

Human rights inquiry

Call for evidence response form for service providers

We need your help!

We are carrying out an inquiry to find out how public authorities¹ are using the Human Rights Act in Britain.

Under the Human Rights Act, 'public authorities' includes both those bodies which would usually be thought of as public authorities (like local authorities) but also private or voluntary organisations when they are carrying out public functions (for example, a private company running a prison). Our inquiry applies to all the public authorities covered by the Human Rights Act.

We want to hear from you about any examples of public authorities using human rights to improve services or about situations where they have failed to do so.

Are you working for an organisation which complies with the Human Rights Act in providing services? Or do you feel that your organisation needs to do more to meet its human rights obligations?

Please tell us about your experiences – positive or negative – using the call for evidence form.

¹ The House of Lords decided last year that private and voluntary care homes were not public authorities for the purposes of section 6 of the Human Rights Act, even where they were publicly-funded – see *YL (by her litigation friend the Official Solicitor) (FC) (Appellant) v Birmingham City Council and others (Respondents)* [2007] UKHL 27. The Government has indicated since the judgment that the intention of the Government was that such care homes should be covered by the Human Rights Act and has agreed to table an amendment to correct this position in the Health and Social Care Bill, which is currently passing through Parliament.

It will only take about 15 minutes to fill in the form and the evidence you give us will be vital in helping to make this inquiry as comprehensive as possible.

To make sure your contribution informs our inquiry report, please send it to us **by 21 June 2008**.

You can send your response:

- by email to: HRI@equalityhumanrights.com
- by fax to: 0207 407 7557 (please send faxes for the attention of the Human Rights Inquiry team)
- by post to the following freepost address:
FREEPOST RRUY-EJHS-CKGT
Equality and Human Rights Commission – Human Rights
Inquiry
3 More London, Riverside
Tooley Street
London
SE1 2RG
- If you need to give your response by telephone or textphone, please contact our helpline:
 - For England
Telephone: 08456 046 610
Textphone: 08456 046 620
 - For Wales
Telephone: 08456 048 810
Textphone: 08456 048 820

All your personal information will be kept confidential.

Whichever way you choose to present your evidence, it would be helpful if you could answer the questions set out in the following form. If you need more space to respond to one or more questions please use a separate sheet, labelled with the relevant section number.

Section 1: Your contact details

It will really help us if you can provide your name and contact details in case we need more information. Naturally we will treat this information as confidential (please read our confidentiality statement at the end of this document).

If you wish to remain anonymous, please leave this blank but it would be very helpful if you can complete section 2 about the profile of your organisation.

Your name: Carolyn Regan, Chief Executive		
Full postal address: Legal Services Commission 85 Grays Inn Road London WC1X 8TX		
Telephone: 020 8356 0410	Mobile: N/A	Fax: N/A
Email address: carolyn.regan@legalservices.gov.uk		

Section 2: Profile of your organisation

Name of your organisation: Legal Services Commission

Organisation status: Public..... X
 Private.....
 Voluntary/community.....

Are you responding on behalf of your organisation or as an individual?

Responding on behalf of organisation.

Does your organisation provide services to specific group/s? If so which group/s?

Legal aid to people in England and Wales.

Section 3: Questions for service providers

1. How has the Human Rights Act been used by your organisation?

How has the Human Rights Act been used by your organisation? Do you have any good practice examples of how the Human Rights Act has been used and can you explain in which way you think that this represents good practice?

The Legal Services Commission (LSC) funds legal aid in England and Wales at a cost of around £2.1 billion. Within the LSC, the Community Legal Service (CLS) helps people with civil legal problems such as family breakdown, debt and housing. At present the CLS funds advice and representation through three key streams. The first is telephone advice; the second Legal Help advice and assistance and the third is through representation in proceedings before courts and tribunals. These three levels of service are applied within 14 civil categories of law including:

- Family
- Immigration and asylum
- Social welfare (community care, debt, employment, housing and welfare benefits); and
- Mental health and other civil areas (actions against the police, clinical negligence, consumer, education, miscellaneous, personal injury, public law).

The CLS Fund Funding Priorities is a direction by the Lord Chancellor under section 6(1) of the Access to Justice Act 1999 concerning the priorities that the LSC should set for funding services as part of the CLS. It requires the LSC to give top priority to:

- Special Children Act proceedings
- Civil proceedings where the client is at real and immediate risk of loss of life or liberty

After this the LSC must also give the following categories higher priority than others:

- Help with social welfare issues that will enable people to avoid or climb out of social exclusion, including help with housing proceedings, debt, employment rights and entitlement to social security benefits;

- Domestic violence;
- Proceedings concerning the welfare of children; and
- Proceedings against public authorities alleging serious wrong-doing, abuse of position or power or significant breach of human rights.

