

Responding to Discrimination: The Geography and Geometry of Advice Provision in England, Scotland and Wales

John Borland, Aled Griffiths, Osian Rees

and

Stewart Collins

Gaurav Dahiya

Sue James

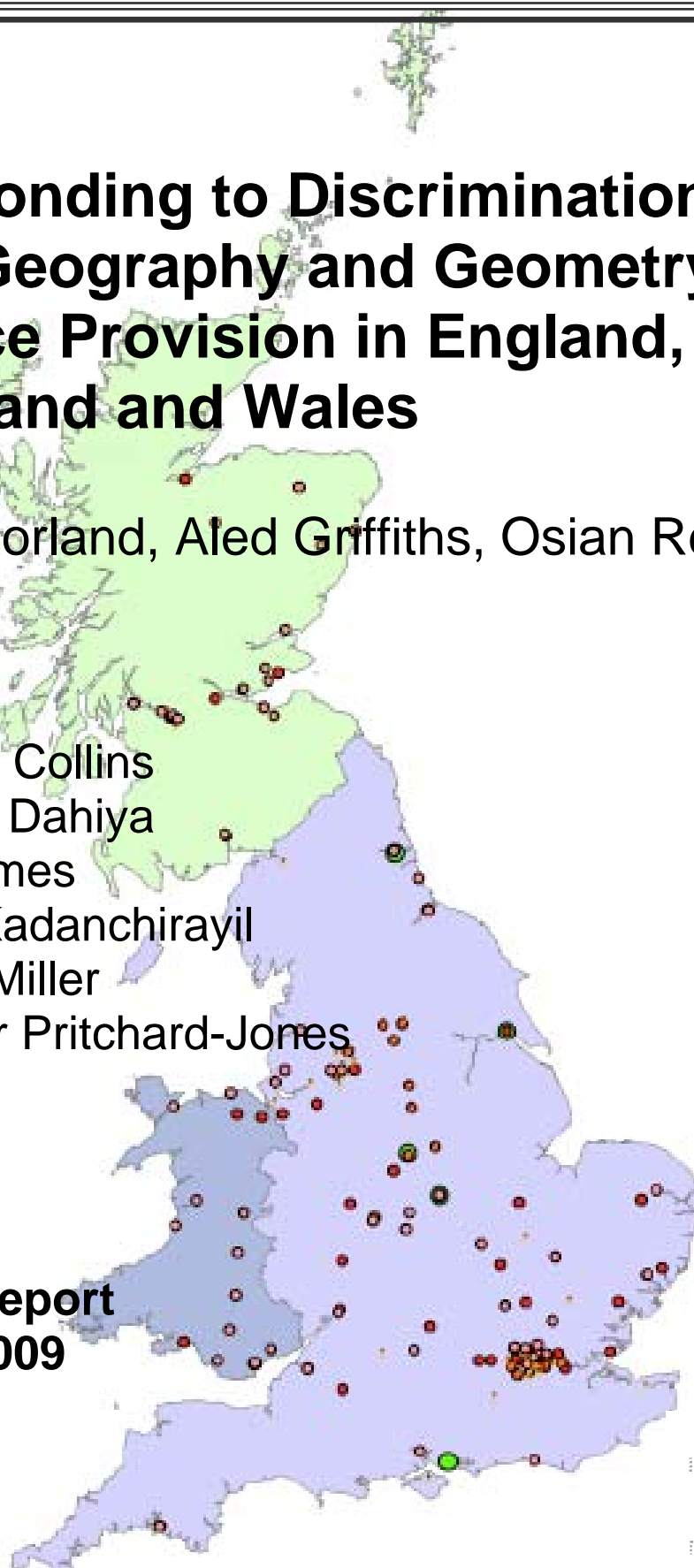
Anish Kadanchirayil

Servel Miller

Jennifer Pritchard-Jones

Final Report

April 2009



ACKNOWLEDGEMENTS

We are extremely grateful for all the support and cooperation we have received from the advice agencies involved and other key individuals involved in this important service. People have made themselves available to us with little notice and at considerable inconvenience. Some have also travelled long distances to make their contribution and their commitment to good practice was obvious.

In particular, we are extremely grateful to individuals within key agencies, namely AdviceUK, The Law Centres Federation and Citizens Advice Bureaux for their openness and the cooperative way in which they have made our study possible.

PREFACE AND METHODOLOGY

This update builds on previously commissioned reports on Wales and Scotland, and provides a summary of more recent evidence from third party sources in relation to England. The earlier Welsh material mapped out provision and also provided some narrative and reflection as to what was needed in relation to facilitating growth, development and sustainability of appropriate advice provision. The previous Scottish report was essentially a detailed mapping exercise. This report therefore, brings forward some of the previous recommendations in the Welsh report and provides some narrative as to the nature of provision in Scotland. Supplementary material taken from recent sources in England adds substance and largely corroborates the evidence collated in the fieldwork undertaken in this project.

The research has utilised both macro and micro methods of investigation. As part of a mapping exercise diverse lists of advice providers were collated and their location plotted. A short questionnaire, modelled on earlier recent work carried out for the EHRC, was also developed with the intention of adding to the baseline data about the nature of provision across the three countries. The fieldwork and consultation process also consisted of arranging focus groups in England, (London and Manchester) Scotland (Glasgow) and Wales (Cardiff) together with some thirty in-depth semi-structured interviews with a wide range of key stakeholders reflecting all the currently legally recognised strands of discrimination. Others, unable to attend the focus groups or

make themselves available for individual interview, have made written submissions.

The themes and issues explored with the participants focussed on funding and relevant constitutional, institutional and policy developments. Inevitably, however, wider concerns were often raised, including comments about the nature of EHRC expectations and support services. Where possible, such information has also been included in the hope and belief that it contributes to the development of optimum best practice.

Finally, the somewhat limited nature of this short investigation is acknowledged. Whilst every effort has been made to include a comprehensive range of responses, it has to be acknowledged that the views represented are partial. In particular, it is important to point out that the primary focus in this research has been on the contribution and concerns of the not for profit sector, and that only incidental and passing references are included in respect to private sector legal practice.

CONTENTS

Executive summary and recommendations	5
1 Background and update on the nature of provision	11
1.1 Introduction	11
1.2 England	13
1.3 Scotland	18
1.4 Wales	27
2. Constitutional and institutional developments	29
2.1 Introduction	29
2.2 Devolution in Wales	29
2.3 Devolution in Scotland	32
2.4 Equality framework	33
2.5 Equal opportunities requirements in Scotland	33
2.6 Adherence to the principle of equality in Wales	36
2.7 Commissioners for Children and Older People	41
2.8 Differences in the arrangement of legal services (CLACs and CLANs in England and Wales)	44
2.9 Legal Aid in Scotland	47
3. Some spatial evidence	49
3.1 Introduction	49
3.2 Methodology	50
3.3 Distribution of advice providers	52
3.4 Distribution of EHRC-funded casework organisations 2008/09	54
3.5 Distribution of advice centres and funded centres providing discrimination advice services	56
3.6 Distribution of Law Centres, CABx and LSC in relation to benefit entitlement in Wales	58
3.7 Distribution of Law Centres, CABx and LSC for Wales in relation to County Court judgments 2005	60
3.8 Distribution of Law Centres, CABx and LSC for Wales in relation to distribution	

of ethnic minority grouping	61
4. Questionnaire survey (review of provision of legal advice and representation)	63
4.1 Introduction	63
4.2 Methodology	63
4.3 Range of services provided	66
4.4 Overall distribution of staff and volunteers	71
4.5 Activity data	75
4.6 Areas of discrimination covered	78
4.7 Delivery methods	79
4.8 Use of websites	80
4.9 Provision of facilities designed to enhance accessibility to the service	80
5 Aspirations, concerns and recommendations as to the way forward	85
5.1 Introduction	85
5.2 Comments and recommendations	86
Bibliography	116
List of participating organisations	124
Appendix 1: Review of legal advice and representation survey	
Appendix 2: England Focus Group Questions	
Appendix 3: Scotland Focus Group Questions	
Appendix 4: Wales Focus Group Questions	

EXECUTIVE SUMMARY AND RECOMMENDATIONS

1. This report, which was commissioned by the Equality and Human Rights Commission, reviews the provision of legal advice and representation in England, Scotland and Wales on the equality and human rights enactments. In so doing, it combines a range of disciplines and methodologies, so as to update and expand upon previous research in the field.
2. **Chapter 1** considers the findings of existing research relating to England, Wales and Scotland, which suggest that provision of advice is unevenly distributed, and that there are significant ‘advice deserts’ in each of the countries.
3. **Chapter 2** considers in detail the impact of devolution in Scotland and Wales on the law and practice relating to equality. It is shown that devolution has led to increasing divergences from England in both Scotland and Wales, with the effect that the needs of the three countries are becoming increasingly distinct, and must be recognised as such. In addition, the chapter considers the position relating to Community Legal Advice Centres and Community Legal Advice Networks in England and Wales, explaining the different pace of developments between the countries, and also explains important differences in the way that Legal Aid is funded in Scotland as compared to England and Wales.
4. **Chapter 3** provides information about the spatial provision of advice across the three countries. It does this by mapping the locations of legal ‘service providers’, including LSCs, CABx, CLACs, Law Centres, Independent Advice Centres engaged in discrimination case work, and EHRC funded centres in England, Scotland and Wales using a Geographical Information System. The data, set out in map format, includes the distribution of advice providers in England and Wales; the distribution of EHRC-funded casework organisations in England, Scotland and Wales; and the distribution of Law Centres, CABx and LSC in relation to various factors in Wales, including benefit claimants, County Court judgments and ethnic minority groupings.
5. **Chapter 4**, based on the results of a short questionnaire, provides a review of the provision of legal advice and

representation. The results provide an indicative overview of activity, staffing and volunteering, the range of discrimination strands and accessibility facilities.

6. **Chapter 5** reports on the consultative exercise and sets out a series of recommendations based on the previous chapters and the concerns and aspirations of the contributing stakeholders.

The key findings and recommendations are as follows:

- Whilst uncovering evidence of good practice and innovative work, the research confirms that significant gaps remain in the geography and geometry of advice provision in England, Scotland and Wales.
- The establishment of a database which accounts for all major providers of advice in discrimination matters across England, Scotland and Wales is a significant achievement. It is recommended that this precedent be acknowledged and underwritten by a protocol that recognises the contribution of all concerned and, given appropriate permissions, an agreement is reached to share the information across key agencies.
- There is serious and widespread concern about the future existence and sustainability of the third sector provision. It is recommended that the funding priority should be the maintenance of existing quality provision rather than the development of innovative and novel schemes.
- It is recommended that the financial impediments that characterise the funding of the third sector be recognised and that moves in the direction of sustainable funding be implemented, including commitments in principle to the delivery of three to five year contracts and service level agreements.
- It is recommended that the need to fund bridge funding in order to facilitate consortia and partnership building be recognised and that the EHRC agree to use its influence to assist the sector in securing third party funding for the necessary development work where possible.

- It is recommended that the EHRC's operational and funding policies, particularly in the light of the potential future development of 'centers of excellence', resist any temptation to prioritise on the basis of a hierarchy of discrimination and that equality of the strands be accepted as a fundamental principle.
- The benefit and dangers of aligning EHRC funding priorities were recognised and debated. It is recommended that the guiding principle should be to strive for stability and sustainability whilst protecting and promoting diversity of provision.
- It is recommended that the EHRC should endeavour to persuade the relevant authorities of the need to establish generic discrimination casework as a separate civil legal category.
- Despite some encouraging signs of good practice and important development work, there remains much to be done in order to establish and grow an effective referral network.
- There is significant work to be done in relation to developing and promoting an accredited qualification in discrimination advice work across England, Scotland and Wales. Some progress has taken place but much more needs to be done.
- To date, there is little evidence of human rights based activity across the sector. In part, the lack of activity is to be understood in terms of institutional and procedural alternatives and impediments, but there may also be a need for additional sector training at the highest level. Encouragingly, there is evidence of some successful training and dissemination of information at a generalist level but the benefits may be short-term unless reinforced by further training. It is recommended that additional sector training should be developed.
- Advice sector activity in relation to protecting against discrimination in relation to the supply of goods and

services was also low. A significant increase in activity is anticipated when protection is extended to older people. However, it appears from individual case examples made available to this research that serious cases of such discrimination persist in the context of disability.

- There is a lack of referral procedures, support, and mutually beneficial funding service alignment even within particular strands. There is significant scope for cross-charity sponsorship of resources and specialist legal services, particularly in the context of disability.
- Although there is evidence that charitable trusts, like other organisations, are being affected by the economic downturn, it may be that some funding can be pulled down, particularly if needed for sustainable asset accumulation. It is recommended that the possibility of such funding should be explored.
- Sustained future Big Lottery funding is unlikely, and the future of some services are under threat. It is recommended that the position in this respect be kept under review.
- The eligibility rules for EU funding are varied and reflect regional and national differences. The current rules are complex and do not readily translate into funding possibilities for the sector. However, successful applications bring down serious money. It is recommended that consideration be given to identifying vanguard providers and lead applicants in order to help extend the funding more widely.
- It is recommended that in the light of established case law and innovative projects such as *'Better Advice, Better Health'*, the EHRC and stakeholder providers should try and ensure that health funders shoulder some of their responsibilities for advice services which clearly have a significant impact on citizen well-being.
- There was widespread alarm concerning the potential withdrawal of EHRC funding for awareness and

information programmes. Several witnesses emphasised the value of such programmes in the context of making and developing contact with 'hard-to-reach' groups and individuals.

- There was common recognition of good practice examples across the sector and there is a need to promote such developments in areas where services are underdeveloped. It is recommended that some models, such as Newport and Northumbria, could be usefully replicated.
- It is recommended that the sector would benefit from additional technological resources. For instance, the advice sector lacks access to legal databases and some services, such as instant messaging could add significantly to the potency of the service provider.
- There was encouraging recognition of the success of the EHRC's Helpline but some felt that more investment was needed in order to ensure that the service was capable of investing sufficient time in making on-going referrals. It is recommended that consideration be given to making further investment in this respect.
- It is recommended that the EHRC should give due consideration to the different national structures in Scotland and Wales. In the Scottish context it appears that perhaps coordination at a national level is loose and could be reinforced by better structural arrangements. In Wales there is some concern about the lack of alignment between WAG and EHRC requirements. It is also recommended that given the impact of devolution, consideration should be given to the possibility of earmarked funding.
- It is recommended that the EHRC should ensure that appropriate adaptations to services are made in order to properly provide for the needs of all potential users. The need is particularly clear in relation to the deaf community.

- The evidence relating to the quality of trade union support and representation is conflicting. It is recommended that the EHRC should further engage with the trade union movement to facilitate positive progress.
- It is recommended that there should be further investigation of the contribution of the private legal sector. From the evidence received, present delivery seems fractured and insufficient. The imminent publication of the Bach Report would seem to present an opportune moment for such urgently needed work to take place.

CHAPTER 1 – BACKGROUND AND UPDATE ON THE NATURE OF PROVISION

1.1 Introduction

This update and review has been built on evidence and recommendations contained in earlier mapping and agenda setting publications,¹ and has also take account of constitutional, institutional, statutory and policy developments. The early reviews and mapping exercises referred to identified ‘advice deserts’ in both Scotland and Wales, and similar concerns have arisen in relation to advice provision in England.² Indeed, the need for better coordination of services and wider provision has been acknowledged across a range of government Departments, and the Ministry of Justice has recently announced its commission of a detailed study into the funding and provision of local legal advice.³ The study entitled, ‘Legal Advice at Local Level’ will examine:

- The impact of the recession and the demand for civil legal advice.

¹ Williams C , Borland, J, Griffiths, A, Morris, E, and Roberts G , (2003) *Snakes and Ladders: Advice and Support for Employment Discrimination in Wales*,(2003),(Full Report available from Commission of Racial Equality, The Disability Rights Commission, The Equal Opportunities Commission or Legal Services Commission Wales www.cre.gov.uk ; Williams C, (2006) *Advice and Information Support for Discrimination Cases in Wales*, Report commissioned by the CEHR and prepared with the support of the Transition Team; Mapping Advice & Information Equality and Human Rights Scotland OSD, Edinburgh, Report commissioned by the CEHR. No similar Reports were commissioned in England.

² See for instance Sandbach, J (2004) *Geography of Advice*, Citizens Advice 2004, London. The Report provided details of a survey of CAB experience of the CLS and the majority view was that the CLS had not improved the delivery of legal advice, or made a positive impact on the local landscape of advice provision. The negative response was mostly due to the withdrawal of private solicitors from publicly funded legal services. Indeed, thirty-nine per cent of bureaux said that they thought they were in an advice desert (paras 2.12- 2.14- at pg 11) See also Hynes, S (2008) *Availability of Advice Survey: six months on*, Legal Action, September pp 8-9. Though not confined to discrimination cases, the short article provides an interim report of on- going research between LAG and the Access to justice Group (AJA) on individuals’ experiences of seeking legal advice- only half of those who sought advice had succeeded in getting it. Fifty-five percent tried three organisations or more. People with disabilities were having particular difficulties in accessing advice services. The availability of advice survey is available at <http://www.lag.org.uk/advice-survey>

³ Ministry of Justice, 4 December 2008, Press Release. The Report will be available in 2009. The Press Release also highlighted that the value of legal aid contracts that have been awarded to the not-for-profit sector by the Legal Services Commission has increased from £48 million in 2002/3 to £ 80 million today. Moreover, the Ministerial claim was that such arrangements had enabled the government to provide legal aid to an increasing number of people. It was also claimed that 250,000 of the estimated 800,000 acts of advice giving were delivered by not-for-profit agencies.

- The impact of civil legal advice fixed fees on local providers – financially and in terms of the type of work they are taking on.
- The initial experience of Community Legal Advice Centres, including the impact on other providers in the area.
- Trends in funding other than the Community Legal Service, including local authority funding, national lottery funding, charities, central government departments, and others.

The steering group is due to report to Ministers in Spring 2009, and will make recommendations in due course.

The evidence to date, however, suggests that it is not easy to access appropriate advice in discrimination cases particularly when the issues involved are complex and require expert advice. For instance, CAB's recent internal Equality and Diversity review reported that no less than seventy per cent of the bureaux had difficulties in referring clients on when confronted with discrimination cases that they could not resolve.⁴

Anti-discrimination law in Britain has emerged from labour law and pre-dates human rights law,⁵ and leading academic writers warn of the dangers of limiting the approach to discrimination as an employment focussed conception of discrimination.⁶ As they suggest, highly significant human rights issues also arise in the context of criminal law, police practice, judicial review, family law, and property law.⁷ The Equality Act 2006 (EA 2006) strengthens and adds to the power to provide advice and assistance. The Equality and Human Rights Commission (EHRC) under s. 3 is placed under a 'general duty' to use its powers and functions towards the development of a society where equality and rights principles have become rooted. In particular it charges the EHRC with the responsibility of working towards ensuring that:

⁴ See CAB, BIS 2007/8 – Equality and Diversity (Table 31).

⁵ See Fredman, S (2002) *The Future if Equality in Britain* Equal Opportunities Working Paper No. 5 (Manchester; EOC, 2002)

⁶ See Bamforth, N, Malik, and M and O' Cinneide, C (2008) *Discrimination Law: Theory and Context: Text and Materials*, London, Thomson, Sweet & Maxwell.

⁷ *Ibid.*, at page 8. See also Lester, A (2001) 'Equality and United Kingdom Law: Past, Present, and Future', *Public Law* 77. The article provides a practitioner's survey of the wide range of contexts in which discrimination issues can arise.

- (a) people's ability to achieve their potential is not limited by prejudice or discrimination;
- (b) there is respect for the protection of each individual's human rights;
 - a. there is respect for the dignity and worth of each individual;
- (c) each individual has an equal opportunity to participate in society; and
- (d) there is mutual respect between groups based on an understanding and valuing of diversity and on shared respect for equality and human rights.

A similar set of duties and functions guide how the Commission is to use its powers in relation to equality and anti-discrimination duties under s. 8 and its' human rights duties under s. 9. As others have suggested, the width of these statutory provisions provide the Commission with an 'expansive field of action to intervene across a wide range of issues and intersectional forms of discrimination'.⁸ Crucially, in the context of the bid, the power provided to the EHRC under s. 17 of EA 2006 to make grants extends to both the equality and anti-discrimination duties and also the human rights duties. Thus in the context of this review and update, the brief provides for an extensive definition of discrimination. This wider definition is also in concert with the EHRC's ambitious business plan.⁹

Recent evidence confirms that provision is unevenly distributed across England, Wales and Scotland.

1.2 England

Although there is no direct equivalent to the reports on discrimination advice provision in Scotland and Wales, two relevant research projects have recently been carried out in England, which provide valuable information for the purposes of this report, in terms of both the geography and the geometry of current advice provision. A third report (ACAS, 2007), also

⁸ O' Cinneide, C (2007) 'The Commission For Equality and Human Rights: A New Institution for New And Uncertain Times', *Industrial Law Journal* 36(2), pp 141-146.

⁹ EHRC Business Plan 2008/9. 'We are running an interim grants programme for 2008/9. We have identified three priority areas for funding: Encouraging good relations; promoting equality and human rights; and supporting the development of legal cases that help people get a fair deal. We are also providing a capacity development programme to help organisations improve the services they provide. The programme will focus particularly on the newer equality areas in our remit (age, religion or belief, and sexual orientation) as well as human rights.'

summarised below, highlights some of the potential inequalities that stem from the lack of representation in tribunal proceedings.

Firstly, AdviceUK undertook research in 2008 with a view to identifying existing and potential referral networks and partnerships in the provision of discrimination advice provision across England by AdviceUK member organisations.¹⁰ The information in the report was collated through an analysis of responses to surveys sent to AdviceUK member organisations in September/October 2008; analysis of AdviceUK's membership database; and information about which AdviceUK member organisations receive funding from the EHRC and have LSC employment contracts. The findings show that though there are divergences and examples of positive developments, there are significant gaps in advice provision at county and regional levels. To provide examples, provision gaps were identified in Essex, Buckinghamshire, Harrow and Teeside, and the North East, the South East and Yorkshire and Humber were identified as regions with very little discrimination advice provision, and little or no evidence of partnership working.

Secondly, two surveys were carried out by ADP Consultancy in 2008 as part of the Discrimination Workstream of the Working Together for Advice project, one examining advice provision by Citizens Advice Bureaux,¹¹ and the other advice provision by Law Centres.¹²

With regard to the CAB survey, there were 90 respondents, from across England. The key findings may be summarised as follows:

- In terms of the type of discrimination advice offered all of the Bureaux responding to the relevant survey question said they provided discrimination advice on age and disability, with most of those providing advice on gender discrimination and race discrimination. Slightly fewer Bureaux reported

¹⁰ AdviceUK, *Identifying existing and potential referral networks and partnerships in the provision of discrimination advice provision across England AdviceUK member organisations* (2008).

¹¹ ADP Consultancy, *Working Together for Advice, Discrimination Workstream: Citizens Advice Survey: A summary of findings* (2008).

