, as outlined in section 4a, what should be the features of an appropriate, affordable and fair dispute resolution process or processes, particularly for claims of low financial value, housing cases, family cases and children's hearing referrals?

It is important that any proposals for claims of "low financial value, housing cases, family cases and children's hearing referrals," recognise the importance of such cases for the individuals involved. A claim under equalities legislation may have low financial value, but seek an additional remedy which would resolve significant longstanding discrimination. An eviction action, to which there may be a defence under equalities legislation, could result in an individual being made homeless.

The Commission considers that some specialisation of judges is to be welcomed, to allow for the development of experience and expertise in the areas of civil claims outlined above. This should not be done at the cost of ensuring access to local justice, as minority groups would in particular likely to be adversely affected by any move to centralise courts. For example travel and subsistence costs may combine with work and care commitments to exclude those on low incomes from accessing courts that are outwith the local area and the lack of accessible transport could exclude many older or disabled people.

.

b) Support to facilitate access to justice

Does the package of measures/assistance to support citizens to have appropriate access to justice via the courts or other routes, as proposed in the civil courts review report (such as self-help, public legal education, McKenzie Friends and in-court advice services) represent the best way forward?

The Commission supports proposals for improving public legal education and self-help, recognising that in areas such as equality law, often those discriminated against are unaware that they may have rights which have been breached. It is essential that people are made aware not only of their rights, but also of the remedies available to them and of where they can get advice, assistance and representation. There is already inequality in the access available for minority groups to such information, advice and representation and a disparity in provision of legal advice services across Scotland.

There is great scope for using web based resources to improve the availability of legal education information. However, any internet information service, for example one mirroring the NHS24 type provision, must be fully accessible and must be part of a variety of resources available, given the lack of internet access for many minority groups and for those in poverty.

The Commission welcomes the proposals to extend provision of in-court advice, which provides a vital service for unrepresented parties. Discrimination claims are complicated and very difficult for people who have suffered discrimination to pursue without assistance. They are more likely to have particular need for assistance such as communication or language support. At the same time, in court advice should be seen as a service provided for those at that stage in the civil justice process, who need immediate and urgent advice. Such a service has to be an additional facility and exist together with other advice and representation provision available earlier in the process, with steps taken to make people aware earlier of the availability of such advice. The extension of in-court provision should not result in any diminution of access to other legal services, particularly Legal Aid for legal advice and law centres.

Discrimination is often an overarching issue and can be hard to identify as it can arise in a variety of settings, for example as mentioned earlier in an

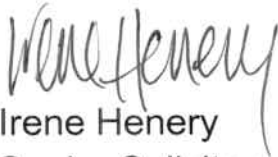
eviction action. It is essential that minority groups have access to expert legal advice and assistance capable of diagnosing discrimination issues.

Equality Duties

The Equality Duties¹ require that public bodies work to eliminate discrimination and harassment and promote equality of opportunity on the grounds of gender, disability and race. The Equality Act 2010 will in due course introduce a new public sector duty which will also cover religion, sexual orientation and age.

These duties, which apply to the Scottish Ministers and the Scottish Court Service, must be taken into account in the consideration of proposals for reform. For example the Disability Equality Duty specifically requires public bodies to take account of people's disabilities, even where that means treating disabled people more favourably than other people, to seek to eliminate discrimination and to promote positive attitudes towards disabled people and encourage their participation in public life. This will require for instance, ensuring that embedded into the planning process is consideration of the needs of disabled people not only for full physical access but also for a full range of adjustments including the provision of auxiliary aids and services.

Yours sincerely,



Irene Henery
Senior Solicitor

¹ The Disability Equality Duty (Disability Discrimination Act 2005), Gender Equality Duty (Equality Act 2006), Race Equality Duty (Race Relations Act 1976 (as amended)).