The LSC gives effect to these priorities by setting rigorous requirements in the Funding Code for these categories and by allocating resources to contracts for particular categories of cases. Where there is a gap in provisions we run bid rounds for additional work.

Family

Out of the total legal aid budget, around £550m is used to help people with family issues; This equals over 250,000 people each year.

Generally, eligibility for civil legal aid is dependent on a person and their case meeting a means and merits test. If these criteria are met, funding can be available for family problems including:

- Divorce, separation and civil partnership dissolution;
- Child contact and residence;
- Domestic violence court orders;
- Care proceedings;
- Family mediation; and
- Child abduction.

Special Children Act and Domestic Violence cases are specific funding priorities for the LSC as specified in the LSC Manual.

We fund Special Children Act cases on a non-means, non-merits tested basis for children, parents and those with parental responsibility. In 2006/07 (the most recent data available) we granted 28,497 certificates for Special Children Act cases.

More broadly within public law family cases, the LSC funds applications under section 7 of the Human Rights Act. This allows applicants to, for example, pursue a damages claim where it is alleged that a public authority has not followed proper processes.

Legal remedies in instances of domestic violence assist victims in assuring life and liberty. As an organisation, the LSC extended its eligibility thresholds to increase the number of domestic abuse victims who are able to seek protection under civil law. From 9 April 2007, the LSC extended discretion to waive the upper disposable income limit for

the benefit of domestic violence victims. Before 9 April, only the upper disposable income limit could be waived. Now discretion applies to all income limits – gross and disposable income limits as well as disposable capital limits.

Mental Health

The LSC pays for legal services for people with legal problems relating to mental health law, including representation before the Mental Health Review Tribunal. In 2005/06 the LSC spent approximately £29 million on mental health controlled work and nearly £1m on certificated work.

As specified by the Community Legal Service Fund Funding Priorities, cases where the client is at risk of loss of liberty are within the top priority for CLS funding. Regulation 3 of the Community Legal Service (Financial) Regulations 2000 states that Legal Representation proceedings before a Mental Health Review Tribunal under the Mental Health Act 1983, where the client's case or application to the Tribunal is, or is to be, the subject of the proceedings, shall be available without reference to the client's financial resources.

The LSC funds 'legal help' (the provision of general information about the law, legal system and availability of legal services) which is means tested.

The CLS must also ensure that people with mental health problems receive the specialist advice they need in relation to social welfare legal problems such as housing or welfare problems. It is working jointly with local authorities to commission and set up Community Legal Advice Centres and Networks, to provide quality integrated legal advice services ranging from basic information to representation in court. These centres and networks will make people with mental health problems a high priority group.

Immigration and Asylum

In the immigration category, in relation to asylum applications, the LSC funds specialist legal advice in relation to the application for protection which may be proceeding on Article 3 or Article 8 in conjunction with 1951 Convention Relating to the Status of Refugees and any consequential appeal, subject to the means and merits test. Legal Help is available for the initial application (and any subsequent asylum or Human Rights application). Controlled Legal Representation is available for representation before the Asylum and Immigration Tribunal.

The CLS Fund Funding Priorities under section 6(1) of the Access to Justice Act 1999 require the LSC to prioritise Civil proceedings where the client is at real and immediate risk of loss of life or liberty. Asylum applications and appeals by implication carry the risk of detention (loss of liberty) and removal. The LSC therefore prioritise Asylum and Human Rights applications and Appeals.

The LSC established a fast track Asylum Legal Services Scheme to ensure that prompt, competent and independent asylum and Human Rights legal advice services are available to the fast track asylum seekers at Home Office removal centers. For clients subject to fast track procedures the timescale of events are considerably shorter than with the usual asylum decision process, with initial decisions being made within three days of arrival. Time limits for appeals are also shorter, with clients remaining at a removal centre until they have been granted status or their rights of appeal have been exhausted and removal is arranged.

In addition and in line with LSC commitment to quality asylum and Human Rights legal advice within the detained fast track process, the LSC funded Immigration Law Practitioners Association (ILPA - www.ilpa.org.uk) to produce "The Detained Fast Track Process a Best Practice Guide (January 2008).

Discrimination

There are 14 civil categories of law with discrimination an element of each rather than a separate category in its own right. The LSC believes that keeping discrimination as part of a wider case within a category of law rather than a separate case is the most effective way of securing access to high quality services for clients.