¹² ADP Consultancy, *Working Together for Advice, Discrimination Workstream: Law Centres Federation Survey: A summary of findings* (2008).

providing advice on discrimination relating to religion or belief and sexual orientation.¹³

- Bureaux use a variety of methods to deliver discrimination advice. The most common methods across all responding Bureaux were by appointment at the main Bureaux, by drop-in and by telephone. In addition, some Bureaux also provided discrimination advice using outreach services, by email and home visits.¹⁴
- In terms of the level of discrimination advice provided, most Bureaux reported providing information and general advice. Fewer Bureaux provide general or specialist casework and only 29% provide representation.¹⁵
- The vast majority of Bureaux stated that they had no partnership arrangements in place, and most stated that they did not receive referrals from other organisations on discrimination issues.¹⁶
- In terms of funding discrimination advice services, most Bureaux receive funding from local authorities, with smaller numbers also receiving funding from the Legal Services Commission, Trusts, and the Equality and Human Rights Commission. It is noted, however, that 'the funding from local authorities is a combination of ongoing funding and funding that is due to end within the next year. All of the funding from the EHRC is due to end within the next year.'¹⁷
- Fewer than 40% of Bureaux are currently involved in carrying out discrimination awareness raising in their community.¹⁸
- Insofar as ways of improving discrimination advice is concerned, the findings were as follows: 'The most Bureaux (36) responding to the survey said that improved funding was the most important factor that would improve discrimination advice in their area. Thirteen Bureaux considered

¹³ ADP Consultancy, *Working Together for Advice, Discrimination Workstream: Citizens Advice Survey: A summary of findings* (2008), p. 2.

¹⁴ *Ibid.*, p. 5.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, p. 8.

¹⁷ *Ibid.*, p. 9.

¹⁸ *Ibid.*, p. 10.

better/more training as the main factor along with 29 Bureaux who thought this was the second most important factor. The improvement of referral networks was largely seen as the third most important factor although eight Bureaux considered it the most important.¹⁹

To turn to the Law Centre survey, there were 21 respondents, from across England, apart from South East England and the West Midlands. The key findings may be summarised as follows:

- In terms of the type of discrimination advice offered the majority of Law Centres said they provided discrimination advice on all aspects of discrimination including age, disability, gender, race, religion or belief and sexual orientation.²⁰
- Law Centres use a variety of methods to deliver discrimination advice. The most common methods across all responding Law Centres were by appointments and by telephone. Law Centres also provided discrimination advice through drop-in and outreach services, by home visits and by email.²¹
- In terms of the level of discrimination advice provided, most Law Centres reported providing specialist casework and representation. Significantly fewer Law Centres provided information, General advice and general casework.²²
- 60% of Law Centres stated that they did not have any partnership arrangements in place. Of those Law Centres that did have arrangements in place, a number were working in partnership with other Law Centres, their regional EHRC, other local advice services and through the use of outreach services.²³

¹⁹ Ibid.

²⁰ ADP Consultancy, *Working Together for Advice, Discrimination Workstream: Law Centres Federation Survey: A summary of findings* (2008), p. 2.

²¹ Ibid., p. 5.

²² Ibid.

²³ Ibid., p. 7.

- Law Centres all received referrals from other agencies, most commonly CABs, independent advice centres, BME Groups, Age Concern and disability organisations.²⁴
- In terms of funding discrimination advice services, Law Centres receive funding mainly from the Legal Services Commission and the Equality and Human Rights Commission. Some also receive funding from local authorities, trusts and London Councils. It is noted that ‘most of the funding from the Legal Services Commission is considered to be ongoing funding whereas the funding from the EHRC is due to end within the next year for all Law Centres currently receiving funding.’²⁵
- 80% of Law Centres said they were currently involved in carrying out discrimination awareness raising in their community.²⁶
- Insofar as ways of improving discrimination advice is concerned, the findings were as follows: ‘All but one of the Law Centres responding to the survey said that improved funding was the most important factor that would improve discrimination advice in their area. One Law Centre said that better or more training was the most important. Improving referral networks between organisations was considered the second most important issue for 12 Law Centres with better or more training 3rd most important for 12 Law Centres.’²⁷

Another relevant published Report (Acas, 2007²⁸) provides compelling evidence of problems emanating from lack of representation in Employment Tribunals. It cites a 2004 survey of claimants in Race discrimination tribunal cases (Seta RRA²⁹), which found that approximately two thirds of those who finally get to the Tribunal to be men. The claimants also tended to have a younger profile and to be highly educated, and to be working for

²⁴ Ibid.

²⁵ Ibid., p. 9.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Hudson, M., Barnes, H., Brooks and Taylor, R (2007) *Race Discrimination claims: Unrepresented claimants' and employers' views on Acas' conciliation in employment tribunal cases*, Policy Studies Institute, on behalf of Acas Research and Evaluation section.

²⁹ Peters, M., Seeds, K and Harding, C (2006) *Findings from the Survey of Claimants in Race Employment Tribunal Cases* (SETA RRA). Employment Relations Research Series No. 54.

large organisations. The majority of the claimants interviewed felt that they had no choice about representation – they wanted representation but simply could not afford to pay and some were disturbed and wrong-footed by the late withdrawal of representation:

*'I was given my solicitor's details from the Race Equality and he initially started the ball rolling and did all the paperwork for me and had contacts from the company I was working with's solicitor. I don't know what happened there and then he said he could not represent me because he was going to take a percentage and then he said to me that he didn't think it worth while him doing, so he pulled out, like about three days before my paperwork had to be in.'*³⁰

Moreover most felt significantly disadvantaged during the tribunal procedure with some describing the experience as “traumatic”. Others described the stress they had suffered whilst undertaking the procedure, the negative impact on their family members and several mentioned how the depression that they had suffered had been in part induced by the lack of representation. Indeed stress and depression were widely cited as issues arising from the process of bringing a case³¹

1.3 Scotland

This section sets out and updates the findings of research undertaken by Organisation and Social Development Consultants in 2006 on mapping advice and information on discrimination, equality, diversity and human rights in Scotland.³² The research was commissioned by the Equalities and Human Rights Commission. In considering the position of legal advice and discrimination in Scotland, as in England and Wales, the picture is a complex one. People may well seek advice about discrimination direct from a legal source or an organisation with a particular focus on discrimination such as the EHRC, or they may seek help indirectly via a host of different advice sources, whose major tasks and functions may or may not focus on legal perspectives, discrimination, equality and rights.

³⁰ Ibid., at p. 53.

³¹ Strikingly similar accounts were reported in *Snakes and Ladders*, at p. 96.

³² Organisation and Social Development Consultants, *Mapping Advice and Information Equality and Human Rights Scotland* (2006).

In Scotland there are concentrations of advice centres providing face to face contacts centred around the large urban centres such as Glasgow, Edinburgh, Dundee, Aberdeen, but there are also many small towns and rural areas where the provision of advice centres may be more limited, for instance, Dumfries and Galloway, the Borders, the Highlands and Islands.

Help and information for those seeking legal advice about discrimination may also be available through nation wide networks such as telephone lines or computer based web sites, such as the EHRC itself³³, with a general public helpline and specialist advice line for advisors from CAB's, the trade Unions and employment rights advisers

Some organisations have Scotland wide networks, or are intended to be Scotland wide, such as CAB Scotland,³⁴ the Scottish Association of Law Centres,³⁵ the Legal Services Agency,³⁶ the provision of legal help by private solicitors or through Scottish legal aid. In some CAB in Scotland, second tier legal advice has been available in some areas because of special project funding ,such as general legal and employment advice in the Highlands and Islands, disability legal advice in North and South Lanarkshire, while some referrals can be made to discrimination specialists. Legal advice about discrimination in employment can be obtained from national bodies such as ACAS,³⁷ and Trade Unions. For instance, in 2005, ACAS Scotland dealt with around 150 cases of sex and disability discrimination and just over 80 'race' discrimination cases.³⁸

There is also a range of advocacy services in Scotland. A Scottish Executive Report noted over 20 generic advocacy organisations and a similar number of other specialist advocacy groups, for

³³ It should be noted however, that there was some concern expressed about the limited referral role of the helpline during from one participant in the Glasgow focus group. The individual concerned was an active and experienced member of a Disability Access Panel: *"They give you a list of 150 solicitors but not one of them will take on legal aid cases when you phone them... Point is – why send 150 names? I phoned all 150. If they are going to give a list of legal aid lawyers they should have it correct to save our time."*

³⁴ See <http://www.cas.org.uk/>

³⁵ See <http://www.govanlc.com/salc>

³⁶ See <http://www.lsa.org.uk/>

³⁷ See <http://www.acas.org.uk/index.aspx?articleid=1949>

³⁸ Organisation and Social Development Consultants, *Mapping Advice and Information Equality and Human Rights Scotland* (2006).

example, providing services to people experiencing mental health problems and learning difficulties.³⁹ However, only small numbers of advocacy services linked to children⁴⁰ and young people, homeless people and those experiencing physical disability and there were significant gaps in advocacy provision for ‘mainstream’ user groups.⁴¹

Gender

Advice about gender discrimination is available from a range of women’s organisations, such as Scottish Women’s Aid (with two groups for black women who experienced violence in Glasgow and Edinburgh),⁴² Rape Crisis Scotland,⁴³ with centres in the large cities and in Kilmarnock, Lanarkshire, Argyll and Bute. Other organisations support survivors of rape and sexual abuse in the large conurbations and, for instance, in Fife, Central Region, Dundee, Dingwall, Dumfries and Stranraer. There is also a range of advice centres for Black and Minority Ethnic women, mainly in Glasgow and Edinburgh.⁴⁴ It is not clear to what extent these groups offer specific legal advice related to discrimination or to what extent they refer on to other agencies for this purpose.

BME Communities

³⁹ Scottish Executive Report: Advocacy Standards Agency, *A Map of Independent Advocacy across Scotland* (2004).

⁴⁰ A participant in the Glasgow focus group stressed the vulnerability of children in the context of Scottish advice provision: *“Our experience is that children get the short end of the stick. There is a lack of expertise in dealing with children and their rights but when they are trying to fix the problem they take an adult solution and cut it down to fit. An example is representation – the right has a child to a view. It is in the Children Scotland Act and legislation but when a child wishes to express a view they run into trouble when the view does not coincide with the parent. If they are denied LA that does not happen. Children do not go to court in Scotland for offences, they go before the Children’s Hearing and they go before Children’s Hearing not because they have done something naughty it can be a child who has been neglected or compulsory care. They go into a room like this with tribunal members. They may be there to admit offences – they have the right to have a solicitor to look at those charges. Children are admitting offences and going into these things on their own. There is nothing available. From that example they have to fit into the adult system. Children get cut down to size all the time.”*

⁴¹ Similar concern was expressed in the focus group about the vulnerability of immigrant communities: *“Some of the immigrant communities are not being reached. We get indirect contact with them through social workers, health visitors and some families coming from eastern European countries and because of the language barriers and because they have had dreadful treatment from the authorities in their own areas as they don’t know the help that is out there. Particular problems with children who are staying with people who don’t have parental rights. It is difficult to provide the support needed.”*

⁴² See <http://www.scottishwomensaid.org.uk/>

⁴³ See <http://www.rapecrisisscotland.org.uk/>

⁴⁴ See Organisation and Social Development Consultants, *Mapping Advice and Information Equality and Human Rights Scotland* (2006), at p.p. 40-44.

In relation to BME communities, the project One workplace-Equal Rights, a partnership with the STUC looks at racism and tackling inequality in the workplace. The Black and Ethnic Minority Infrastructure in Scotland (BEMIS) supports organisations or individuals who are discriminated against or excluded on the grounds of 'race', colour, language and faith, especially the support needs on black minority ethnic communities in rural areas.⁴⁵ BEMIS has a database of 500 organisations who provide various services, including representation. CEMVO also provides representation services.⁴⁶ PAIH (Positive Action in Housing) offer a casework service to minority ethnic communities and those facing homelessness, with one third of it's users reporting racist incidents or harassment.⁴⁷ There are also various advice centres offering help and advice related to racial discrimination in the Asian community, such as Scottish Asian Action and the Africa Centre in Glasgow.⁴⁸ Racial Equality Councils are present in Edinburgh, the West of Scotland, Central Scotland and Grampian, with one of their primary functions to provide individual advice, assistance and support on racial harassment and discrimination through, for example, complainant aid work and drop in sessions. The Edinburgh REC has been involved in Employment Tribunals and grievance procedures. There are also other local groups in Edinburgh, which provides advocacy, advice and casework support such as the Black Community Development Project in Greater Pilton and the multi Cultural Welfare Project in Wester Hailes. In Glasgow, GARA – the Glasgow Anti Racism Alliance works with black young people to challenge racism and institutional racism,⁴⁹ while Communities United has a multi cultural advice and information centre for ethnic minorities, with a range of organisations addressing race inequalities in Fife. In the North East, Aberdeen International Centre and Multi Ethnic Aberdeen provide information, advocacy, advice and support.

In 2005, four Scottish racial equality Councils (Central, Edinburgh and Lothian, Grampian and West of Scotland) formed the Scottish

⁴⁵ See <http://www.bemis.org.uk/>

⁴⁶ See <http://www.cemvo.org.uk/scotland/index.asp>

⁴⁷ See <http://www.paih.org/>

⁴⁸ See Organisation and Social Development Consultants, *Mapping Advice and Information Equality and Human Rights Scotland* (2006). at p.p. 50-55.

⁴⁹ See <http://www.gara.org.uk/>

Alliance of Racial Equality Councils.(SAREC).⁵⁰Unlike in some areas of England and Wales, however, the Scottish Councils have not as yet gone generic and evolved into Equality Councils. Some, but not all the Scottish Race Equality Councils do case work.⁵¹ Another concern is that not all of Scotland benefits from the service of a Council. However, the Scottish Parliament and Scottish Executive has placed equality and race equality in particular, at the top of the political agenda, and has established a Race Equality, Integration and Community Support Fund.⁵²

Refugees and Asylum Seekers

The Scottish Refugee Council offers advice and information through a web site and provide advice and information sessions in Glasgow and Edinburgh.⁵³ New arrivals are helped in all aspects of the asylum process, such as the availability of legal support and special advice on housing, education and employment. PIAH, as noted above, also provide advice about homelessness and housing to refugee communities-around 63 % of their clients were refugees and asylum seekers. The Edinburgh Refugee Centre provides a drop in service for refugees and asylum seekers.⁵⁴ In Glasgow, the Greater Govan Asylum Seekers Support Group has drop in centres and Maryhill CAB had a pilot project to recruit asylum seekers and refugees as advice workers and to support staff and volunteers about the rights of asylum seekers and refugees. The Glasgow Refugees Action Group was established by asylum seekers to represent their interests directly, but again it is difficult to ascertain the manner in which legal advice is provided or obtained.

⁵⁰ Coverage is incomplete and has actually shrunk: "we used to have six but now only have four. CRE introduced core standard and through that a lot of RECs lost their capacity to work. Traditional funding was CRE and local government and when CRE withdrew funding from REC the local government withdrew funding so there was no funding at all." It would appear that users would have difficulty in obtaining face-to-face advice and assistance from Race Equality Councils in many rural areas, such as South West Scotland, Argyll and Bute and large areas of North West Scotland, including the Western Isles, the Orkneys and Shetlands.

⁵¹ In the course of our Focus group we were informed that there is some disappointment and frustration about the lack of expansion and consolidation: "*We used to have good coverage in Scotland and we would hope that coverage would be expanded but it has been contracted so we have only my centre and Aberdeen and Grampian which do some case work. The other RECs are not doing any casework, which is a huge resource which is being wasted. We are concerned as all we needed was capacity to expand the experience we had to other equality strands. They are parachuting people in and it's like an oasis – good advice here and there – but nothing in between* (Central Scotland, REC).

⁵² See Scottish Executive Review of Race Equality Work in Scotland, November, 21, 2005.

⁵³ See <http://www.scottishrefugeecouncil.org.uk/>

⁵⁴ See <http://www.stgeorgeswest.com/centre/erc.htm>

Disability

There are many groups that provide advice and information to people experiencing a disability. Many offer specific information to people with specific disabilities. Many provide direct services, support and advice, such as the Dumfries and Galloway Coalition of Disabled People,⁵⁵ Disability West Lothian,⁵⁶ the Borders Disability Forum,⁵⁷ Disability Information Group Greater Glasgow,⁵⁸ Ethnic Enable⁵⁹ and Barnado's Apna Service.⁶⁰ On a more general level, Capability Scotland provide a national advice and information service for children and adults experiencing disability and an Equality Unit,⁶¹ while The Scottish Disability Equality Forum represents individuals with any type of disability.⁶² There are also other groups that aim to combat discrimination by providing information and pursuing rights representation, such as the Lothian and Borders Rights Office, while the Glasgow Centre for Inclusive Living,⁶³ a user controlled organisation, provide information on the Independent Living Scheme and Direct payments. Also there are many other Disability Groups and sources of advice and information for disabled people, for example, in the Glasgow area, Edinburgh, Aberdeen, Dundee, Fife, Central Region, Lochaber, Orkney, Shetlands and the Orkneys.⁶⁴ In relation to mental health, The Scottish Association for Mental Health supports people experiencing mental health problems⁶⁵, and Penumbra also offer person centred support based on rights, choice, dignity and participation.⁶⁶

Age

A wide range of organisations offer support services to older people. Many provide specific services to those who experience Alzheimer's Disease or dementia, but there seem to be relatively

⁵⁵ See <http://www.dgcdp.co.uk/>

⁵⁶ See <http://www.dwl.demon.co.uk/>

⁵⁷ See <http://www.bordersdisabilityforum.org.uk/>

⁵⁸ See <http://www.digg.org.uk/>

⁵⁹ See <http://www.ethnicenable.org.uk/>

⁶⁰ See <http://www.barnardos.org.uk/apna.htm>

⁶¹ See <http://www.capability-scotland.org.uk/>

⁶² See <http://www.sdef.org.uk/>

⁶³ See <http://www.gcil.org.uk/>

⁶⁴ See Organisation and Social Development Consultants, *Mapping Advice and Information Equality and Human Rights Scotland* (2006), at p.p. 91-104.

⁶⁵ See <http://www.samh.org.uk/>

⁶⁶ See <http://www.penumbra.org.uk/>

few that focus on older people's equality and human rights issues. Important, major organisations include Age Concern Scotland,⁶⁷ who offer advocacy services and support a wide network of local groups for older people, linked, for instance, to Age Concern itself and to Older People's Welfare groups. Help the Aged also works with about 130 forums for older people.⁶⁸

A wide range of organisations provide support for young people including Children First,⁶⁹ who have 35 projects, including Children's Rights services in Moray and East Lothian. They also run Parent line Scotland and Child line Scotland. A range of local authority and voluntary sector youth work provision is evident which can signpost to other advice and information, for instance, in Glasgow, the Govan Youth Information Project,⁷⁰ the North Ayrshire Council and Barnado's Children Rights and Advocacy Service, while the Fife Children's Rights service is an example of an organisation providing support for looked after children.⁷¹

There is also a specialist legal advice provider, the Scottish Child Care Law Centre.⁷² The Centre is an independent charity, which provides services throughout Scotland. However, with only two solicitors, it is unable to undertake representation and limits its role to providing support and guidance to those solicitors to whom it refers work on.

LGBT

Many of the lesbian, gay, bisexual and transsexual (LGBT) organisations focus upon the health of gay men or HIV/AIDS. In Scotland there are a number of telephone lines and switchboards offering advice, for example, in Glasgow and Edinburgh. Also many social and support groups offer advice opportunities, but LGBT people living in rural communities seem to experience

⁶⁷ See <http://www.ageconcernscotland.org.uk/>

⁶⁸ Note that Age Concern Scotland, like Age Concern England and Age Concern Cymru, is amalgamating with Help the Aged. The objective is to streamline and strengthen organisational capacity to provide support for older people. The organisation's website notes that the new charity will be developing a new name and brand. For the time being it will be known as Age Concern and Help the Aged in Scotland. It is claimed that the new charity will reach over 5 million people across the UK through its information and advice services, and its trading activities will reach 17 million people.

⁶⁹ See <http://www.children1st.org.uk/>

⁷⁰ See <http://www.gyip.org.uk/>

⁷¹ See <http://www.cvsfife.org/directory/org0139.htm>

⁷² See <http://www.sclc.org.uk/>

isolation. National organisations include the Equality Network,⁷³ which has links with 800 organisations and groups, but casework and advice is not provided, although a web site is available for this purpose. Stonewall Scotland campaigns and employs an Employment Equality Project Officer in partnership with the Interfaith Council.⁷⁴ LGBT Youth Scotland has a web site and a telephone help line.⁷⁵ The Beyond Barriers Mapping Exercise (2005) suggested there were around 1200 LGBT organisations in Scotland, with a third Scotland wide which were part of larger parent organisations such as LGBT via Unions, a third in Glasgow and Edinburgh and the remaining third in other parts of the country. These services were concentrated in cities and large towns, with few in rural areas.

In Glasgow, the Terence Higgins Trust offers support and advocacy services about HIV/AIDS; there is also a welfare rights team. Crosslynx has a weekly helpline for transvestite and transsexual people, with a monthly support group in Edinburgh and in the Lothians, Waverley Care offer information and support with a LGBT Centre,⁷⁶ while the LGBT Centre in Glasgow offers support and advocacy services and a monthly surgery.⁷⁷ There is also a LGBT helpline in Inverness while Reach Out Highland has a postal and e mail address for HIV information and support. Diversity in Dundee offers telephone and face to face support, while groups in Grampian, such as the North East LGBT Forum offer support services.⁷⁸

⁷³ See <http://www.equality-network.org/>

⁷⁴ See <http://www.stonewallscotland.org.uk/>

⁷⁵ See <http://www.lgbtyouth.org.uk/>

⁷⁶ See <http://www.waverleycare.org/>

⁷⁷ See <http://www.glgbt.org.uk/>

⁷⁸ We received written testimony from the Director of Stonewall Scotland to the effect that there remains considerable gaps in advice provision across the LGBT sector: *'My view is that the major gap in provision lies around dedicated LGBT advocacy and advice. Whilst mainstream advocacy advice and information providers (CAB for example) must work hard to ensure their services are LGBT inclusive and marketed to the LGBT community there continues to be a demand for LGBT specific support. This reflects the fact that many LGBT people who face difficulties (for example harassment from neighbours) feel unable to contact mainstream providers. Their fear is a lack of understanding or knowledge on the subject or worse, a negative or unhelpful response. At present the main LGBT organisations in Scotland attempt to informally provide advice and expertise to individuals but are not trained or funded to do so. At best this usually involves referring on to a combination of mainstream providers, the EHRC helpline or even one gay friendly lawyer. Capacity in this area should be addressed though which of the main LGBT organisations would be best placed to develop funding or have the skill set to develop such a service is unclear at this stage.'*

Gypsy/Traveller Communities

The gypsy/traveller community can obtain support and advice on rights from a small number of projects. The Scottish Gypsy Travellers Association, based in Edinburgh, promotes equal opportunities. In Glasgow, the Traveller and Gypsy Community Development Project provides individual support and group work, with a Travellers Education and Information Project in Aberdeen. Save the Children are also active in work with Scottish Gypsy Traveller families using community development approaches and providing casework support on discrimination and rights cases. The Scottish Child Law Centre, in partnership with the CAB, has also received temporary funding to provide specialist advice services in Perth and Falkirk.⁷⁹

Religion/Faith

Finally, advice provision on discrimination for religious/faith groups appears to be limited, with Glasgow home to significant percentages of the Roman Catholic, Sikh and Muslim communities in Scotland and the Nil by Mouth group,⁸⁰ which offers practical information about sectarianism. There is a Scottish Inter Faith Council,⁸¹ and local inter faith organisations in the major cities and in Dumfries, East Renfrewshire, Fife, Skye and Shetland, but it is difficult to ascertain to what extent legal information and advice giving comes with their remit.

