

Equality and Human Rights Commission

Research report 99

# Equality, human rights and access to civil law justice:

a literature review

Executive summary

Helen Anthony and Charlotte Crilly



**Equality and  
Human Rights**  
Commission

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First published October 2015

ISBN 978-1-84206-656-0

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## 1. Background

A range of changes potentially affecting access to civil law justice in England and Wales have been introduced in recent years. These changes include: substantial reductions to the scope of civil legal aid under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO); proposals for further reforms to legal aid (including a residence test); reforms to judicial review; and the introduction of fees in employment tribunals.

The Equality and Human Rights Commission (EHRC) is a statutory body; its powers and duties are set out in the Equality Act 2006. It is the independent advocate for equality and human rights in Britain. The EHRC's (2014a) mid-term report on the UK's progress in fulfilling Universal Periodic Review<sup>1</sup> recommendations raised concerns about the equality and human rights implications of many of the recent changes to civil law justice. In order to inform its future strategy in this area, the EHRC commissioned a literature review to identify the reported potential and actual equality and human rights impacts of recent changes to civil law justice.

## 2. Methodology

This literature review explores:

- The reported potential or actual impacts of changes to access to civil law justice for people sharing characteristics protected by the Equality Act 2010,<sup>2</sup> including access to redress for victims of discrimination.
- The reported potential or actual impacts of changes to access to advice and redress for human rights breaches, regardless of protected characteristics.

During the period January to March 2015, the review looked at a range of relevant academic and industry literature, legal cases and secondary sources. It focused mainly on material published since November 2010, although some earlier sources were also considered where relevant. As the reforms are relatively recent, quantitative evidence and analysis that showed causal impacts on people with particular protected characteristics were found to be limited. The review is therefore necessarily focused on the impact of the reforms drawing on qualitative findings, including the recent experience of individuals and small groups who have been directly affected.

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<sup>1</sup> A review of the human rights records of all United Nations member states.

<sup>2</sup> The protected characteristics as set out in the Equality Act 2010 are: age; disability; sex; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; and sexual orientation.

This literature review presents findings, notes gaps in knowledge and draws conclusions based on publicly available sources. These are listed in the Bibliography.

### **3. Key findings**

- 3.1** The findings tended to highlight that disabled people, women and people from ethnic minorities are particularly affected by the reforms.
- For disabled people, it was reported that there is an impact on access to justice in welfare benefits, community care, housing and discrimination cases.
  - For women, findings indicated an impact in family cases, where those who have experienced domestic violence are affected by the strict evidence requirements. There is evidence of an adverse impact on women in relation to discrimination cases, because of the introduction of fees in employment tribunals.
  - Ethnic minorities are potentially affected by the removal of many types of immigration cases from the scope of public funding.
  - The proposed residence test for legal aid is reported to have a disproportionate impact on non-British nationals.
- 3.2** Outside employment tribunals, there was very little reported evidence relating to discrimination because of age, religion or belief, or sexual orientation.
- 3.3** The review found no reported impacts with regard to gender reassignment or marriage and civil partnership.
- 3.4** The review identified the following reported impacts on the number of people seeking access to advice and/or redress for discrimination:
- The number of discrimination inquiries handled by the mandatory telephone gateway is much lower than estimated.
  - There has been a drop in all categories for which there are records of discrimination claims in employment tribunals.
  - There are also barriers to bringing discrimination claims in the County Court.
- 3.5** The review identified the following reported impacts on people seeking advice and/or redress for human rights breaches:
- Some people seeking redress for breaches of Article 8 of the European Convention on Human Rights (ECHR) (right to respect for private and family life) in relation to family,

housing or immigration issues have experienced more difficulty following the introduction of LASPO. This is despite the existence of the exceptional case funding (ECF) scheme.

- In some cases, being unable to access legal advice and representation may itself amount to a breach of Article 6 of the ECHR (right to a fair trial).
- Children are particularly at risk of having their rights under the United Nations Convention on the Rights of the Child breached by recent reforms. This includes unaccompanied migrant children and children in family cases.

In some circumstances, other human rights instruments are relevant, such as the United Nations Convention on the Rights of Persons with Disabilities.

#### **4. Gaps in evidence**

The review showed that there are several gaps in evidence, including on:

- How often and how effectively the fee remission system for employment tribunal fees is used.
- Why the legal aid that is still in scope is apparently so underused.
- The impact of legal aid reforms for judicial review cases.
- The impact of the increase in the small claims limit.
- The extent to which mediation is used as an alternative, in particular by women of different religions or beliefs.
- What has happened to people who can no longer access advice, representation or the courts.

# Contacts

This publication and related equality and human rights resources are available from the Commission's website: [www.equalityhumanrights.com](http://www.equalityhumanrights.com)

For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

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Published October 2015

ISBN 978-1-84206-656-0

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