Exceptional Funding

The targeting of funding on priority areas under the Access to Justice Act 1999 is reflected in the fact that certain areas of law, such as business, defamation and personal injury cases, are generally excluded from CLS funding altogether under section 6(6) of and Paragraph 1, Schedule 2 of the Act. Further, the courts and tribunals for which legal representation can be funded are limited to those specified in Paragraph 2 Schedule 2.

However, under section 6(8) of the Act, the Lord Chancellor may authorise the LSC to fund services within Schedule 2 of the Act in

specified circumstances, or on request by the LSC, in an individual case.

The main Authorisation of the Lord Chancellor on excluded cases brings a number of types of proceedings back into the scope of CLS Funding. This reflects the priority given to certain case categories, such as family proceedings, discussed above. It also ensures that cases involving allegations against public authorities of a significant breach of human rights, and hearings where the liberty of the client is in issue, are within scope.

Another Authorisation of the Lord Chancellor brings into scope Inquests where the death occurred in police or prison custody, during the course of police arrest, search, pursuit or shooting, or during the compulsory detention of the deceased under the Mental Health Act 1983. Guidance in relation to this authorisation provides that funding should be granted where legal representation of the deceased's family is necessary to assist the coroner to investigate the death effectively, or where there is significant wider public interest in the family being represented.

Cases funded on the basis of an individual recommendation to the Lord Chancellor fall broadly into two categories: inquests, other than those directly in scope as above, and non-inquest cases. Guidance on the latter cases indicates that recommendations for funding should be made where the case has overwhelming importance to the client (in the sense of life, liberty, physical safety or roof over the head being at issue), there is significant wider public interest in the applicant being represented, or there are exceptional circumstances such that without public funding for representation it would be practically impossible for the client to bring or defend the proceedings, or the lack of public funding would lead to obvious unfairness in the proceedings.

Generally, the Community Legal Service, of course, plays a central role in the UK's compliance with Article 6 ECHR, in ensuring that individuals are able to receive a fair hearing in any determination of their civil rights and obligations. Whilst the Access to Justice Act 1999 and Authorisations and Directions under that Act do not always make explicit reference to the relevant ECHR provisions, the scheme and its priorities for funding clearly reflect the Convention requirements.

In particular, Mental Health Tribunal cases and care proceedings are funded on the basis of a very limited merits test and without reference to means as they necessarily engage, in the former case, Article 5 ECHR and both substantive and procedural obligations under Article 8.

Funding of Inquests is driven primarily by the requirements of the state's investigative obligations under Article 2 ECHR. Again, the financial regulations made under the Access to Justice Act 1999 provide that the requirement of financial eligibility of the family of the deceased may be waived where appropriate, having regard to Article 2 obligations.

The provision to allow funding of cases under section 6(8)(b) of the Act on recommendation to the Lord Chancellor ensures that the LSC is able to discharge the state's Article 6 obligations in relation to any individual case, regardless of its nature; the test that funding should be available where it would otherwise be practically impossible for the client to bring or defend the case, or lack of public funding would lead to obvious unfairness, is specifically addressed at compliance with Article 6 ECHR.

As observed, allegations of significant breaches of human rights by a public body will bring a case within scope of CLS funding, even if it would otherwise have been excluded by its subject matter, e.g. because it arose from the client's business activity. More generally, for cases that are within the scope of CLS funding, judicial review claims or claims against public authorities that raise significant human rights issues are given greater priority, in that they will not be refused funding purely by virtue of having only borderline prospects of success (essentially an arguable case but not one that can be said to have more than a 50% chance of succeeding).

The Access to Justice Act established the Criminal Defence Service, under which 'individuals involved in criminal investigations or criminal proceedings have access to such advice, assistance and representation as the interests of justice require'.

Our funding (e.g. of advice and assistance and representation at the police station, magistrates court and crown court) ensures that individuals have a fair hearing, in accordance with the Human Rights Act. Also our funding of prison law advice for example enables individuals to challenge the way in which they are treated by prisons governors and to apply for a parole.

3. Have you experienced any barriers in using the Human Rights Act? If so what are they and how do you think they can be overcome?