Conclusion

Many organisations in Scotland specialising in discrimination, equality and human rights are national rather than local and campaign rather than offer individual advice and information about legal matters. Individual advice is available at a national level via telephone helplines and web sites. However, national level could

⁷⁹ "We have a project with Perth CAB and one in Falkirk (partnership). This came about as the commission funded us to do case work in Perth and Kinross. Because of the geography and distance and we are dealing with gypsies and travellers communities our case worker has experience at CAB but we have a phone line connection so if someone turns up when no one is there they can be connected to my office and get advice through the CAB worker and an appointment can be made to follow up if we need a caseworker. It comes to an end in April but we are negotiating with Perth and Kinross Council to continue with the service as our casework has increased because of this. "

⁸⁰ See <http://www.nilbymouth.org/>

⁸¹ See <http://home.btconnect.com/sifc/>

mean a link with U.K. based helplines that do take sufficient account of the Scottish legal system. At a local level a great deal of general advice, information, guidance and advocacy opportunities are available face to face to a wide range of user groups, but it is difficult to ascertain the quality of service offered in relation to legal matters. General advice and advice offered to specific user groups may link to legal issues around discrimination, but they may not reach a Tribunal or Court. It is hard to ascertain the effectiveness of local individual advice giving in relation to legal issues, equality and discrimination. There would appear to be issues around the availability of appropriately trained staff and the availability of legal knowledge and skills to the relevant staff, alongside the need for more effective monitoring of services provided both by web sites, telephone helplines and face to face advice in both urban and rural areas.

1.4 Wales

The material in Wales was essentially updated in Charlotte Williams' report in 2006,⁸² which expanded upon an earlier report, *Snakes and Ladders*,⁸³ which considered discrimination in employment cases. The report emphasises that there remain 'significant advice deserts' in Wales.⁸⁴ As Williams puts it:

*'There are a wide variety of service providers in Wales – statutory, private and not for profit – ranging from small shoestring volunteer based organisations to large professional legal practices. Historically no strategic attempt has been made to co-ordinate their services, or to provide secure funding to support advice giving activity. As a consequence, services have developed in a piecemeal fashion and coverage is uneven, with some areas having little or no provision.'*⁸⁵

⁸² Charlotte Williams, *Advice and Information Support for Discrimination Cases in Wales* (2006),

⁸³ Williams C, Borland J, Griffiths A, Roberts G, Bradshaw H and Morris E, *Snakes and Ladders: Advice and Support in Employment Discrimination Cases in Wales* (2002).

⁸⁴ Charlotte Williams, *Advice and Information Support for Discrimination Cases in Wales* (2006), p. 8.

⁸⁵ *Ibid.* Similar comments were made in seminars arranged by the Department for Communities and Local Government in 2006. See *Discrimination advice and the Commission for Equality and Human Rights: How can we make sure people have access to advice and justice?* (2006), at p. 13: 'In Wales, limited resources have led to effective networking and sharing of expertise: there is a lot of potential for learning from this experience. However, capacity to extend these partnerships is limited, and access to services is also low in some areas. Getting through to a CABx can be difficult, the current Commissions take very few

Williams details the bodies that provide information and advice in discrimination cases in Wales, and maps the provision available under the categories of information, generalist providers (including trade unions, Citizen's Advice and the Cardiff Law Centre⁸⁶) and specialist providers (including ACAS, private solicitors, the Pro-bono Network, the Equality Commissions, Race Equality Councils and the LSC in Wales) before detailing other provision (including Stonewall Cymru,⁸⁷ Age Concern Cymru,⁸⁸ Help the Aged in Wales,⁸⁹ and Dials⁹⁰). The report considered building capacity, and building co-ordination. The problems highlighted in Charlotte Williams' report received considerable attention, and there have been some innovative and welcome developments – developments that have been heralded by organisations outside Wales as exemplars of good practice and models to emulate.⁹¹ Regrettably, however, the mooted changes to CLS funding has destabilised the Advice sector with the result that progress on building capacity and co-ordination has been slow or put in reverse.⁹²

cases, and solicitors are generally more interested in either high-profile strategic cases (which tend to fall under the Commissions' remit) or straightforward cases (which CABx can deal with). There are few other specialist providers – such as the Cardiff Law Centre, but this is only open to people who live and work in Cardiff.'

⁸⁶ Cardiff Law Centre remains the only Law Centre in Wales.

⁸⁷ See <http://www.stonewallcymru.org.uk/>

⁸⁸ See <http://www.accymru.org.uk/>

⁸⁹ For further information about the work of Help the Aged in Wales, see http://www.helptheaged.org.uk/NR/rdonlyres/09E92589-F8A7-4C70-ADBA-F51F9B188B67/0/HtA_Wales_whatwedo_300908.pdf

⁹⁰ See <http://www.dialuk.info/>

⁹¹ Two of the projects cited are partly funded by the EHRC, namely Flintshire CAB (Equality Matters) project and Newport CAB. The Flintshire scheme has been commended for its discrimination work, particularly on how to incorporate social policy into service delivery. The Newport scheme has focussed on giving second-tier support advice on discrimination to non-specialists across Wales: *'We deliver service to other bureaux, we work with staff in other bureaux to identify discrimination issues so we help various community or interest organisations to know how to identify discrimination cases and know where to send them. It's a matter of having a strong referral network and making those referral systems effective and getting the advice to them. It helps to develop and grow some excellent expertise we have in various places and we have contacts etc. We are very good at that and everybody knows each other. We have found it extremely effective....'*

'We have also done some of that with Denbighshire bureau which has now got funding from the EHRC but previously they had some funding from Europe and we supervised their case worker even though it was in North Wales – we had periodic meetings to meet the case worker and review the file. To discuss cases when they came up it meant that person had support even though there was no one in that organisation to do it. They can call us at any time and can speak to a specialist and that person can then advise on a discrimination case – a kind of second tier support and we also offer that to organisations across South Wales.'

⁹² See Chapter Five, below.

CHAPTER 2 - CONSTITUTIONAL AND INSTITUTIONAL DEVELOPMENTS

2.1 INTRODUCTION

This report covers the provision of legal advice and representation on the equality and human rights enactments in England, Wales and Scotland. What immediately becomes apparent is that, by today, it is impossible in many respects to group the three countries together. There have long been considerable distinctions between the law of Scotland and the law of England and Wales. These distinctions have increased as a result of devolution, which brought about the establishment of the Scottish Parliament, which was established under the Scotland Act 1998. Traditionally, England and Wales have been much closer, hence the adage of 'for Wales, see England'. In many respects, this remains the case. Nonetheless, like in Scotland, the position has changed considerably as a result of devolution, which brought about the establishment of the National Assembly for Wales under the Government of Wales Act 1998. Devolution in Wales, it should be emphasised, is far more limited than devolution in Scotland. Despite this, the position is changing dramatically as a result of the radical reforms to the powers of the National Assembly for Wales under the Government of Wales Act 2006. Due to these factors, it is appropriate at this point to briefly explain the constitutional arrangements in both Wales and Scotland, and to highlight the implications of the emerging distinctions from an equality and human rights perspective.

2.2 DEVOLUTION IN WALES

Following the Government of Wales Act 1998 the first Welsh Assembly Government was elected in May 1999. The effect of this was that Wales was provided with a limited degree of self government. Unlike in Scotland, where a Parliament with primary law-making powers was established,⁹³ Wales was provided with an Assembly with the limited power to produce subordinate legislation in certain fields which had previously been the responsibility of government ministers. These fields included, amongst others, education and training; health and health services; local

⁹³ The Scottish Parliament was established by virtue of the Scotland Act 1998. For further discussion, see below.

government; social services; and subsequently social welfare and public administration.⁹⁴

From the beginning, it became increasingly clear that there were significant problems with the Government of Wales Act 1998, and in 2002 a Commission was established so as to consider the powers and electoral arrangements of the Assembly. The resulting report made a number of recommendations,⁹⁵ which eventually led to the passage of the Government of Wales Act 2006, which put a number of the report's recommendations into effect.

The most far-reaching change resulting from the Act concerned the Assembly's law-making powers. Following the Act, the Assembly now has the power to make primary legislation in the form of Measures,⁹⁶ which are similar in effect to Acts of Parliament.⁹⁷ The Assembly may make Measures within certain fields, which are set out in Schedule 5 to the 2006 Act. There are currently 15 fields,⁹⁸ including education and training; health and health services; local government; public administration; and social welfare.⁹⁹

The conferral of Measure-making powers on the Assembly in relation to the fields is extremely complicated. Under Part 3 of the 2006 Act, the Assembly has legislative competence only in relation to 'matters',¹⁰⁰ which are specifically defined policy areas within fields. With some limited exceptions, these matters were not set out when the Act was passed. Instead, legislative competence must be acquired by amending Schedule 5 in order to include matters within fields, which may then be the subject of Measures.¹⁰¹

This may be achieved using one of two mechanisms. Firstly, clauses may be inserted into Acts of Parliament conferring legislative competence on the Assembly in relation to particular topics. Secondly, Schedule 5 may be amended by means of what

⁹⁴ Government of Wales Act 1998, Sch 2.

⁹⁵ *Report of the Richard Commission on the Powers and Electoral Arrangements of the National Assembly for Wales* (2004).

⁹⁶ Government of Wales Act 2006, s 93.

⁹⁷ Government of Wales Act 2006, s 94 (1).

⁹⁸ It is possible for these to be amended.

⁹⁹ Government of Wales Act 2006, Sch 5, Part I.

¹⁰⁰ Government of Wales Act 2006, s 94 (4).

¹⁰¹ For an updated version of Schedule 5, which illustrates the system of fields and matters, see http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-guidance/bus-legislation-guidance-documents/legislation_fields/schedule-5.htm

are termed Legislative Competence Orders (LCOs).¹⁰² These are a type of Order in Council, and insert a new matter (or matters) into the relevant field, providing the Assembly with the power to make Measures within the policy areas defined by the matter. LCOs are made by the Queen in Council, having been approved by both the Assembly and Parliament.¹⁰³ At the time of writing, five LCOs have been approved, and five more are in progress.¹⁰⁴

This approach to legislative competence may best be described as amounting to a compromise in terms of devolution of powers, and doubts have already arisen as to its effectiveness due to tensions between Cardiff and Westminster, which have made the passage of LCOs far more difficult than originally anticipated.¹⁰⁵ The position may however change in the near future, as Part 4 of the 2006 Act provides the possibility for the Assembly to make Acts in relation to the fields outright, subject to certain exceptions.¹⁰⁶ In order for Part 4 to take effect, a referendum must be passed.¹⁰⁷ The current Welsh Assembly Government has committed itself to holding a referendum,¹⁰⁸ and an 'All-Wales Convention' has been established to host a debate on the matter.¹⁰⁹ If a referendum is passed, then the current position will change dramatically, providing the Assembly with a far greater level of law-making autonomy.

The Assembly's current Measure-making powers are nonetheless a significant development, as the ability to legislate independently of Westminster provides the Welsh Assembly Government with greater freedom to pursue its own distinct policy agenda in a manner it considers appropriate and effective.¹¹⁰ As is shown below, even prior to the 2006 Act, devolution led to some divergences between Wales and England relating to equality and

¹⁰² Government of Wales Act 2006, s 95.

¹⁰³ For a guide to the procedure in this respect see <http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-guidance/bus-legislation-guidance-lco.htm>

¹⁰⁴ See <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders.htm>

¹⁰⁵ In 2008, the Assembly's Presiding Officer, Lord Ellis-Thomas, accused the Parliamentary Welsh Affairs Select Committee of 'anti-devolution sentiment.'

<http://news.bbc.co.uk/1/hi/wales/7678556.stm>

¹⁰⁶ These exceptions are set out in Schedule 7 to the Government of Wales Act 2006.

¹⁰⁷ Government of Wales Act 2006, s 103.

¹⁰⁸ See, Labour and Plaid Cymru: *One Wales: A progressive agenda for the government of Wales* (2007), at p 6.

¹⁰⁹ See: <http://allwalesconvention.org/>

¹¹⁰ For discussion of divergences between England and Wales in the family and child law context, see O. Rees, 'Devolution and the development of family law in Wales' [2008] *Child and Family Law Quarterly* 45.

discrimination. Such divergences are likely to increase in the future.

2.3 DEVOLUTION IN SCOTLAND

Similarly to Wales, a referendum on devolution in Scotland was held in 1997, with 74.3 per cent of voters voting in favour of the establishment of a Scottish Parliament. The Parliament was subsequently established under s 1 of the Scotland Act 1998, and is located in Edinburgh.

The position insofar as law making is concerned is far more straightforward than the position in Wales. To put it succinctly, the Scottish Parliament has the power to make Acts of Parliament within its sphere of competence as set out in the Scotland Act 1998. In contrast with the National Assembly for Wales, which must currently acquire legislative competence in relation to defined matters set out under Schedule 5 of the Government of Wales Act 2006, the Scottish Parliament has the power to legislate in relation to any matters which are not explicitly reserved to the United Kingdom Parliament under Schedule 5 of the Scotland Act 1998. There are five general categories of matters reserved to the United Kingdom Parliament in this respect: the constitution; the registration of political parties; foreign affairs; Civil Service; defence and treason. Part II to Schedule 5 lists specific reservations under 11 heads, including financial and economic matters; home affairs; trade and industry; energy; transport; social security; regulation of the professions; employment; health and medicines; media and culture; and miscellaneous. This final head, it should be emphasised, includes equal opportunities, citing the Equal Pay Act 1970; the Sex Discrimination Act 1975; the Race Relations Act 1976; and the Disability Discrimination Act 1995.¹¹¹

In the same way as with Wales, the United Kingdom Parliament retains a power to legislate for Scotland.¹¹² This power has been used frequently, but in relation to devolved matters the United Kingdom Parliament will only legislate with the consent of the

¹¹¹ Scotland Act 1998, Schedule 5, Part II, s L. 2.

¹¹² Scotland Act 1998, s 28 (7).

Scottish Parliament, in line with the principles of the Sewel Convention.¹¹³

2.4 EQUALITY FRAMEWORK

As has already been suggested by reference to the position in Scotland, devolution has not resulted in significant divergences in the law on equality emerging between England, Wales and Scotland. Notwithstanding the desirability or otherwise of providing Wales and Scotland with further powers to legislate in this respect, it should be emphasised that the current framework is complicated. As Bamforth, Malik and O’Cinneide put it,

‘The sheer number of measures is enough on its own to make contemporary domestic law appear extremely complicated, but further complexity stems from the fact that such measures operate against the backdrop of, and must be read in the light of, the various EU non-discrimination guarantees that have direct effect in domestic law, as well as of the Human Rights Act’s protection of Art. 14 and other Convention rights which are relevant in the discrimination context.’¹¹⁴

Insofar as domestic legislation is concerned, it should be noted that the main provisions apply in England, Scotland and Wales. Nonetheless, devolution has led to some more general divergences between the three countries, particularly in terms of policy, and it is worth providing an overview of some key developments in this respect in Scotland and Wales.¹¹⁵

2.5 Equal Opportunities Requirements in Scotland

As is stated above, the power to legislate on equal opportunities is reserved to the United Kingdom Parliament. However, the Scotland Act 1998 gives the Scottish Parliament the power to

¹¹³ For further discussion see, A. Batey and A. Page, ‘Scotland’s other Parliament: Westminster legislation about devolved matters in Scotland since devolution [2002] *Public Law* 501. It should be noted that the principles of the Sewel Convention also apply to Wales.

¹¹⁴ N. Bamforth, M. Malik and C. O’Cinneide, *Discrimination Law: Theory and Context* (Sweet & Maxwell, 2008) at p. 124.

¹¹⁵ For information on measures taken by the Westminster Government in relation to England and the United Kingdom, see the website of the recently established Government Equalities Office, at <http://www.equalities.gov.uk/Default.aspx>. The first Annual Report of the Office is available at <http://www.equalities.gov.uk/PDF/GEO%20Annual%20Report%202007%20-%202008.pdf>

encourage equal opportunities, particularly the observing of the equal opportunity requirements. It also has the power to impose duties on Scottish public authorities and cross border public bodies operating in Scotland.¹¹⁶

Equal opportunities are defined under the Scotland Act 1998 as: 'the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.'¹¹⁷

An Equality Strategy was developed in 2000,¹¹⁸ and a progress report was published in 2003,¹¹⁹ outlining the progress made in implementing the Strategy. The Scottish Government has established a Mainstreaming Equality Project which is based within the Equality Unit. The aim of the project team is to ensure that all policies, legislation and services are designed and delivered in a way that is sensitive to the diverse needs and experiences of all people living in Scotland. An Equality Impact Assessment Tool has been developed in pursuance of this aim.¹²⁰

The work of the Scottish Government across the equality strands may be summarised as follows:¹²¹

Age Equality

An Older People's Unit has been established to promote age equality for older people. More generally, the Scottish Government's website contains information on matters relating to older people.¹²²

Disability Equality

The Disability Discrimination Act 2005 provides that specific duties applying to certain public bodies can be prescribed in regulations.

¹¹⁶ Scotland Act 1998, Schedule 5, Part II, s L. 2.

¹¹⁷ Ibid.

¹¹⁸ Scottish Government, *Equality Strategy: Working together for Equality* (2000).

¹¹⁹ <http://www.scotland.gov.uk/Publications/2003/02/mper/0>

¹²⁰ <http://www.scotland.gov.uk/Resource/Doc/1032/0054791.pdf>

¹²¹ The headings have been taken from the equality pages of the Scottish Government website, with the effect that 'faith' and 'race' have been placed together. See

<http://www.scotland.gov.uk/Topics/People/Equality>

¹²² See <http://www.scotland.gov.uk/Topics/People/OlderPeople/>

These specific duties are laid down by Scottish Ministers in the Disability Discrimination (Public Authorities) (Statutory Duties) (Scotland) Regulations 2005. They set out specific steps which listed bodies must take to fulfill the general duty, including a duty to: publish a Disability Equality Scheme demonstrating how it intends to fulfill its general and specific duties; involve disabled people in the development of the scheme; carry out impact assessments; make arrangements for gathering relevant information; develop an 'action plan'; take the steps set out in its action plan, within three years; and publish a report. Two annual reports have been prepared to date,¹²³ as well as two Disability Equality Schemes.¹²⁴ In addition, individual reports have been published setting out progress reviews in the following fields: arts, culture and built heritage; health and wellbeing; finance and sustainable growth; education and lifelong learning; justice; rural affairs and the environment; and a report setting out proposals for coordination of action by Scottish public authorities to further progress equality of opportunity between disabled persons and other persons.¹²⁵

Gender Equality

The Scottish Government have produced a Gender Equality Scheme for 2008-2011.¹²⁶ The Scottish Government's Equality Unit provides funding to a variety of organisations and projects to promote equality of opportunity for women and men in Scotland. Details of the use of this funding are available on the Scottish Government website.¹²⁷

Lesbian, Gay, Bisexual and Transgender Equality

The Scottish Government recently announced a funding package for the LGBT sector of £1.7 million over 3 years 2008-11. This money will be used to 'commission a series of ten projects through the three national organisations which is designed to help improve the lives of LGBT communities in Scotland, increase access to

¹²³ The 2008 is available at <http://www.scotland.gov.uk/Publications/2008/12/15103651/0>

¹²⁴ The most recent is the Disability Equality Scheme 2008-2011, available at <http://www.scotland.gov.uk/Publications/2008/05/22092418/0>

¹²⁵ All the reports are available at <http://www.scotland.gov.uk/Topics/People/Equality/disability/disabilityministersduty>

¹²⁶ <http://www.scotland.gov.uk/Publications/2008/06/12114733/0>

¹²⁷ See <http://www.scotland.gov.uk/Topics/People/Equality/18500/13411>

services, promote equality and celebrate the lives and achievements of LGBT Scots'.¹²⁸

Faith and Race Equality

On 8 December 2008 the Minister for Communities and Sport published a Race Equality Statement which outlines the Government's priorities for race equality over 2008-2011.¹²⁹ The Statement is part of a 'package of measures' which provide a focus for the Scottish Government's work on race equality, including the Race, Religion & Refugee Integration Funding Stream 2008-11 which has allocated £5.6m to projects around Scotland Link and the Government's Race Equality Scheme 2008, which was published on 28 November 2008.¹³⁰

A Scottish Working Group on Religion and Belief Relations has also been established 'in order to develop and deliver a Scottish strategic framework which will aim to provide the foundation for encouraging constructive dialogue and promoting positive activity among and between religion and belief communities in Scotland'.¹³¹

2.6 ADHERENCE TO THE PRINCIPLE OF EQUALITY OF OPPORTUNITY IN WALES.

Following the establishment of the National Assembly for Wales under the Government of Wales Act 1998, there has been a statutory duty to adhere to the principle of equality of opportunity in the exercise of devolved functions. This duty applied to the National Assembly for Wales under s 120 of the 1998 Act, and a similar duty is set out under s 77 of the Government of Wales Act 2006, which stipulates that 'The Welsh Ministers must make appropriate arrangements with a view to securing that their functions are exercised with due regard to the principle that there should be equality of opportunity for all people.'¹³² There is an obligation on the Welsh Ministers to publish an annual report

¹²⁸ <http://www.scotland.gov.uk/Topics/People/Equality/SexualOrientation>

¹²⁹ <http://www.scotland.gov.uk/Topics/People/Equality/18934/RaceEqualityStatement>

¹³⁰ See <http://www.scotland.gov.uk/Publications/2008/11/28092741/0>

¹³¹ <http://www.scotland.gov.uk/Topics/People/Equality/18934/workinggroupreligion>

¹³² Government of Wales Act 2006, s 77 (1). It should be noted that the reference to 'The Welsh Ministers' as opposed to the National Assembly for Wales stems from the separation of powers between the Welsh Assembly Government and the National Assembly for Wales under the Government of Wales Act 2006.

setting out the arrangements made in pursuance of this duty, and an assessment of these arrangements in promoting equality of opportunity.¹³³

A report commissioned by the CRE, EOC, DRC and Institute of Welsh Affairs in 2002 and written by Paul Chaney and Ralph Fevre pointed out that the statutory duty provided Welsh citizens with a 'positive right', and concluded that, only two years after the establishment of the National Assembly for Wales, the provision had made a significant impact in practice, and that there should be similar duties across the UK.¹³⁴ By today, the Welsh Assembly Government claims that the statutory duty has led to the development of a 'distinctive equality agenda' in Wales,¹³⁵ and as part of its aim of mainstreaming equality issues has established race,¹³⁶ disability,¹³⁷ and gender equality schemes,¹³⁸ and has recently undertaken consultation on the development of a Single Equality Scheme, which will include the former equality schemes for gender, race and disability, alongside the additional strands of belief/non belief; age, sexual orientation and transgender issues.¹³⁹

The following three examples included in the Welsh Assembly Government's most recent annual report published under s 77 of the Government of Wales Act 2006 may be considered indicative of arrangements made in pursuance of the duty to ensure equality of opportunity for all people:

1. Inclusive Policy Making

'The purpose of Inclusive Policy Making is to mainstream consideration of the equality duties throughout all of our policies. This is done by helping officials in Welsh Assembly Government departments to consider how a new or revised policy could affect people negatively in different ways on grounds of race, gender, disability, age, sexual orientation or religious belief (or other belief or non-belief). These effects,

¹³³ Government of Wales Act 2006, s 77 (2).

¹³⁴ Paul Chaney and Ralph Fevre, *An Absolute Duty: Equal Opportunities and the National Assembly for Wales*, (2002) Institute of Welsh Affairs, Disability Rights Commission, Commission for Racial Equality and Equal Opportunities Commission.

¹³⁵ <http://wales.gov.uk/topics/equality/?lang=en>

¹³⁶ See <http://wales.gov.uk/caec/publications/equality/rescheme/item?lang=en>

¹³⁷ See <http://wales.gov.uk/topics/equality/publications/descheme/?lang=en>

¹³⁸ See <http://wales.gov.uk/topics/equality/publications/gescheme/?lang=en>

¹³⁹ Details of the consultation, which closed on 23 January 2009, are available at:

<http://wales.gov.uk/consultations/closedconsultations/equality/singleequalityscheme/?lang=en>

*whether intentional or unintentional, are referred to as “differential impacts”. If differential impacts are revealed, measures can be taken to remove or reduce them and maximise opportunities to promote equality’.*¹⁴⁰

2. Promoting Equality Fund

‘The Promoting Equality Fund was created in 2000 to develop capacity and structures for under-represented groups to conduct dialogue with the Assembly Government.

‘In 2007, an internal Welsh Assembly Government review of the Promoting Equality Fund was undertaken in light of the changing context of equality and diversity since its inception. The review has contributed to proposals for a consultation on the future use of the fund.

*‘The consultation will ensure that those who actually receive the funding such as the Third Sector will have a say in how the fund is used in the future to provide effective support for organisations to promote equality and human rights. It is an opportunity to ensure that notable practice on funding the Third Sector is implemented.’*¹⁴¹

[The] consultation on the fund will make a number of proposals for the future use of the fund. It will look at levels of funding, eligibility, applications, assessment, monitoring and evaluation. It is proposed that the fund will in the future be used to support activity that is:

- Focused on human rights, and / or one or more of the equality strands addressed, those being age, disability, gender, race, sexual orientation, religion / belief and non-belief and transgender; and*

- Cross cutting covering two or more policy areas that are devolved to the Welsh Assembly Government. For example, activities that take place in schools only, would be expected to be funded by the Welsh Assembly Government’s Department of Children,*

¹⁴⁰ Welsh Assembly Government, *Working for Equality in Wales: The Ninth Annual Report on Equality 2008-2009* (2009), p. 8.

¹⁴¹ *Ibid.*, p. 9.

Education, Lifelong Learning and Skills.

'We will seek comments and suggestions about how the grant scheme can be improved and publicised effectively, and make the necessary changes in light of these views.'

*'The new grant scheme will be in place from April 2009 and transitional arrangements have been introduced for core funded bodies to avoid destabilising organisations in the Third Sector.'*¹⁴²

3. Croeso

'The Welsh Assembly Government has continued to fund the Croeso Campaign to celebrate the diverse people and cultures of Wales and promote the understanding of language, faith, community and inclusion.'

*'A project team based at the Equality and Human Rights Commission works with schools and other organisations: visiting venues, galleries and campus areas across Wales with the Paul Robeson exhibition; and a variety of activities, workshops and discussions around race and diversity are encouraged.'*¹⁴³

Whilst the Assembly prima facie has no power to legislate on equality matters, Williams claims that existing legislation passed by the Assembly 'has a significant impact on the prevailing legal equalities framework'.¹⁴⁴ In support of this point she cites the School Government (Terms of Reference) (Wales) Regulations 2000. This Wales-only law places legal duties on governing bodies and head teachers to exercise their respective functions with due regard to the need (a) to eliminate unlawful discrimination on grounds of race or sex; and (b) to promote equal opportunities and good relations – (i) between persons of different racial groups, and (ii) between males and females. More generally, the adoption by the Welsh Assembly Government of the United Nations Convention on the Rights of the Child as the basis to all its work

¹⁴² Ibid., p. 18.

¹⁴³ Ibid., p. 14. For further information on the Croeso Campaign see <http://wales.gov.uk/topics/equality/rightsequality/race/croesocampaign/?lang=en> , and http://www.croesoproject.org/croeso/index.php?lp_lang_pref=en

¹⁴⁴ Charlotte Williams, *Advice and Information Support for Discrimination Cases in Wales* (2006), p. 4.

relating to children and young people, and the United Nations Principles on Ageing as the basis to all its work relating to older people, may be cited as indicative of a more rights-based approach than that taken by the United Kingdom Parliament.

The National Assembly for Wales has a cross-party Equality of Opportunity Committee, which was formerly referred to as the Equal Opportunities Committee.¹⁴⁵ To provide recent examples of its work, in October 2008, the Committee set out the terms of reference for its Inquiry into Home Maintenance and Adaptations Services for Older People which will inquire into the effectiveness of the Welsh Assembly Government's arrangements for providing home maintenance and adaptations services for older people, and in November 2008 published a report on issues affecting migrant workers in Wales.¹⁴⁶

There are a number of other initiatives that have been undertaken by the Welsh Assembly Government on equality issues. To provide some examples, in relation to disability, the Welsh Assembly Government has produced guidance on accessible venues.¹⁴⁷ In relation to faith, a Faith Communities Forum has been established, in order to 'promote a dialogue between the National Assembly for Wales, Welsh Assembly Government and the major faith communities on any matters affecting the economic, social and cultural life of Wales'.¹⁴⁸ In relation to race, as well as funding the Croeso Campaign, the Welsh Assembly Government has issued Departmental Action Plans in order to implement its Race Equality Scheme.¹⁴⁹ In relation to age, in addition to establishing the world's first Commissioner for Older People, discussed below, the Welsh Assembly Government has established a 10 year action plan to improve the quality of life of older people,¹⁵⁰ and similarly to the Scottish Government, has a section on issues relevant to older people on its website.¹⁵¹

¹⁴⁵ The Equality of Opportunity Committee was established under Standing Order 17 of the Standing Orders of the Third Assembly. For further information relating to the Committee, see <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eoc-home.htm>

¹⁴⁶ National Assembly for Wales Equality of Opportunity Committee, *Issues affecting migrant workers in Wales, their families and the communities in which they live and work* (2008). Available online at <http://www.assemblywales.org/cr-ld7303-e.pdf>

¹⁴⁷ See

<http://wales.gov.uk/topics/equality/rightsequality/disability/accessvenues/guidance/?lang=en>

¹⁴⁸ <http://wales.gov.uk/topics/equality/rightsequality/faith/faithforum/?lang=en>

¹⁴⁹ See <http://wales.gov.uk/topics/equality/rightsequality/race/actionplans/?lang=en>

¹⁵⁰ See <http://wales.gov.uk/topics/olderpeople/strategy/?lang=en>

¹⁵¹ See <http://wales.gov.uk/topics/olderpeople/?lang=en>

It should be emphasised that Wales is a bilingual country, and there are obligations in relation to the Welsh language under the Welsh Language Act 1993. The Act provides that in the conduct of public business and administration of justice in Wales, the English and Welsh languages should be treated on the basis of equality in the provision of public services in Wales. All public bodies providing services in Wales must implement Welsh language schemes which must be approved by the Welsh Language Board. Furthermore, the National Assembly for Wales is currently considering a proposed Legislative Competence Order relating to the Welsh language which will provide an opportunity to confirm 'official status' for both the Welsh and English languages, secure linguistic rights in the provision of services, and establish a Language Commissioner.¹⁵²

2.7 Commissioners for Children and Older People

Every country within the United Kingdom has established Children's Commissioners, and a Commissioner for Older People has recently been established in Wales. These offices are termed 'national human rights institutions', and share a common aim of promoting the rights and welfare of the groups that they represent. Despite being *prima facie* independent, they are established by statute, and their level of funding is determined by government.

The Children's Commissioner for Wales was the first institution of its kind to be established in the United Kingdom. It was established by virtue of the Care Standards Act 2000 as a result of *Lost in Care*,¹⁵³ and its functions were broadened under the Children's Commissioner for Wales Act 2001.¹⁵⁴ The Scottish Commissioner for Children and Young People was established by virtue of the Commissioner for Children and Young People Act (Scotland) 2003,¹⁵⁵ whilst the Children's Commissioner for England was subsequently established under the Children Act 2004.¹⁵⁶ The Older People's Commissioner for Wales was established under the

¹⁵² National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009.

For further information, see <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2009-no10.htm>

¹⁵³ *Lost in Care: Report of the Tribunal of Inquiry into the abuse of children in care in the former county council areas of Gwynedd and Clwyd since 1974*, (2000) HC 201.

¹⁵⁴ For further information see <http://www.childcomwales.org.uk/>

¹⁵⁵ For further information see <http://www.sccyp.org.uk/>

¹⁵⁶ For further information see <http://www.11MILLION.org.uk/>

Commissioner for Older People (Wales) Act 2006, and is the first institution of its type in the world.¹⁵⁷ Its establishment demonstrates the perceived value placed by the Welsh Assembly Government on the commissioner model.

Much has been written on the work of the Commissioners, and their impact in practice.¹⁵⁸ To provide a brief overview, each of the Commissioners share common functions in that they are expected to raise awareness and promote the rights of children, and in the case of the Commissioner for Older People, the elderly. They are empowered to carry out reviews of policy and legislation, and may carry out public inquiries where there have been perceived failings. The Commissioners, in line with the Paris Principles,¹⁵⁹ may exercise their own discretion in determining how to function, though the Children's Commissioner for England may be directed by the Secretary of State to carry out an inquiry.¹⁶⁰

It should be emphasised that, unlike their counterparts in England and Scotland, the Children's Commissioner for Wales and the Older People's Commissioner for Wales can provide 'advice and assistance' to individuals. The effect of this is that the Welsh Commissioners can take up individual cases, providing advice and representation to children and older people. Inevitably, particularly in the light of the limited resources available to the Commissioners,¹⁶¹ much of this involves first tier work, signposting individuals to appropriate organisations. In many instances, however, assistance provided by the Children's Commissioner for Wales has led to positive outcomes for individual children and young people. To put forward but some examples, the office have succeeded in getting excluded children back into schools, have

¹⁵⁷ For further information see <http://www.olderpeoplewales.com/>

¹⁵⁸ For a comprehensive discussion of the powers and functions of the Children's Commissioner for Wales, and the background to the establishment of the office see, G. Douglas and K. Hollingsworth, 'Creating a children's champion for Wales? The Care Standards Act 2000 (Part V) and the Children's Commissioner for Wales Act 2001' (2002) 65 *Modern Law Review* 58. For a comparative discussion of the four Commissioners in the UK, meanwhile see, J. Williams, 'Effective government structures for children?: The UK's four Children's Commissioners' [2005] *Child and Family Law Quarterly* 37. For discussion of the work of the Children's Commissioner for Wales see, for example, O. Rees, 'Beyond the hype: a year in the life of the Children's Commissioner for Wales' [2002] *Family Law* 748; and O. Rees, 'The Children's Commissioner for Wales: The First Five Years (2006) 226 *childRIGHT* 16.

¹⁵⁹ Principles relating to the status of national institutions for the promotion and protection of human rights, General Assembly resolution 48/134 of 20 December 1993

¹⁶⁰ Children Act 2004, s. 4.

¹⁶¹ To provide an example, the net operating cost of the Children's Commissioner for Wales for 2007-2008 was £1,754,000.

helped children access in-bed treatment for eating disorders, have prevented vulnerable families from being evicted, have helped families with disabled children obtain grants for heating, have prevented the closure of a children's home, and have persuaded social services departments to undertake child protection investigations when they had previously refused to do so. The following example, in particular, may be viewed as indicative of the impact of the Commissioner from an equality perspective:

*'Sue, aged 18, needed a communication device to enable her to take up a place at a further education college. Funding for the device was not forthcoming – each agency concerned believed that it either was, or soon would be, the responsibility of another agency. By contacting the different agencies the development of a funding formula was facilitated, through which each agency could contribute to the funding for the device.'*¹⁶²

One significant limitation on the powers and functions of the Children's Commissioner for Wales and Older People's Commissioner for Wales, as well as the Scottish Commissioner for Children and Young People, is that they are limited to devolved matters. Where a matter is not devolved, it falls within the remit of the Children's Commissioner for England. The effect of this, for example, is that the Children's Commissioner for Wales may not provide advice and assistance to children and young people in relation to asylum or youth justice, a problem compounded by the fact that the Children's Commissioner for England may not take up individual cases in any event.

Notwithstanding this issue, which needs to be urgently considered by the Westminster Government, the Commissioners have arguably made some impact, and have the potential to play an important part alongside the EHRC in promoting the equality and human rights agenda. Examples of recent activities in this respect include representations made by the Children's Commissioner for Wales on age discrimination legislation,¹⁶³ and the model for

¹⁶² Children's Commissioner for Wales: *Annual Report and Accounts 2003-2004* (2004)

¹⁶³ See, Children's Commissioner for Wales: *Annual Report and Accounts 2007-2008* (2008): 'I am very concerned that the UK Government has decided – despite many representations – to exclude children under 18 from the proposals to extend age discrimination legislation to cover goods, facilities and services and the single public sector equality duty. Young people in the UK face discrimination in benefit rates and the minimum wage. Sixteen and seventeen year olds receive the lowest benefit rates and the lowest minimum wage rate. There is no

carrying out children's rights impact assessments developed by the Scottish Commissioner for Children and Young People.¹⁶⁴ It is essential that strong links are developed and maintained between the EHRC and the Commissioners in the future.

2.8 DIFFERENCES IN THE ARRANGEMENTS OF LEGAL SERVICES (CLACS AND CLANS IN ENGLAND AND WALES)

Community Legal Advice Centres (CLACs) and Community Legal Advice Networks (CLANs) for England and Wales were initially proposed in the LSC consultation paper, *Making Legal Rights a Reality* (2005). In the words of the LSC, CLACs and CLANs aim to: 'enable people to protect their fundamental rights and sort out legal disputes; tackle disadvantage and promote social inclusion; deliver legal advice services to local communities according to local needs and priorities; provide quality integrated legal advice services ranging from basic information to representation in court, which offer value for money and are supported by co-ordinated funding; be independent of funders and government; and bring services to clients who do not currently access legal services.'¹⁶⁵

Five CLACs have been established in England to date,¹⁶⁶ and an evaluation of their effectiveness is to be carried out by the LSC in 2009. Serious concerns have, however, been raised about their work, and a report carried out by the Advice Service Alliance set out a number of problems, including structural issues, independence, funding and service quality.¹⁶⁷

In Wales, developments have taken place at a more measured pace. The Welsh Assembly Government and Legal Services Commission published a policy document in 2007, entitled *Making Legal Rights a Reality in Wales*. This document set out proposals for developing Community Legal Aid Services in Wales. Unlike in

evidence at all to support the view that young people have lower living costs and in my view no justification for this discrimination.'

¹⁶⁴ See

http://www.sccyp.org.uk/webpages/pr_single.php?article=Children'sRightsImpactAssessment:TheSCCYPModel&id=27

¹⁶⁵

http://www.legalservices.gov.uk/civil/innovations/community_legal_advice_centres_and_networks.asp

¹⁶⁶ For further information, see

http://www.legalservices.gov.uk/civil/innovations/community_legal_advice_centres_and_networks.asp

¹⁶⁷ A. Griffith, *CLACs – are they worth it?* (Advice Service Alliance, 2008). The report is available online at http://www.asauk.org.uk/fileLibrary/pdf/CLACs_are_they_worth_it.pdf

England, it was decided that CLANs would be more appropriate than CLACs for Wales:

*'Networks share the same aims as centres but are envisaged to be a more appropriate model for semi-urban, rural and larger, possibly, regional, areas. Networks may therefore be the most appropriate model for regional working in Wales. Networks would bring together a consortium of organisations to provide these services and would therefore be likely to have multiple providers able to provide complementary rather than competing types of advice. The preferred model for a network is for the funders to contract with a lead supplier who would then sub-contract with other suppliers.'*¹⁶⁸

It was intended that eight CLANs should be established in Wales, potentially including a regional CLAN. The plan was to establish such organisations incrementally, beginning with one focused on Cardiff, Bridgend and the Vale of Glamorgan. However, considerable concerns were expressed, particularly by the third sector, and as a result of lobbying and eventual Welsh Assembly Government intervention, this proposal has now been shelved until the Lord Bach Committee's proposals are published.

The major concern is that, as it stands, the CLAN proposals do not properly provide for consortia bids and the third sector are concerned that unless the rules are amended to provide for such partnerships to participate, existing and long-standing community grounded provision will disappear. The issues are being discussed by the Bach Committee, but it is not clear whether any changes the Committee will recommend will apply to both England and Wales or to Wales solely. Publication of the Bach Report has been delayed and is now expected towards the end of April 2009, but as indicated above at section 1.4 the background proposals have given rise to serious concerns about the future stability and diversity of provision. The concern is well illustrated by the interview testimony of the Director of CAB Wales:

'We are really worried about the impact of the proposed changes. The Legal Services Commission and WAG published their view of the future of funding of advice in

¹⁶⁸ Welsh Assembly Government and Legal Services Commission, *Making Legal Rights a Reality in Wales: A policy document by the Welsh Assembly Government and Legal Services Commission* (2007), p. 14.

'Making Legal Rights a Reality in Wales... The way the Commission is approaching that is to say the way to get better integration is to create is not CLACs – we don't have population areas big enough – CLANs they are suggesting 8 across Wales. Geographically across county boundaries where they will, alongside the LAs, which are the main funders of advice through CABx, they will draw together LA money and LSC social welfare money and let a single contract in that wide geographic area to deliver specified services under contract.

'There are a number of dangers; there have been negotiations in Bridgend, Cardiff and Vale which was due to be the first one in Wales and we already have there a service specification that they were intending to go to contract on. Under that specification, they contract for pieces of advice at a fixed fee so, regardless of whether you are an individual who comes through the door with mental health problems, or who has difficulty with literacy, or who is incredibly intelligent, you will get a fixed fee for the advice you give them on those issues. It does not take account of in our view the work that needs to be done in terms of social policy work – our second aim – and it does not take account of all the things that 2nd and 3rd sector advice agencies, and CABx in particular, do around volunteering and getting people back into work, community regeneration though the sort of works we do. All the other things that are part of the advice experience. So, that is the first problem.

'The second problem is that if you have a single contract, they are saying that it can be contracted by one and can be sub-contracted but they are not, at the moment, able to allow what we would call consortium, even a formal consortium to bid for it, where everyone is individually responsible for their bid...

'Our view is the danger of putting what is essentially all the main money in one pot for advice in one contract is that if you are the main contractor you are going to have to protect yourself, you are going to have to be driven to reduce diversity of supply. Although I obviously think that CABx deliver an excellent service across all the areas of advice and we could argue from the CABx and forget everyone else.

If you look at clients, clients develop trust in organisations that they want to go to and trust is relating to their circumstances, their race – the Somali advice service in Cardiff – there are some places that they go to because it is their locality. If you actually break down that diversity of supply, I think the clients will not find it easier as the LSC suggested, but more difficult. What does matter is if you have a diversity of supply you work together. There was some research done some years about the Legal Services network they set up (partnerships) - our experience was that they worked quite well. The Cardiff Providers Forum worked well together. Providers in that area relate to each other. Less so with the solicitor sector but that can be overcome.

‘Our argument has been in order to achieve what the LSC want which is better integrated services, actually a collaborative model is a better model.’

2.9 LEGAL AID IN SCOTLAND¹⁶⁹

The main difference between the two systems relates to the legislative frameworks, with the Access to Justice Act 1999 giving the Legal Services Commission (LSC) in England and Wales a different set of powers and duties to those of the Scottish Legal Aid Board under the Legal Aid (Scotland) Act 1986. The Scottish system is essentially still a *judicare* system, based upon case by case payment for work undertaken by solicitors on an on-demand basis. This contrasts with the heavily contracted approach used by the LSC for the purchasing of legal and associated services. The Board does not have a contractual relationship with solicitors firms on the register. Firms are under no obligation to take on any amount of legally aided work in any given year, area or topic.

The Scottish Legal Aid Board has been involved in a long programme of collaborative work with Government, and the advice sector (including the previous equality Commissions), to look at how best to improve the operation of publicly funded advice in Scotland.¹⁷⁰ The Board continues to monitor the operation of supply, and to map trends in applications for assistance. It is about to publish the results of analysis of applications for civil legal assistance, analysing information on the basis of applicant

¹⁶⁹ The information in this section was kindly provided by the Scottish Legal Aid Board.

¹⁷⁰ For further information, see <http://www.slab.org.uk/reform/index.htm>

location, looking at variations by geographic area and topic. It has also used its powers to directly employ solicitors (Part V Solicitors) where there are gaps in supply.

In practical terms, perhaps the most significant difference between the Scottish provision is that the Legal Aid Board does sponsor employment advice and representation up to a designated maximum figure (currently £1,800).

CHAPTER 3 – SOME SPATIAL EVIDENCE

3.1 Introduction

Many aspects of advice giving have a spatial dimension; of most importance is the spatial relationship between the provider and the consumer. In the commercial world this relationship is key, for example in the world of the supermarket the association between their location and the location of other similar outlets and of their target population is an important factor in the deployment of their resources. This is also true for advice givers.

To know the location of an advice outlet is to know its relation to those in greatest need of its services, other advice outlets, cultural and political boundaries and the local transport system. All of these are important in promoting the success or otherwise of the outlet concerned. At a more strategic level the pattern of location can be important in achieving efficiency in delivery, training and service development.

To say that location is important in this area is not to say anything new, indeed the importance of mapping the location of advice givers has been noted in earlier research, most recently in EHRC commissioned work,^{171 172 173} where recommendations were made for a mapping exercise to be undertaken.

This part of the report is designed to begin that process and to make a small contribution to the discussion about advice deserts and to test the potential of mapping as a tool of enquiry in the area of advice giving such an exercise.

Looking at 'advice deserts' the main objective was to identify the distribution and density of advice outlets in England, Wales and Scotland and their relationship to the main centres of population. Those considered were CAB (including outreach locations), Law Centres, independent advice centres engaged in discrimination advice work, and EHRC funded casework organisations.

¹⁷¹ 2008/2009 of the Discrimination Advice project, funded by the Equality and Human Rights Commission, at the City of London Citizens Advice Bureau.