We believe there are a number of fundamental challenges in applying the Human Rights Act:

- The confusing plethora of existing equalities legislation which does not effectively integrate and sometimes conflicts with human rights principles
- The need for evidence based good practice to demonstrate how human rights has been applied in different ways to tackle inequality and promote a more cohesive society
- The need for a clear focus and direction on the human rights agenda in the public sector, both in terms of service delivery and employment practice
- The negativity surrounding the Act which suggests that it is only a right for minorities
- Poor awareness of human rights law beyond the legal profession
- Variable quality of human rights advice makes it very difficult for vulnerable people to achieve redress after legal channels have been exhausted

Moving Forward

There needs to be a much more inclusive debate about human rights which involves a wider range of organisations and individuals, as there is a huge gap between those who promote human rights and those who at risk of their human rights being abused.

There needs to be a stronger emphasis on principles such as dignity, fairness and respect which could add new dimensions to the traditional equalities agenda and strengthen policy in this area.

There needs to be more information and support to engage the most marginalised people, including those affected by poverty so that they

know about their human rights and how to claim them. The process should be more about empowering individuals to make change happen in their own lives and communities.

The EHRC needs to adopt an integrated approach to human rights and equality, explain the extent of its human rights duties and powers and provide practical guidance to organisations to ensure they understand and can implement the principles effectively within their work.

4. How has your organisation used/could your organisation use the Human Rights Act to improve the way it provides services? What difference has this made/could this make in terms of providing services?

The Legal Services Commission recognises the importance of the Human Rights Act in ensuring that public authorities act in a way, which is compatible with the European Convention on Human Rights as far as possible.

We are taking a number of steps to strengthen the integration of human rights within our work, which include:

- Implementing a programme of Human Rights Training to ensure relevant staff have an understanding of human rights developments and the implications for our work
- Working with stakeholders, including individuals who experience social exclusion to stimulate discussions relating to the impact of human rights on everyday lives and the priorities for action
- Continually reviewing our policies and practices to ensure that human rights becomes more of an integral part of our work and to dispel the myth that human rights are just for minority groups

The LSC has commissioned an external audit into our equalities performance to gain a better understanding of the challenges in taking the equality and diversity agenda forward. The audit has recommended that we adopt a more human rights approach to our work by working with and through others to promote improve our understanding and work in this area.

5. What might help your organisation use the Human Rights Act more effectively? (For example, guidance or good practice seminars.)

More work needs to be carried out to join up human rights, equality and community cohesion in policy and practice. One way in which this could be achieved is by incorporating economic and social rights in domestic law and using them to combat poverty. This could have a positive impact on community relations. What would help us are practical tools and guidance which clarifies:

- what is meant by a 'human rights based approach' in relation to public services;
- how human rights supports existing equalities legislation; and
- how organisations can integrate human rights into their work and how progress can be measured over time.

Benchmarking and/or short term secondment opportunities should be offered to encourage leading 'think tank' organisations to share good practice and work with human rights/equalities specialist on joint projects or emerging issues which affect the public sector.

Examples of good practice in implementation also helpful.

Confidentiality statement

If you are thinking of giving evidence to the inquiry but you have something that you want to keep confidential, please read this page which sets out the Equality and Human Rights Commission's position on confidentiality and disclosure of information.

If you still have concerns after reading this page and want to discuss these in confidence, you can email the inquiry team at HRI@equalityhumanrights.gov.uk

The Equality Act 2006 (EA) sets out specific rules relating to information received by the Equality and Human Rights Commission when carrying out an inquiry under section 16 of the EA:

- section 6 of the EA says that information acquired by the Equality and Human Rights Commission in the course of an inquiry must not be disclosed by the Equality and Human Rights Commission except where any of the following apply:
 - with the consent of each person to whom the information relates
 - in the report of the inquiry
 - for the purposes of carrying out the Equality and Human Rights Commission's functions in relation to its enforcement powers
 - in pursuance of an order of a court or tribunal
 - if the information is anonymised so that no one to whom the information relates can be identified
 - for the purposes of civil or criminal proceedings to which the Equality and Human Rights Commission is party
 - if the information was acquired by the Equality and Human Rights Commission more than 70 years before the date of disclosure.
- section 16 of the EA sets out the rules which apply when the Equality and Human Rights Commission wants to record in its report of an inquiry evidence or findings of an adverse nature about the activities of a specified or identifiable person. These rules include giving that person the right to make written representations on the draft report.

We will not disclose information received from you or your organisation during the inquiry unless it falls within the limited circumstances set out in section 6 (3) of the EA. However, we may include it in the report of the inquiry and this may be in a way which means that you or your organisation will be identifiable. If you do not wish us to include information about you or your organisation in the report of the inquiry then please contact us to discuss this. We will be sensitive to any concerns you have about disclosure and we hope that you will feel confident in reporting any issues to us, including sensitive human rights issues you might have experienced or know about.