¹⁷² Mapping Advice and Information - Equality & Human Rights Scotland. OSDC report for EHRC July 2006

¹⁷³ Working Together for Advice; Discrimination work stream. Law Centres Federation Survey; ADP Consultancy, November 2008

3.2 Methodology

The spatial mapping of legal advice providers including; LSCs, CABx, CLACs, Law centres, and EHRC funded centres was implemented in a Geographical Information System (GIS) environment using the ESRI[®] Software ARCGIS[™]. GIS is a computerised programme capable of inputting, analysing, visualizing and outputting spatial related data. The use of GIS for example allows the user to show the locations of CABx graphically as well as to assess the spatial relations between entities (e.g. location of CLS and Ethnicity) and to determine spatially and graphically patterns/trends from the data (e.g. change in distribution of CABx and law centres since 2003). The application of GIS to the mapping of legal advice services in the England and Wales has been undertaken in the past by Patel et al. (2008). This research builds on this methodology by mapping the locations of legal 'service providers' for England, Wales and Scotland. In addition, the spatial location of these service providers was also analysed in relation to demographic factors (e.g. ethnicity and benefit claimants).

The mapping exercise was undertaken in three phases: (i) data collection and relational database creation; (ii) spatial database development and; (iii) spatial analysis. 'Advice service providers' details were acquired through Internet searches, existing databases (e.g. provided by Legal Services Commission) and telephone interviews. The postcode (acquired) for each provider was then match to the Ordnance Survey National grid reference. The result was a relational database of LSCc, CABx, CLACs, Law Centres EHRC funded providers. These databases have fields with coordinates, which enable them to be imported into a GIS. Once the files were imported in GIS a spatial database was built and the locations of the service providers could be displayed spatially and maps produced. The final phase was to assess the relationship between the location of advice providers and selected demographic groups highlighted in the report, *Geography of Advice*,¹⁷⁴ as more likely to be in need of legal advice. For this

¹⁷⁴ Sandbach, J. (2004) *Geography of Advice*. Citizen Advice 2004. London.

research the relationship with ethnicity (minority groups) and individuals on benefits was explored.

Thematic maps displaying demographic groupings were created in ARCGIS. The maps were based on data obtained from Office for National Statistics (ONS) via their online website (UK Statistics Authority, 2009).¹⁷⁵ Each major administrative area (e.g. Flintshire, Wrexham, Cardiff etc.) of Wales was assigned a value based on the statistical data obtained. The location maps of advice providers were overlaid onto these maps to assess the spatial relationships both visually and statistically.¹⁷⁶

¹⁷⁵ UK Statistics Authority (2009) *Neighbourhood Statistics*.

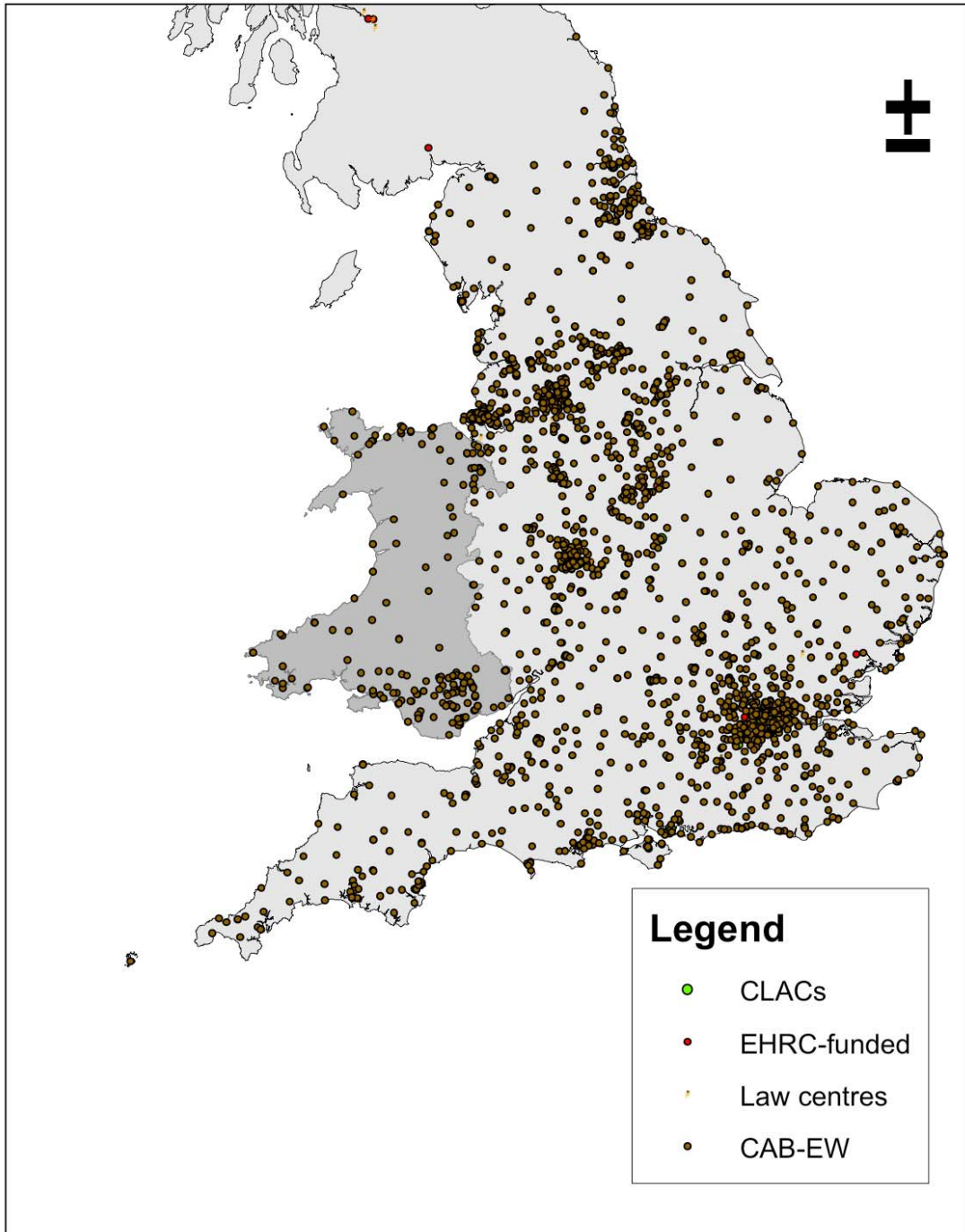
website: www.statisticsauthority.gov.uk or www.statistics.gov.uk

NB. ESRI, ARCGIS, ARCMAP are trademarks, registered trademarks, or service marks of ESRI in the United States, The European Community, or other jurisdictions. ESRI, 380 New York Street, Redlands, CA 92373-8100, USA.

¹⁷⁶ Patel, A. Balmer, N.J., and Pleasence, P. (2008) Geography of Advice Seeking. *GEOFORUM* vol 29, Issue 6, November, pp 2084-2096.

3.3 Distribution of Advice Providers

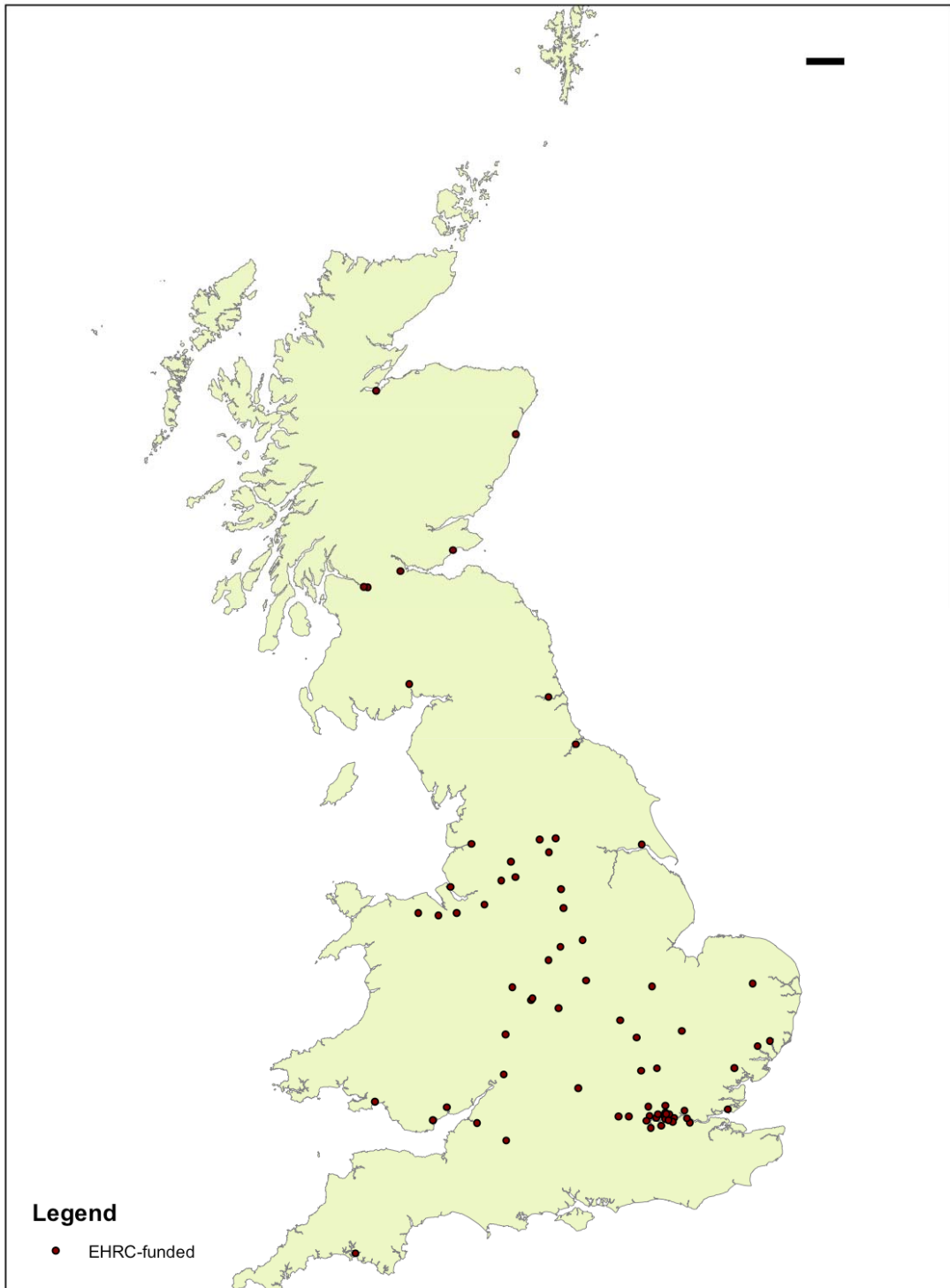
Distribution of CABs, CLACs, EHRC funded and Law Centres in England and Wales



The largest and most widespread advice service in Great Britain are the CABx their distribution across the country is similar to that of the population as a whole. They are most frequently found in areas of substantial population such as the London conurbation, the Midlands, Lancashire and the Manchester area, the North East and south Wales, with smaller concentrations along the south coast of England and Bristol. Elsewhere the number of CABx is much less and there appears to be rather sparse coverage in the predominately rural areas of Britain, in Cumbria, north Lancashire, Yorkshire, Lincolnshire, significant parts of mid and west Wales, the south east of England and Kent.

3.4 Distribution of EHRC-funded Casework Organisations 2008/09

EHRC-funded Casework Organisations 2008/09



The coverage of these funded outlets is quite different to that of CABx, they are predominantly in London, the Thames estuary and the adjacent east coast towns. To a lesser extent they follow the M6 corridor to Manchester and South Lancashire. Wales is relatively well served by EHRC funded casework organisations with five outlets in all three in the south and two in the north. However, the map does identify some 'Saharas.' Large parts of the country have few resources and some none at all. Although some of these have a relatively low population, Mid and West Wales, the West Country and Cumbria the rest are in relatively heavily populated areas such as the south coast of England, Kent, the West Midlands, Humberside and the North East.

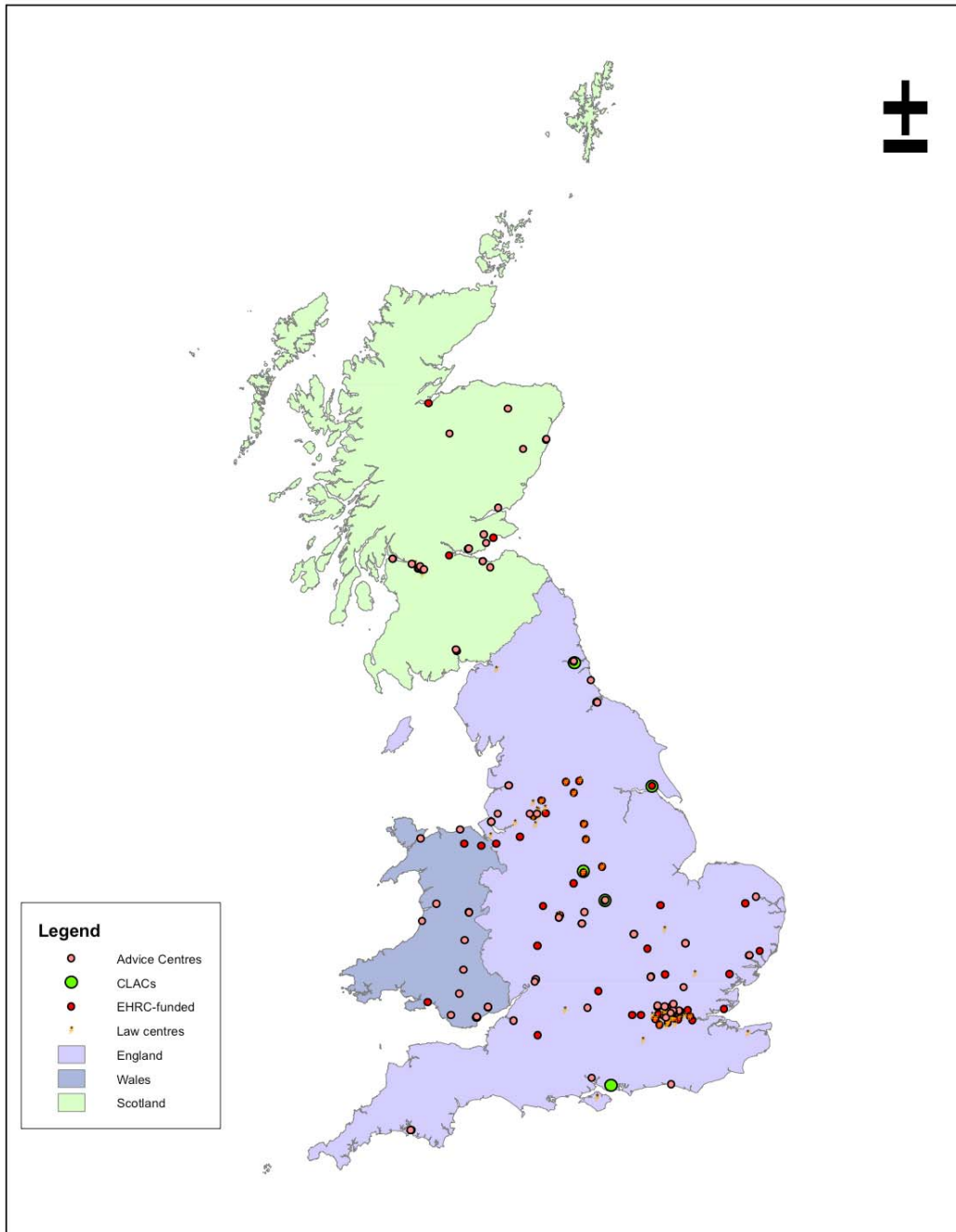
Taken together these maps show that the backbone of the British advice giving service is the CAB, and while not denying that they provide a wide range of services, advocacy and specialist advice there is a predominantly generalist service staffed by significant numbers of volunteers. The great contrast the mapping reveals is the difference between the two levels of advice outlets in terms of their numbers and their distribution.

This particular comparison is making little use of the potential of the method, its real advantage lies in the way in which different types and levels of information can be located at a particular geographic point. For example this simple analysis would be improved by being able to 'see' the profile of each advice outlet in each location. It would be further improved by being able to relate the advice provision with likely need.

To illustrate the latter facility a comparison was made between the distribution of Law Centres, CAB and LSC in Wales and the distribution of Benefit Claimants as an indicator of relative deprivation.

3.5 Distribution of advice centres and funded centres providing discrimination advice services

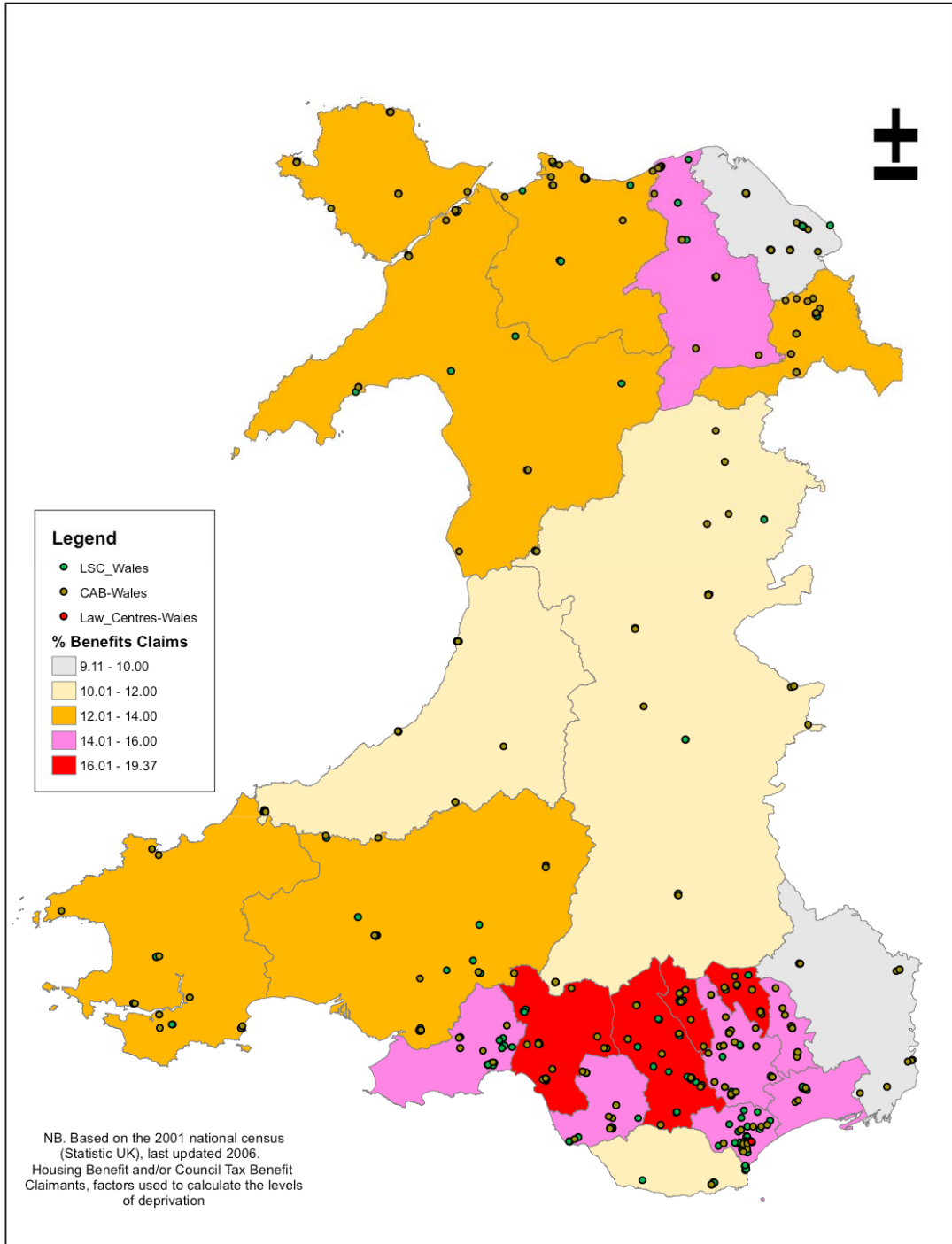
Distribution of CLACs, EHRC funded, Law Centres and Independent Centres providing Discrimination Advice (Advice UK) in England, Scotland and Wales.



This map reveals a geographical advice desert across the whole of south England, Cumbria, Northumbria, East Anglia, parts of Wales, and significant areas in the lowlands and highlands of Scotland.

3.6 Distribution of Law Centres, CABx and LSC in relation to benefit entitlement in Wales.

Distribution of Law Centres, CAB & LSC for Wales in relation to distribution of Benefit Claimants

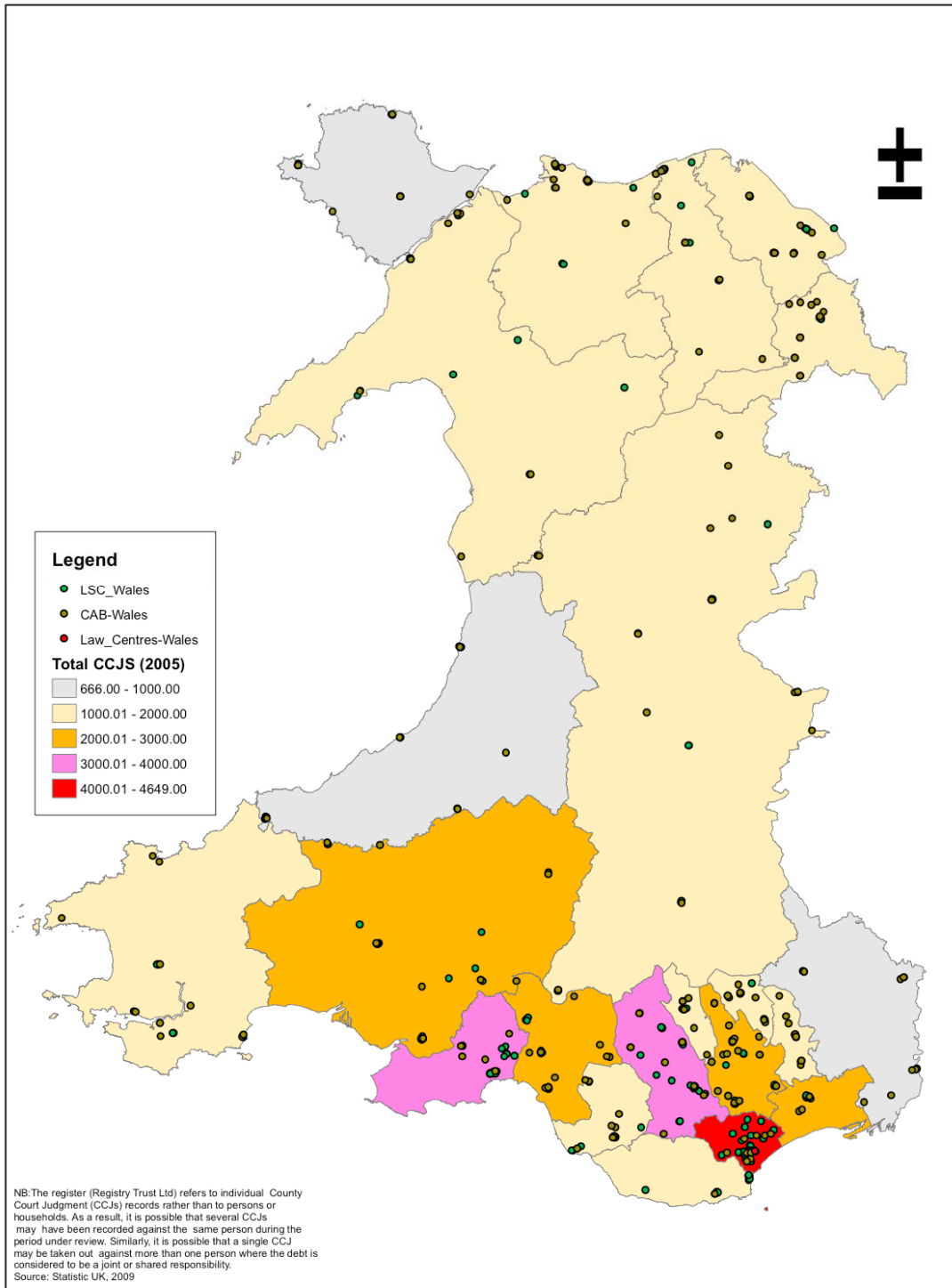


The distribution of benefit claimants in Wales shows that the highest percentage of claimants reside in Torfaen and in the western valleys of south Wales, predominantly the areas which once were the centre of the Welsh coal mining industry. There are significant proportions of claimants in west Wales and in the North (with the exception of Flintshire). At first sight the distribution of advice outlets would seem to follow a similar pattern, with most being in south east Wales and a smaller number in the north but a closer inspection shows some discrepancy. In the south east advice givers are more likely to be found in Cardiff, and the eastern valleys than in the west. In north Wales advice centres tend to be along the coast and there are a significant number in Flintshire which has one of the lowest percentage of benefit claims in Wales. To a lesser extent that is true for north Powys where benefit claims are relatively low.

To give some idea as to the complexity of the problem another indicator of deprivation, county court judgements, give a somewhat different view. In this case the congruence between the outlet and the likely need in the population is much closer. In this case the mapping process could be seen to confirm the efficiency of the spatial distribution of advice centres.

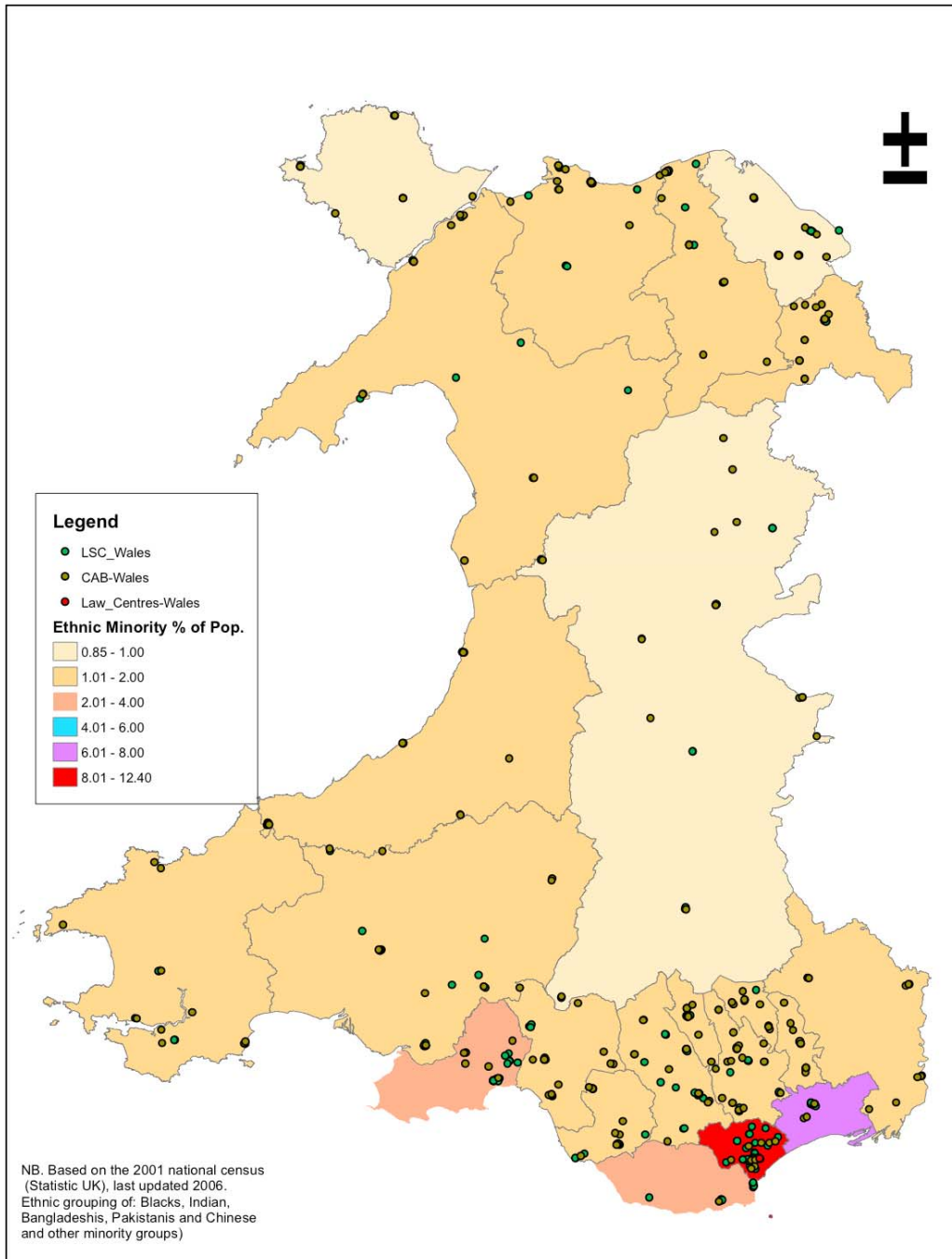
3.7 Distribution of Law Centres, CABx and LSC for Wales in relation to County Court Judgments 2005

Distribution of Law Centres, CAB & LSC for Wales in relation to CCJs 2005



3.8 Distribution of Law Centres, CABx and LSC for Wales in relation to distribution of ethnic minority grouping

Distribution of Law Centres, CAB & LSC for Wales in relation to distribution of ethnic minority grouping



The spatial distribution of ethnic minorities in relationship to advice provision would appear to confirm that the spatial relationship between advice giving and need is reasonably close. Whether the overall provision is sufficient cannot be answered in these comparisons, however questions of capacity can be investigated if the data is available and located within the spatial database.

The maps displayed here are to illustrate, in a small way, the potential impact of such an exercise not to be an analysis in itself. The use of mapping to describe individual provision, to study the spatial distribution of advice giving and its relationship to patterns of discrimination can help both the strategic and operation goals of a service that wishes to combat discrimination. It can be used on a national, regional and a local level to help design appropriate services directed towards those in greatest need.

CHAPTER 4 - QUESTIONNAIRE SURVEY (REVIEW OF PROVISION OF LEGAL ADVICE AND REPRESENTATION)

4.1 Introduction

As part of this research investigation, a short questionnaire was developed with the intent of adding to the baseline data across England, Wales and Scotland, and across advice agencies. The questionnaire built on earlier work carried out for the EHRC^{177 178}¹⁷⁹ in extending both the geographical and organisational comparisons drawn.

The questionnaire drew upon the work of the 2008 Law Centres Federation study in the design of some questions, with the intent of producing data which can be compared over time and area.

Due to the very short timescale available to this research investigation, the questionnaire was limited to gathering information, which it was felt the individual advice agencies would have readily to hand, and this part of the work was carried out alongside a series of focus groups and in-depth telephone interviews. The results of the questionnaire provide an indicative overview of activity, staffing & volunteering, the range of discrimination strands, and accessibility facilities.

4.2 Methodology

The survey made use of listings held by other organisations to distribute the questionnaire. For speed, the distribution method selected was e-mail, but this necessarily results in those organisations, which did not include an e-mail address in their listing being unrepresented in this survey.

There was a further erosion due to out of date contact information, with the detail given in Table 1 below.

¹⁷⁷ 2008/2009 of the Discrimination Advice project, funded by the Equality and Human Rights Commission, at the City of London Citizens Advice Bureau.

¹⁷⁸ Mapping Advice and Information - Equality & Human Rights Scotland. OSDC report for EHRC July 2006

¹⁷⁹ Working Together for Advice; Discrimination work stream. Law Centres Federation Survey; ADP Consultancy, November 2008

Table 1

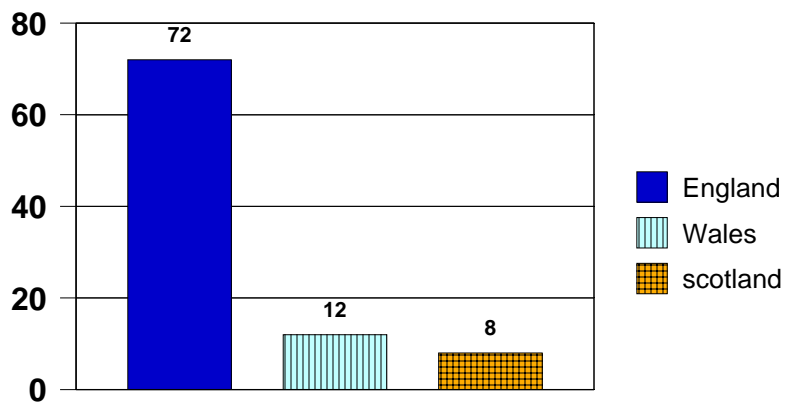
<i>List</i>	<i>Total no listed</i>	<i>With e-mail</i>	<i>% sent out [via e-mail]</i>	<i>Returned 'undeliverable'</i>
EHRC funded agencies	77	75	97%	9 – 12%
Law centres/ Dec 08	71	61	85%	
Scottish advice centres	186	134	72%	29 - 22%
Total overall	334	270	80%	38 – 14%

In addition, the questionnaire was distributed on behalf of Exellink by two further organisations. The Citizens' Advice Bureau network reinforced the importance of a response from bureaux, and AdviceUK sent out to some 2000 organisations affiliated to the network of advice-providing organisations. The method of distribution for this last group of organisations was less effective [again related to the very short timescale given to agencies to respond] as it was attached to an e-newsletter distributed by AdviceUK. There were no identifiable returns from this distribution within the timescale needed for the production of the report, and represents a significant omission from the overview picture provided by the survey.

From the questionnaires that did reach the recipients, a total of 92 were returned in the timescale; representing a 34% response rate. A further 6 were returned but too late to be included in the analysis.

Table 2

Respondents - by area



This table may be reflecting a lower accuracy level in the Scottish lists used [as already seen in the 'undeliverable e-mails' total in Table 1.]

Table 3

Respondents by type of organisation

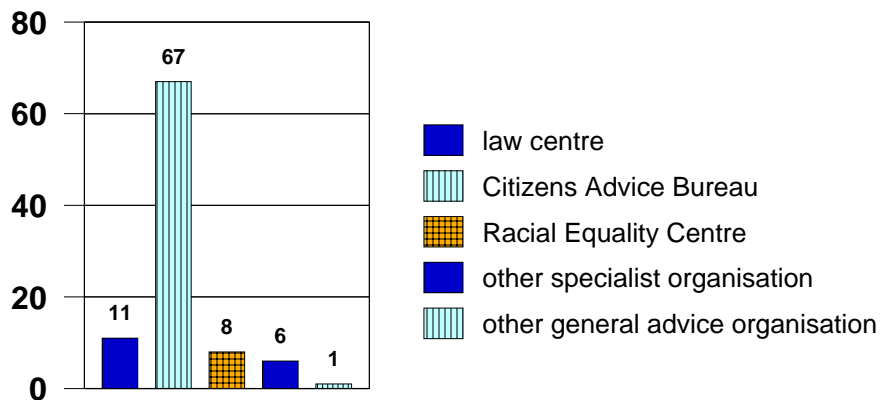
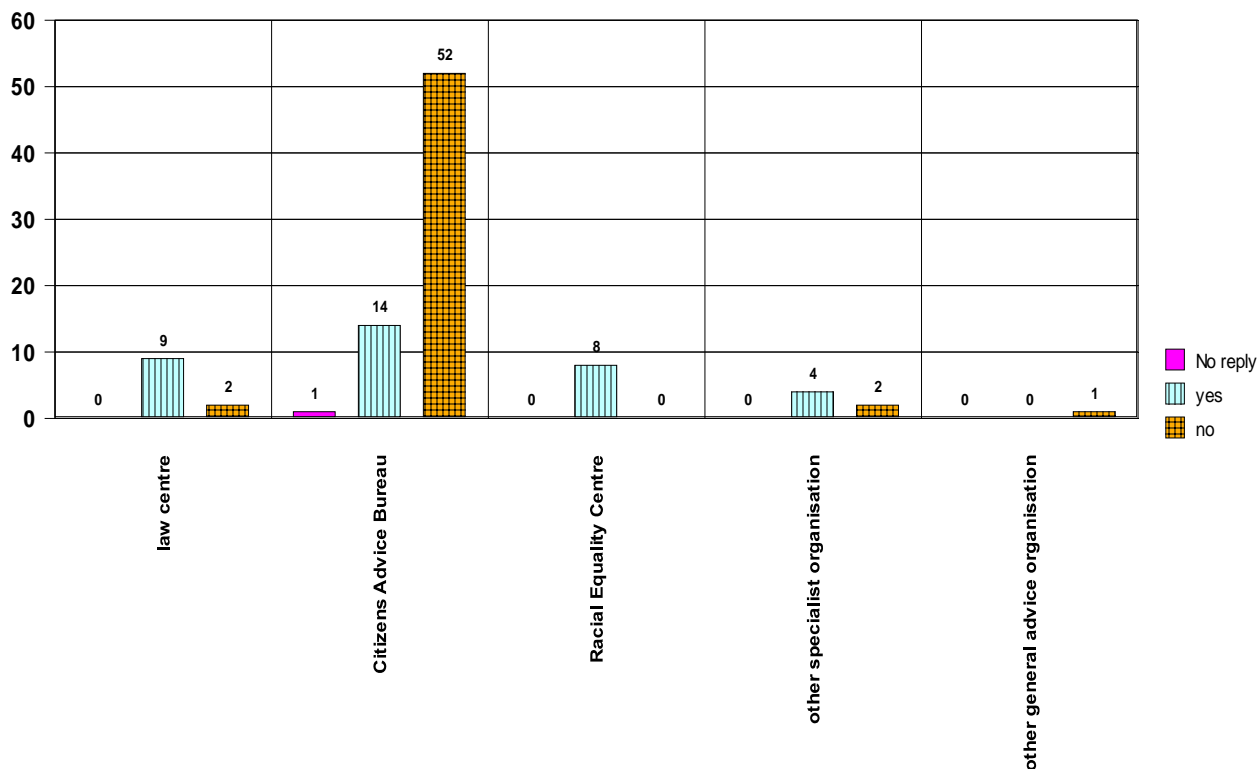


Table 4

In receipt of EHRC funding by type of organisation



4.3 Range of services provided

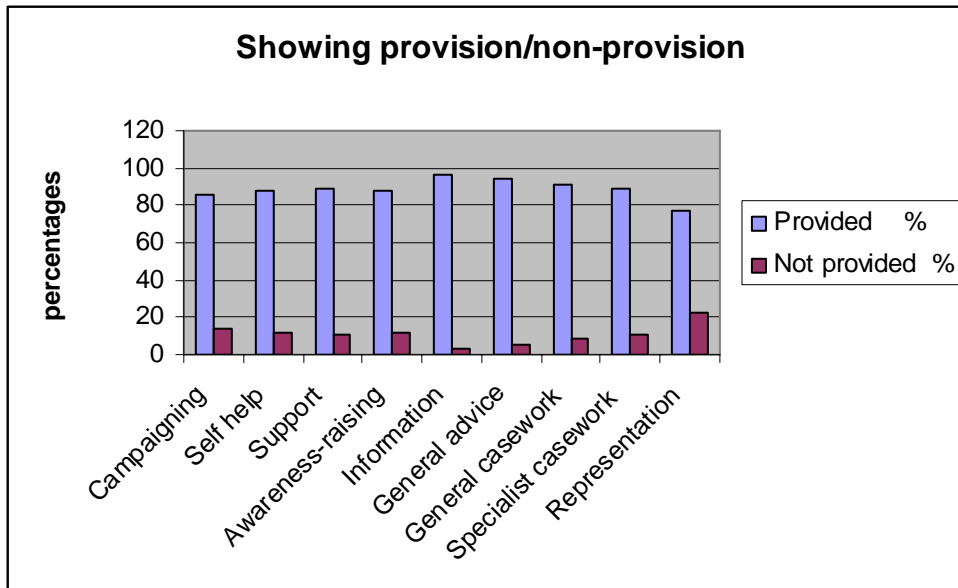
Respondents were asked to indicate which of a range of services they provided, combining the levels of advice-giving [as they increase in complexity and requirement for expertise in the advice-giver] with a range of activities associated with raising the profile of equalities and discrimination issues and developing skills in dealing with their impact.

Table 4 below gives the detail of overall responses, and the chart following shows the split between provision and non-provision. In the calculation for the chart, respondents who answered the question set, but left blank spaces against questions where they did not tick ‘sometimes provide’ or ‘provide regularly’ have been counted for that question as ‘do not provide’ – thus the ‘no replies’ have been aggregated with the ‘do not provide’ responses.

Table 4a

Absolute Analysis % Respondents	Base	Missing	Grid Table		
		No reply	Do not provide	Sometimes provide	Provide regularly
Base	828	39 4.7%	53 6.4%	173 20.9%	563 68.0%
Campaigning on equalities issues	92	5 5.4%	8 8.7%	47 51.1%	32 34.8%
Self help	92	6 6.5%	5 5.4%	28 30.4%	53 57.6%
Support	92	6 6.5%	4 4.3%	16 17.4%	66 71.7%
awareness raising	92	6 6.5%	5 5.4%	33 35.9%	48 52.2%
Provision of information - including signposting, and some diagnosis	92	2 2.2%	1 1.1%	3 3.3%	86 93.5%
General advice - identification of issues & possible outcomes or solutions	92	3 3.3%	2 2.2%	3 3.3%	84 91.3%
General casework - including attempts at informal resolution, without going to court or tribunal	92	4 4.3%	4 4.3%	7 7.6%	77 83.7%
Specialist casework - involving preparation for court, tribunal, or alternative dispute resolution	92	2 2.2%	8 8.7%	17 18.5%	65 70.7%
Specialist casework - including representation in court or tribunal where necessary	92	5 5.4%	16 17.4%	19 20.7%	52 56.5%

Table 5 All organisations: provision/non-provision



- Indicating that information provision is the most commonly provided service across all respondent organisations.
- That representation is the service most often not provided.

The following charts give information on services provided, broken down by three of the organisation types.

Table 6

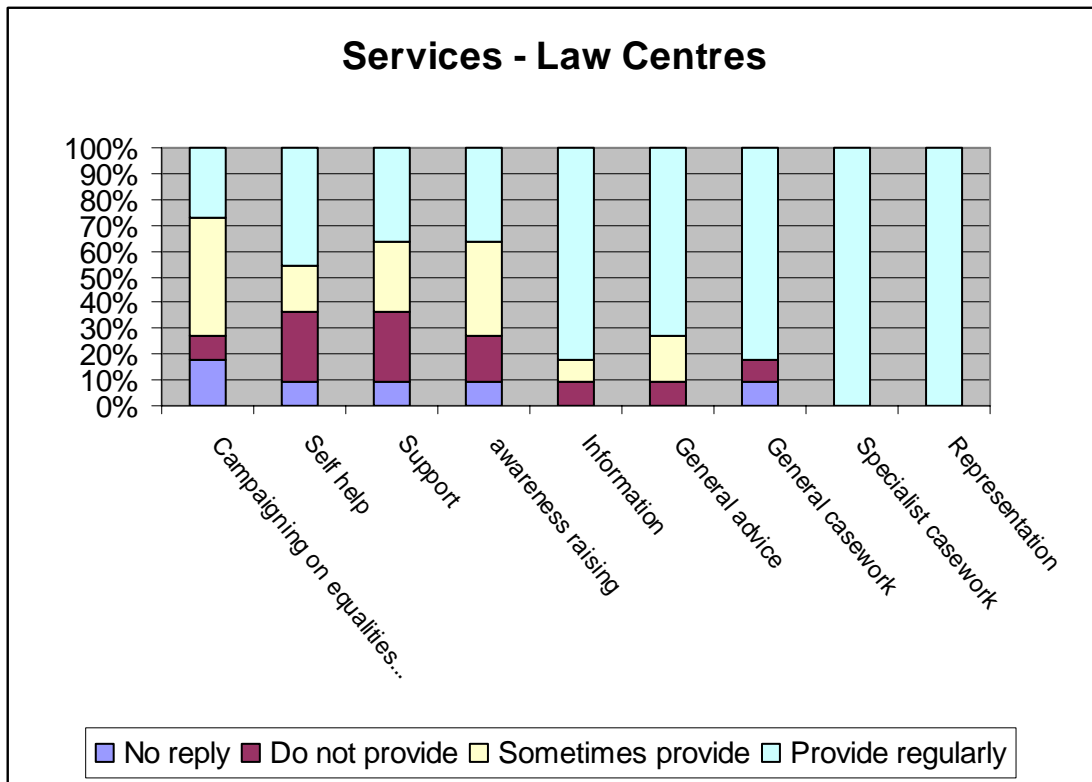


Table 7

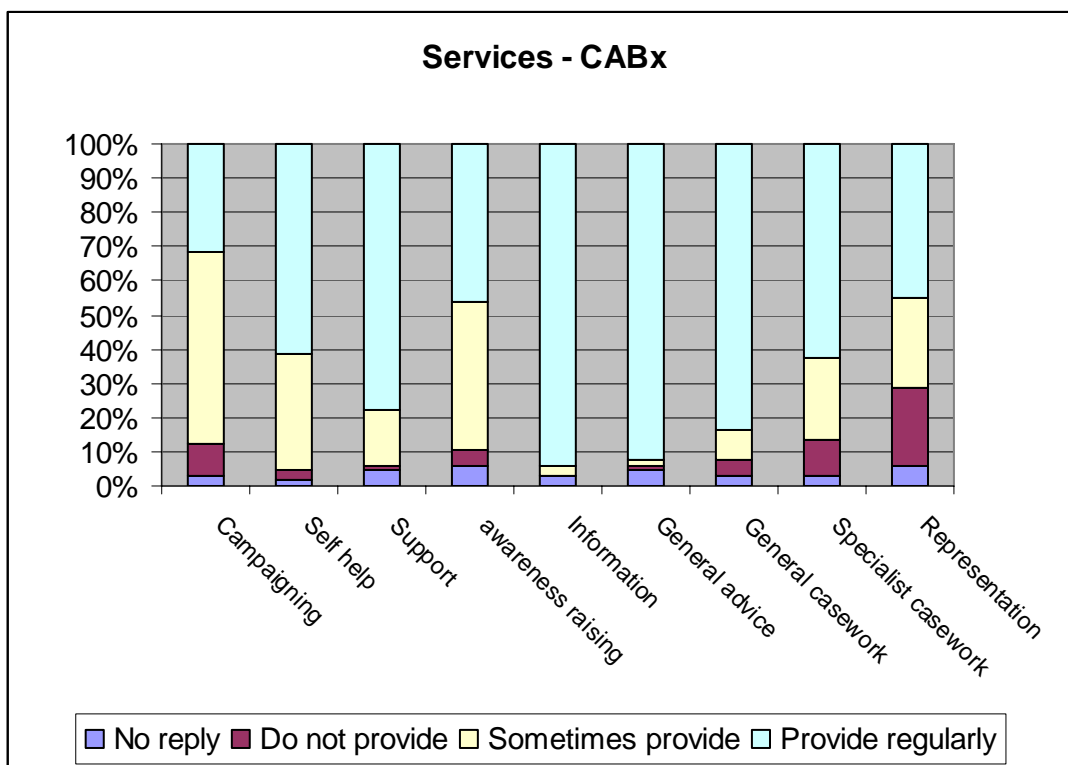
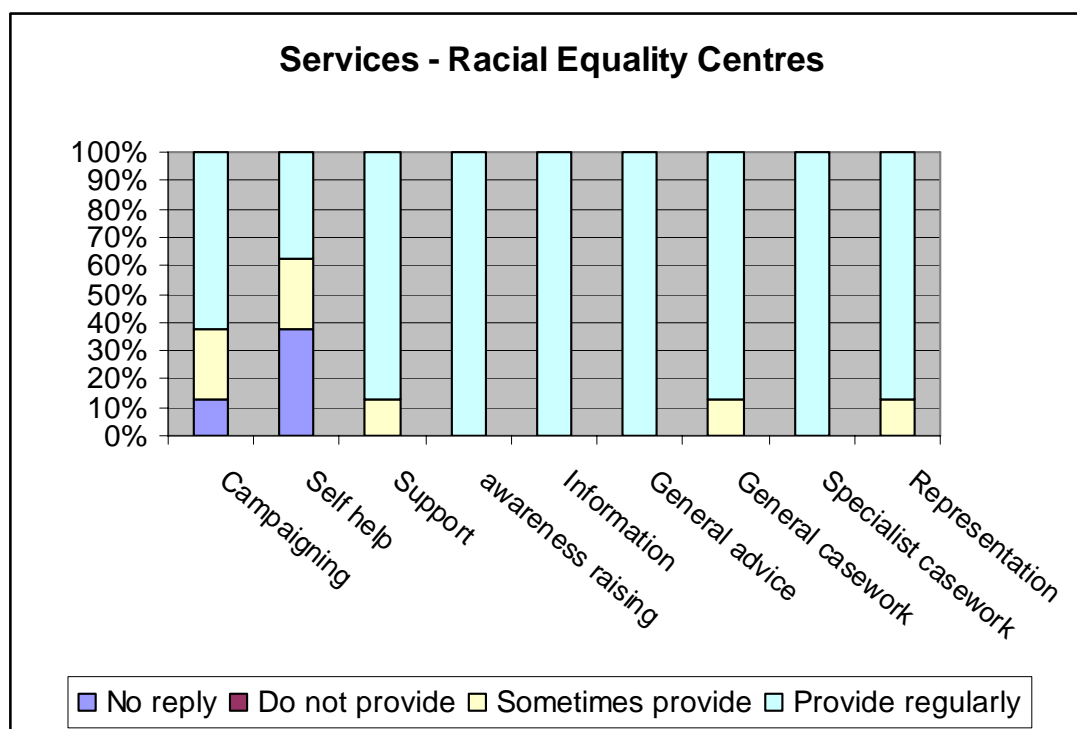


Table 8

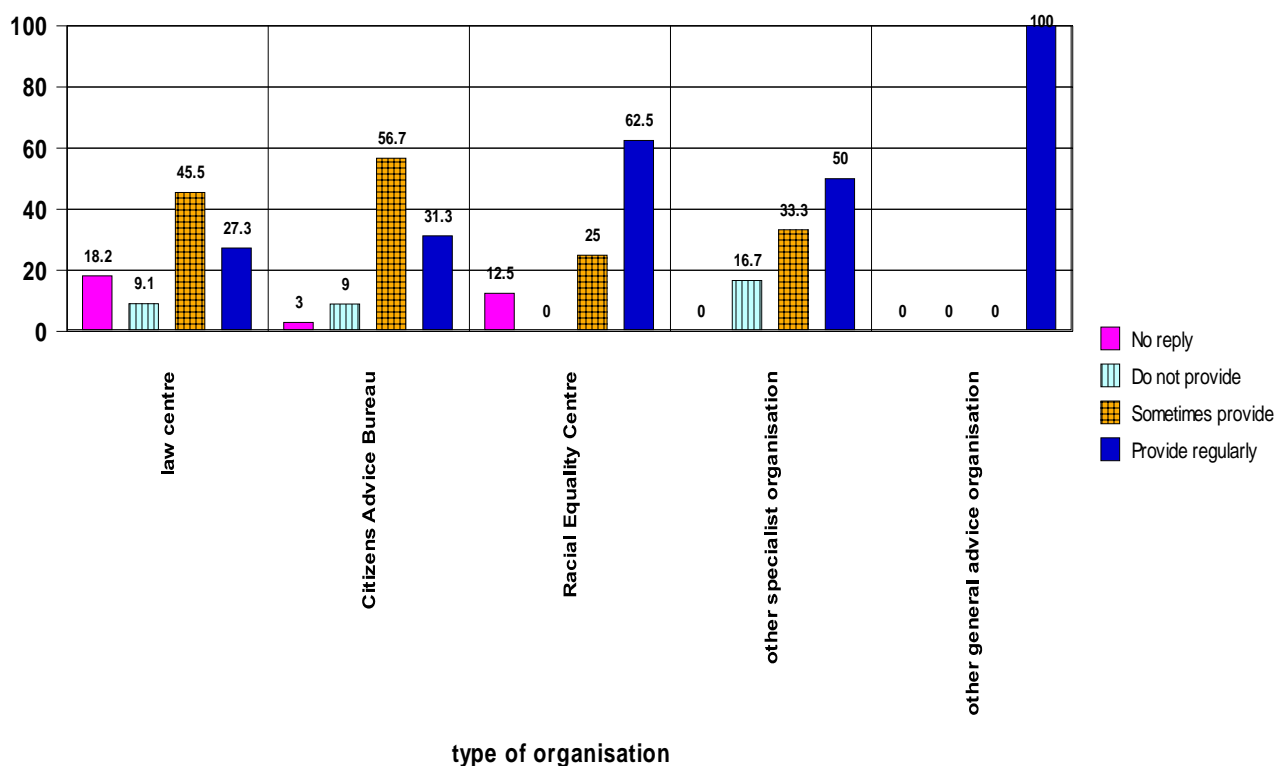


From these three charts it can be seen:

- that there is an emphasis in the law centres on specialist casework and representation activities, less emphasis on self help and support, and a significant portion of activity directed at campaigning on equalities issues.
- that the CABx emphasise information provision, advice and general casework. But only 11% of the bureaux are not also involved in campaigning on equalities issues.
- The Racial Equality Centres have a more even spread of activity from awareness-raising right through to specialist casework, with provision of representation also high.
- Campaigning on equalities issues represents a significant element of the work in all organisation types

Table 9

Campaigning on equalities issue by organisation type



figures in percentages

4.4 Overall distribution of staff & volunteers

Respondents were asked for information about the numbers of paid and volunteer staff. Table 10 shows the position across the 3 sectors, giving an overall comparison between them on the ratio of paid to unpaid workers.

Table 10

	Law centres	CABx	Racial Equality Centres
Paid staff	152	650	50
Volunteer staff	253	2410	61
Paid staff	37%	21%	45%
Volunteer staff	63%	79%	55%

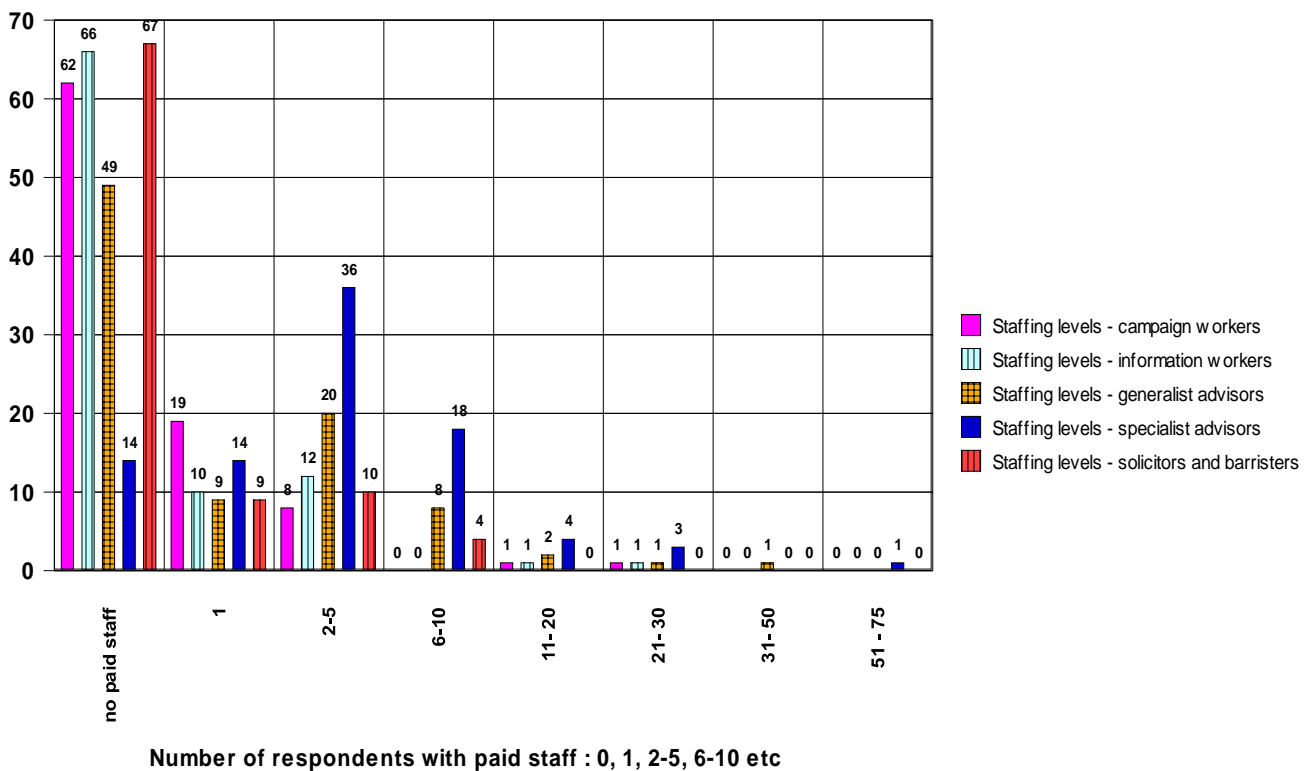
There was a very considerable range in numbers of paid staff as is shown in table 11. The largest staff group in the law centres was the specialist advisors, with the maximum size in any one centre being 29. For solicitors and barristers, which formed the second largest group, the maximum size in any one centre was 10.

Paid staff in the CABx were most often specialist advisors, with the largest group in a single bureau being 53 paid specialist advisors. For the CABx, the second largest paid staff group were the generalist advisors – largest single team being 40.

Paid staff in the RECs were much more evenly spread across the category of worker, [save for solicitors and barristers]. Figures for the 8 RECs included in the responses are small, so only tentative conclusions should be drawn, but the specialist advisors and information workers are the largest groups of paid staff. Staff teams in RECs were much smaller and so the maximum size of a team in the RECs was 4, and that was a team of information workers.

Table 11

Paid staff by type of service



The next set of tables looks at the detailed ratios of staff to volunteers in the different roles, broken down by the main organisation types in the survey. In each table an average number of staff and volunteers has been calculated in order to generate the overall position.

Table 12

Law centres: mean values of staff and volunteers [per centre]

a)volunteers

Campaign & self help volunteers	0.727273
Information volunteers	3.636364
Generalist volunteers	7.272727
Specialist volunteers	1.090909
Volunteer Solicitors/barristers	10.27273

b)Paid staff

Campaign & self help workers	0.363636
Information workers	0.909091
Generalist advisors	0.545455
Specialist advisors	7
Solicitors/barristers	5

This indicates that in every category bar one, the proportion of volunteers exceeds that of paid workers, in the case of campaigning, by twice as much, information by 3 times, and generalist advisors by 14 times, and solicitors and barristers by twice as much.

The exception category is specialist advisors, where proportionately, paid workers outnumber volunteers by 7 to 1.

Table 13

CABx: mean values of staff and volunteers [per bureau]

a) volunteers

Campaign & self help volunteers	2.276923
Information volunteers	4.359375
Generalist volunteers	28.1875
Specialist volunteers	2.265625
Volunteer Solicitors/barristers	0.53125

b) Paid staff

Campaign & self help workers	0.606061
Information workers	0.476923
Generalist advisors	2.738462
Specialist advisors	5.984615
Solicitors/barristers	0.184615

The same pattern between volunteering and paid staff applies in the bureaux, in that it is only in the specialist advisor category that there are more staff than volunteers.

Table 14

Racial Equality Centres: mean values of staff and volunteers [per centre]

a) volunteers

Campaign & self help volunteers	6.5
Information volunteers	0.875
Generalist volunteers	0.125
Specialist volunteers	0.125
Volunteer Solicitors/barristers	0

b) Paid staff

Campaign & self help workers	1.125
Information workers	1.625
Generalist advisors	1.375
Specialist advisors	1.875
Solicitors/barristers	0.25

In the Racial Equality Centres it is only in the campaigning category that volunteers outweigh paid staff. From this data it would appear that, compared to law centres and CABx, the RECs are more dependent on paid staff.

4.5 Activity Data

This was the area of data that proved most problematic to respondents. From comments attached to the questionnaires, a number of respondents clearly found it difficult to provide figures for activity – they were asked to give activity data for the last 12 months for which they had figures. In total, there was a ‘no reply’ in 31.6% of the responses. Hence the figures in the following tables are significantly less reliable than in other areas of the survey.

Respondents were not asked to separate out activity specifically related to discrimination. For a small number of projects specifically working in the discrimination field, it may be the case that most of the cases they reported were discrimination cases. For other organisations, providing a broad range of advice,

discrimination is frequently an aspect of a case, but recorded according to other criteria – housing, employment etc.

The tables following provide an overview of the volume of work undertaken, and comparisons are drawn between Law Centres, CABx, RECs and the other independent organisations.

Table 14

All organisations

Absolute Respondents	Base	Missing	Descriptive Statistics					
		No reply	Count	Mean	Sum	Minimum	Maximum	Range
Provision of information and/or signposting	92	34	58	2794.69	162092	0	50000	50000
Generalist advice	92	21	71	2983.732	211845	0	24328	24328
Specialist advice	92	27	65	1040.338	67622	0	8400	8400
Representation in court or tribunal, or alternative dispute resolution process.	92	34	57	77.35088	4409	0	942	942

Law Centres

Absolute Respondents	Base	Missing	Descriptive Statistics					
		No reply	Count	Mean	Sum	Minimum	Maximum	Range
Provision of information and/or signposting	11	2	9	6831	61479	0	50000	50000
Generalist advice	11	2	9	571	5139	0	4260	4260
Specialist advice	11	1	10	803	8030	0	2694	2694
Representation in court or tribunal, or alternative dispute resolution process.	11	2	9	149.7778	1348	1	462	461

CABx

Absolute Respondents	Base	Missing	Descriptive Statistics					
		No reply	Count	Mean	Sum	Minimum	Maximum	Range
Provision of information and/or signposting	67	33	34	2680.088	91123	46	20971	20925
Generalist advice	67	19	48	4343.813	208503	38	24328	24290
Specialist advice	67	26	41	1398.61	57343	0	8400	8400
Representation in court or tribunal, or alternative dispute resolution process.	67	32	34	76.61765	2605	0	942	942

RECs

Absolute Respondents	Base	Missing	Descriptive Statistics					
		No reply	Count	Mean	Sum	Minimum	Maximum	Range
Provision of information and/or signposting	8	0	8	55.875	447	0	150	150
Generalist advice	8	0	8	30.625	245	0	100	100
Specialist advice	8	0	8	72.125	577	26	130	104
Representation in court or tribunal, or alternative dispute resolution process.	8	0	8	16.125	129	3	37	34

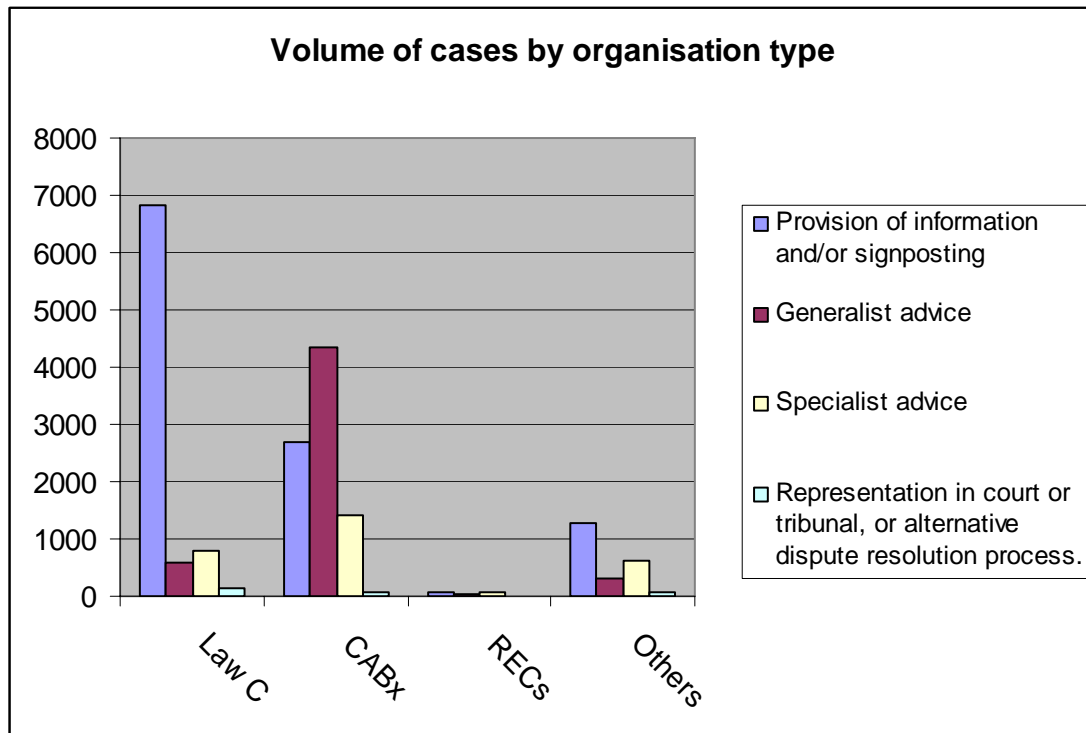
Others

Absolute Respondents	Base	Missing	Descriptive Statistics					
		No reply	Count	Mean	Sum	Minimum	Maximum	Range
Provision of information and/or signposting	7	0	7	1291.857	9043	21	4865	4844
Generalist advice	7	0	7	316.8571	2218	0	1960	1960
Specialist advice	7	0	7	623.7143	4366	0	3430	3430
Representation in court or tribunal, or alternative dispute resolution process.	7	1	6	54.5	327	0	200	200

The key information to draw out of these tables is the mean number of cases handled per organisation. There is enormous variation in size between these organisations [as can be seen from the staffing information in Table 11] and so it is also important to look at the range between minimum and maximum number of cases dealt with.

The following chart is a summary of the above detailed tables, comparing the average number of cases handled across the types of organisation.

Table 15



4.6 Areas of discrimination covered

Table 16

Absolute Respondents	Base	type of organisation				
		law centre	Citizens Advice Bureau	Racial Equality Centre	other specialist organisation	other general advice organisation
Base	92	11	67	8	6	1
Missing						
No reply	2	-	2	-	-	-
In which areas of discrimination does your...						
Age	1	-	-	-	1	-
Disability	2	1	-	-	1	-
Gender	4	1	-	-	3	-
Race	5	1	-	2	2	-
Religion or belief	4	1	-	2	1	-
Sexual orientation	4	1	-	-	3	-
All of the above	83	10	65	6	2	1

This table shows that of the 6 discrimination strands, most of the organisations responding indicated that they covered all strands. Two of the RECs indicated that they covered 2 strands only – those of race and religion/belief. Of the other organisations that did not routinely cover all strands, they were all specialist

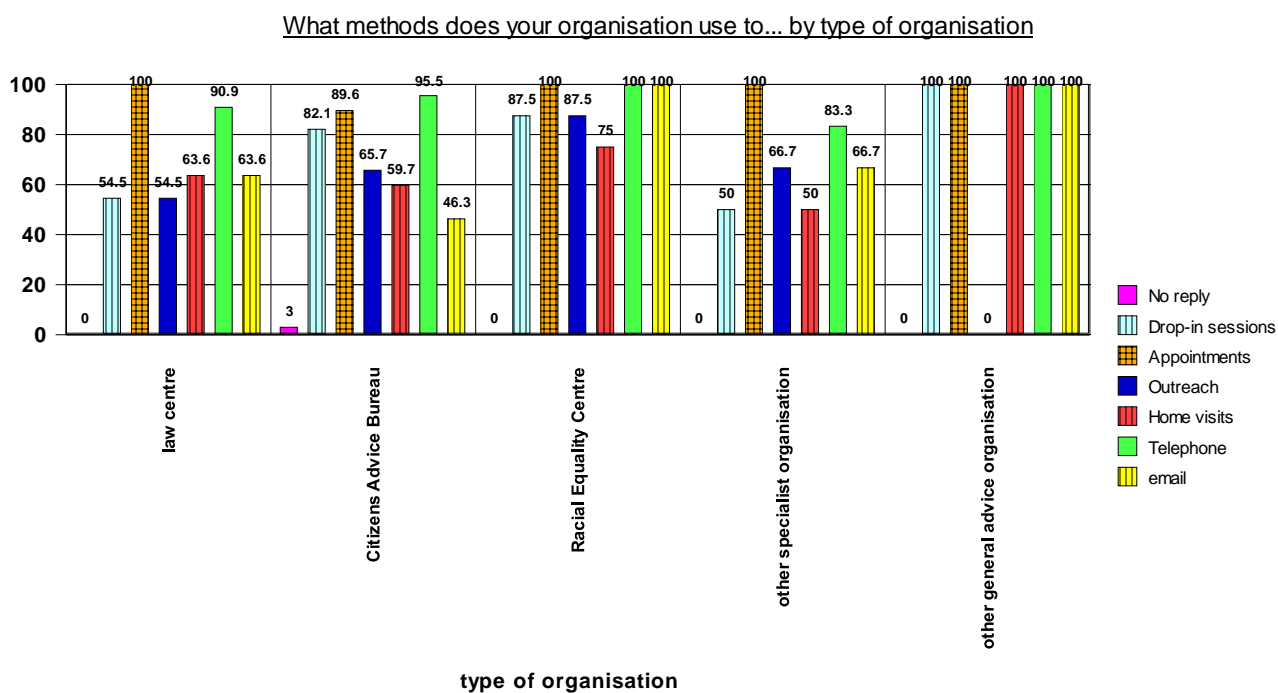
organisations operating in the areas of disability, women’s issues and gay and lesbian rights.

4.7 Delivery Methods

The type of delivery methods used by organisations represents a compromise between the preferences of the advice seeker, and the ability of the advice-giving organisation to manage the resource issues, minimise any geographical and physical constraints, and create a positive ‘brand image’ of the organisation which will encourage potential clients to approach.

Delivery methods themselves have a potential for discriminating against sections of the community. The table below gives an indication of the spread of methods. A similar question was asked of Law centres in the November 2008 Law Centres Federation study, and the responses were the same as in this survey for drop in sessions, appointments and outreach, but home visits, telephone and e-mail methods appear to be used by more organisations in this current survey [increase by approx 20% of organisations].

Table 17



figures in percentages

The chart indicates that appointments are the most commonly used method of advice delivery, with telephone advice being next. The relatively limited use of e-mail is worthy of note.

4.8 Use of websites

The availability of a website was recorded, and 62% of respondents gave a website address. The nature and quality of the website service provision is an area that has not been covered by this survey, but could well justify further enquiry. Some good examples were identified, incorporating information, training materials and specialist advice [for example on migrant worker issues]. Equally, others failed to locate basic contact information accessibly, or on occasion even at all.

4.9 Provision of facilities designed to enhance accessibility to the service

Table 18 Showing availability of accessibility facilities

Absolute Analysis % Respondents	Base	Missing	Grid Table	
		No reply	fully & easy available	partial or conditional availability eg. on request
Base	460	91 19.8%	135 29.3%	234 50.9%
wheelchair accessible accommodation	92	1 1.1%	78 84.8%	13 14.1%
language Interpretation services	92	7 7.6%	21 22.8%	64 69.6%
British sign language	92	26 28.3%	8 8.7%	58 63.0%
Documents in Braille or large print	92	30 32.6%	10 10.9%	52 56.5%
Documents available in 'easy read' format	92	27 29.3%	18 19.6%	47 51.1%

Wheelchair accessibility was available in all but one of the agencies, and in 85% 'fully and easily'. Other facilities were less consistently available.

Language Interpretation [table 19] was available more readily in the law centres and RECs, but also in CABx conditionally.

British sign language, [table 20] documents in Braille [table 21] were 'fully available' in the fewest situations, and conditionally in approximately two thirds of the organisations.

Provision of documents in easy read format [table 22] was more frequent than for sign language or Braille, with just over a third of the RECs providing this 'fully'.

Table 19: Language interpretation

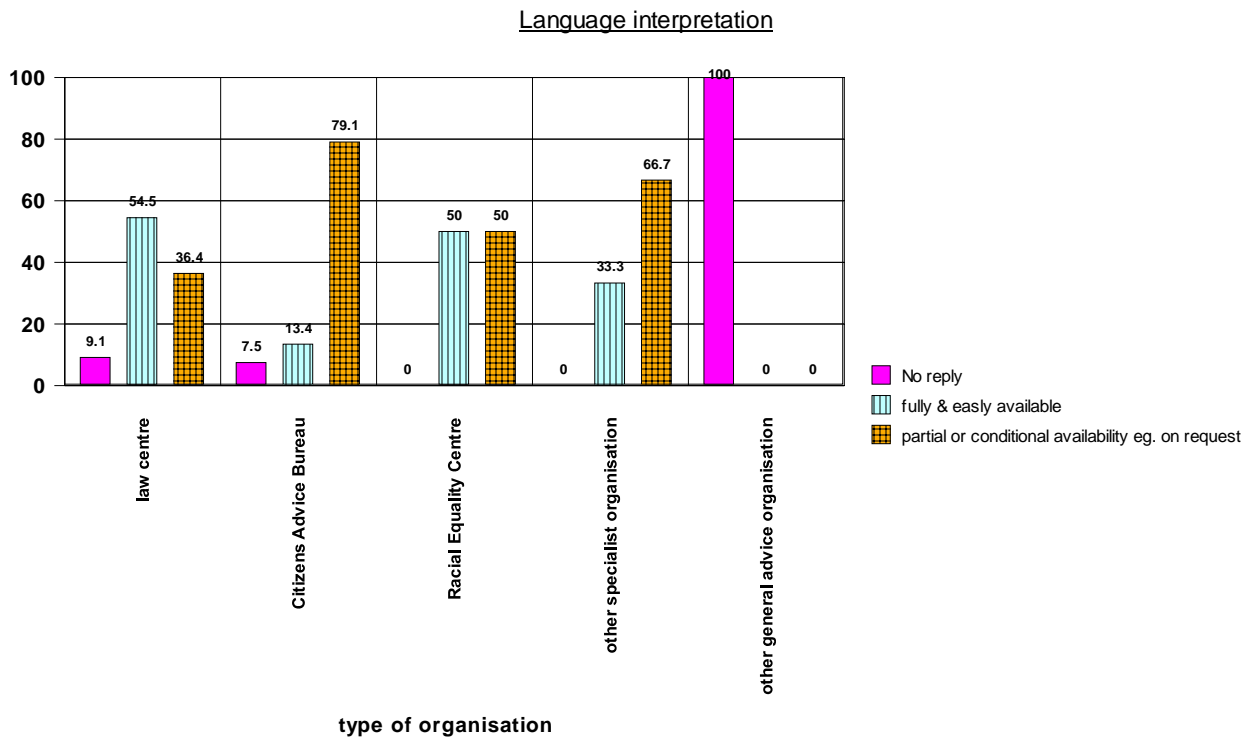
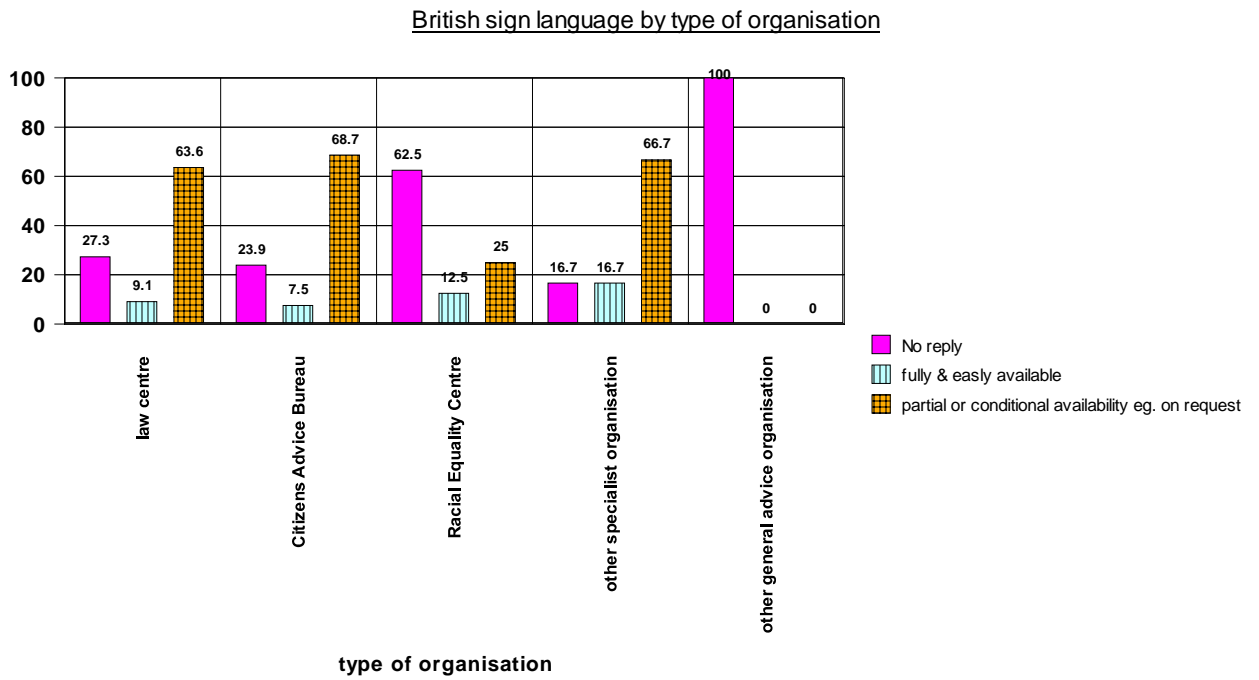
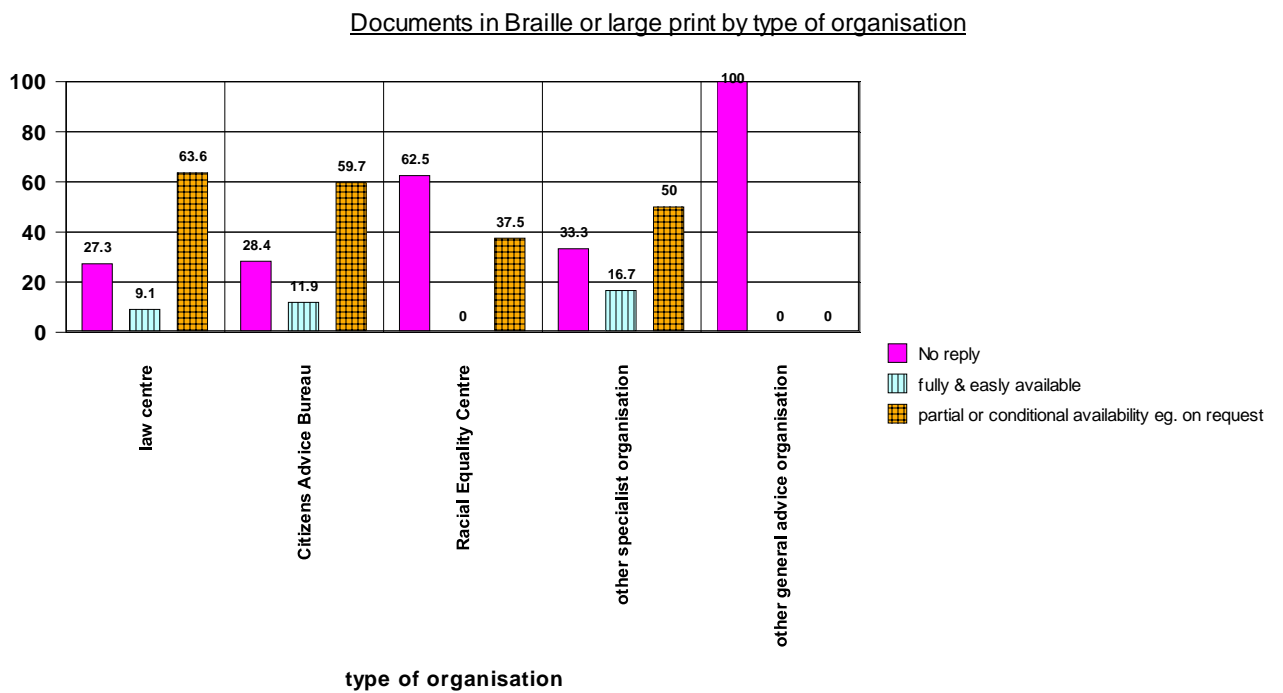


Table 20: British sign language



figures in percentages

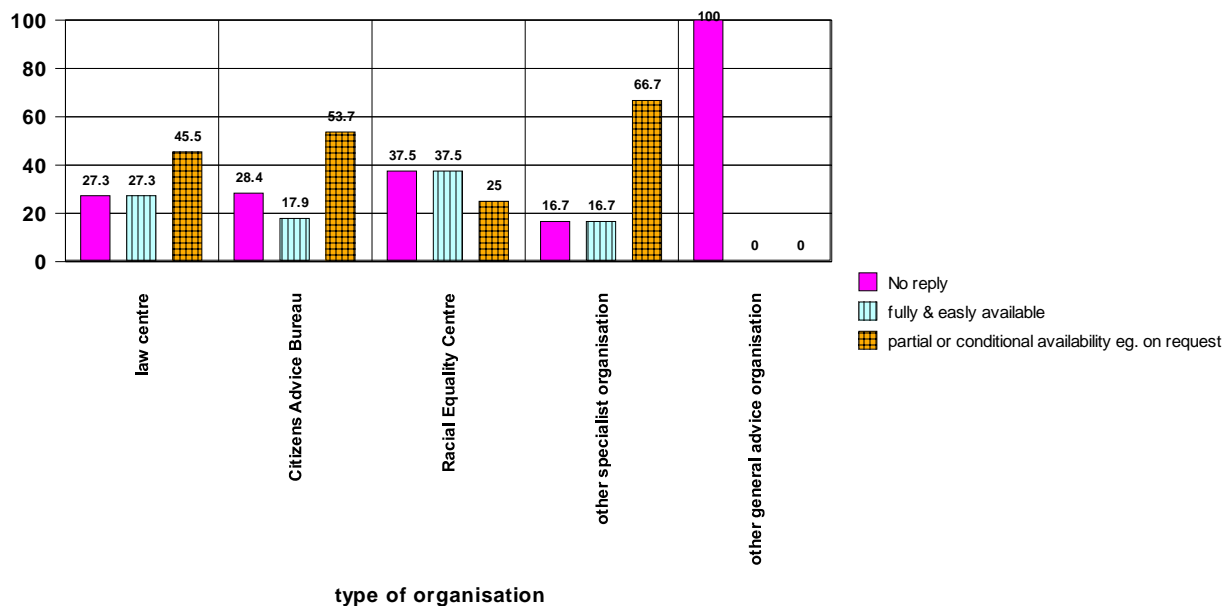
Table 21: Documents in Braille or large print



figures in percentages

Table 22 Documents in easy read format

Documents available in 'easy read' format by type of organisation



figures in percentages

The survey findings reveal substantial variation in the organisations' approach to widening access to their services, and also to the interplay between the strands of discrimination. While organisations may be setup to focus on a particular strand, there will be many individuals who experience discrimination in multiple strands. The questionnaire began to explore some of the disability and language issues with access;¹⁸⁰ there is more work to be done in this area, for example on how adjustments for mental health and learning disabilities issues are incorporated into the service delivery.

Finally, it needs to be acknowledged and emphasised that this survey, together with the mapping exercise in Chapter 3, was only made possible due to the co-operation of all the network agencies. The establishment of a database which accounts for all major providers of advice in discrimination matters across England, Scotland and Wales is a significant achievement. This list should be a valuable resource to all concerned, and the contents worthy of regular up date. Indeed, our project had been delayed initially because of difficulties in obtaining the relevant information and we can only appeal that this precedent be established and

¹⁸⁰ See also discussion and witness evidence in Chapter 5.

acknowledged by a protocol which recognises the contribution of all concerned and, given appropriate permissions, an agreement to share the information across the key agencies.¹⁸¹

¹⁸¹ We must record our thanks to prime movers in the CAB, AdviceUK, The Law Centres Federation and the EHRC for allowing us to come this far.

CHAPTER 5 – ASPIRATIONS, CONCERNS AND RECOMMENDATIONS AS TO THE WAY FORWARD

5.1 Introduction

As indicated earlier, qualitative research was arranged in order to ascertain key players' experiences of existing services and funding arrangements. To this end, focus groups were organised in England, Scotland and Wales, and witness interviews organised with representatives of providers of legal services and advice agencies across the equality strands. The time frame was limited and, regrettably, it was not possible to 'piggy-back' any pre-arranged events. Invitations were open but every effort was made to ensure that all who expressed an interest could participate and, to this end, arrangements were made to facilitate attendance by means of funding travelling expenses on request.

The focus group events addressed the issues underlined in the tender brief and also included specific questions which reflected the idiosyncratic legal and policy arrangements across the three countries (the questions for the focus groups are set out in Appendix 2, 3 and 4). With everyone's consent, the transactions were recorded and have been transcribed, thus providing for opportunities to refer to direct evidence in the body of the Report or in supportive footnotes. Individuals who were unable to attend were invited to either make written submissions or to participate in arranged telephone interviews. Thirty interviews were held and a similar number of written submissions have also been received.

In order to ensure that we were able to collect information from those who were being innovative in the development of services, we also scanned leading newspaper advertisements in order to identify novel developments across a range of services. The organisations concerned were contacted directly and asked to comment on how they had succeeded in funding and planning the ventures concerned.

Inevitably, in both the interviews and focus groups, participants wanted to provide feedback on their relationship with the Commission and also promote suggestions as to how their individual services might be developed and funded. The discussion below will, therefore, reflect both their concerns about the

continued prevalence of ‘advice deserts’, the instability of the sector and their aspirations as to future development.

Despite the significant constitutional and policy differences outlined in the previous chapters, the surprising general conclusion is how similar many of the concerns were.

5.2 Comments and Recommendations

- Considerable concern was expressed by all participants about the instability of the present funding arrangements. In all three countries significant threats to funding characterise current arrangements. In Wales, the uncertainty as to the CLS plans in relation to CLACs and CLANs has traumatised the sector with the result that there is a fear that the community gains established over years of delivery is under threat. No-one – not even those organisations that could boast of recognised excellence, felt confident about the future.¹⁸² Similar evidence was the dominant feature from organisations in England and, again, there was considerable cynicism as to the impact of CLS arrangements on the not-for-profit providers.¹⁸³ A significant concern was the potential impact of the recession and credit crunch, and northern organisations, in particular, were very concerned about the collapse of financial institutions. It was felt unrealistic to expect any significant external funding from such providers in the current climate. In Scotland, similarly, there was considerable pessimism about the future – some organisations had been put on notice that they would no longer be receiving section 10 funding under community care/health provisions.¹⁸⁴ In view of the above, any planned

¹⁸² For instance, the award winning projects in Flintshire and Newport are unclear about their prospects after November.

¹⁸³ For instance, Mary Ward Legal Centre, which currently employs 33 staff including solicitors, case workers, management, secretarial and support staff, recognises that future funding arrangements might place the future of the long established Centre at risk. The Centre currently delivers legal advice to residents across London but in future London is likely to be split into some 30 procurement areas. Moreover, it may be that eligibility to apply to provide services will be subject to the requirement of a ‘permanent presence’ in the area. Such arrangements would effectively make it impossible for not for profit suppliers to apply.

¹⁸⁴ On investigation, there does not appear to have been a change of the Scottish Government’s policy. Project grants are normally provided for a maximum of three years and are not renewable. Core funding is, however, renewable. The funding is generally for national projects. Local projects that are innovative and of potential national significance, can also be funded but generally the funding of local service delivery organisations would be expected to come from other agencies, such as local authorities. Organisations that have received project funding are not surprisingly pessimistic as to their prospects of finding alternative sponsors.

investment may need to give primary consideration as to how to best maintain the status quo, rather than the procurement of additional services.

- The common plea, understandably, was for three or five year contracts. The frustration borne of shorter arrangements was obvious. To quote one participant, 'I have been working in the sector for nine years and have been issued with redundancy notices on five occasions. As things stand, I know I am safe until October but no doubt will receive another notice in a few weeks' time.' There was also some exasperation based on a sense that present funding arrangements seem to take no account of the fact that not for profit charitable organisations lack the financial dexterity of private competitors:

'The problems for specialist legal providers is that, unlike private law firms, we cannot borrow money. Private law firms can charge individuals and we can't as we are a charity and it's not our ethos to do so. We do charge for training and consultancy – third parties – and that helps with our income. It makes it difficult for us to maintain a legal team as private lawyers could do on the basis of paying out salaries etc but you are waiting for your fees to come in or legal aid on a case by case basis. You run an overdraft - well we can't do that as we can't charge fees and we can't borrow money on overdraft so we do rely on regular grant income or regular contract income to maintain our legal team.'

- All organisations, but particularly those in England and Wales, recognise their need to change in response to external pressures. Some of these adjustments will require considerable planning and resources and there was general consensus of the need for some bridge funding in order to protect the sector from being displaced by opportunists. It is important to note in this context that, as indicated above, some long-standing providers fear that they are facing an 'asteroid of dinosaur proportion', and that they need urgent assistance in order to transcend the change. Other than the EHRC, potential bridge funders are not easily identified. The difficulty is compounded by the realisation that different

institutional arrangements are in place across the three countries for facilitating community and third sector cohesion and development. In England, for instance, the Home Office has established a funding scheme known as the 'ChangeUp' programme aimed at setting up consortia/partnerships at regional, sub-regional, and local level. Capacity Builders, a non-departmental public body (NDPB), has been set up to manage the programme and build up the capacity of the third sector. The organisation is committed to helping third sector organisations access high quality support, and boasts that it will use its grant programme strategically to develop new support mechanisms, stimulate improvements in support services, and help to lever other funds. The Third Sector Review in July 2007 reaffirmed government support for continued ChangeUp investment with £88.5 million allocated in the Spending Review for the three year period 2008-11. In essence the fund invests in support organisations (infrastructure or second tier organisations), and has invested in a number of equality organisations including, for instance, the National Equality Partnership. The closest equivalent in Scotland seems to be the Third Sector Enterprise Fund. The Scottish Government has set up the £12 million Third Sector Enterprise Fund to help the third sector to contribute towards Scotland's success. The Fund aims to help third sector organisations to become more sustainable and increase their capacity and capability. The Fund offers awards of between £25,000 and £100,000 to third sector organisations who can demonstrate how they intend to make transformational step changes to their capacity, capability and sustainability. The majority of awards from both funds will be allocated throughout 2009, but funding must be claimed in full before 31 March 2011. There appears to be no direct equivalent provision in Wales to the English and Scottish provision. A Strategic Plan has been published with a view of supporting and working with the Third Sector in Wales, which covers between 2008 and 2011.¹⁸⁵ Perhaps the nearest equivalent grant Scheme is the Communities First programme, which has been set up to improve the living conditions and prospects for people in the

¹⁸⁵ WAG, *'The Third Dimension' – A Strategic Action Plan For the Voluntary Sector Scheme* (2008)

most disadvantaged communities across Wales.¹⁸⁶ It is a long-term programme and will run for at least ten years. Core and project funding is available but to qualify it is necessary to establish that the application relates to a poor community as categorised under the Welsh Index of Multiple Deprivation. The fund will normally provide up to a maximum of £300,000 for up to a three-year period, but proposals for larger budgets can be submitted subject to preliminary approval. Match funding, very widely interpreted, is also necessary. It should be noted, as outlined in Chapter 2 (sections 2.2-6), that s 77(1) of The Government of Wales Act 2006 requires the Welsh Ministers to make appropriate arrangements with a view to securing that their functions are exercised with due regard to the principle that there should be equality of opportunity for all people. Section 70 of the Government of Wales Act 2006 empowers Assembly Ministers to give financial assistance (whether by way of grant, loan or guarantee) to any person engaged in any activity which the Welsh Ministers consider will secure, or help to secure, the attainment of any objective which they aim to attain in the exercise of any of their functions. Thus the Inclusion Grant was originally established in 2002 to fund voluntary sector organisations providing support to Refugees and Asylum Seekers. Since that time, the Inclusion Grant remit has expanded considerably and now covers Refugees, Asylum Seekers, Migrants, Gypsies and Travellers.

- There was a very mixed response to the notion of developing 'centres of excellence'. The Welsh participants felt they were fighting against the tide, and that such developments were inevitable. They therefore felt it was appropriate to petition Commission support to ensure that such developments ensured equality between strands where such arrangements are propelled. In three of the four focus groups, participants talked of a hierarchy of discrimination and some felt that their particular strand was vulnerable. Perhaps the most aggressive or assertive claim in this regard was the suggestion that hate crimes directed at individuals with disabilities were all too common but rarely taken seriously by

¹⁸⁶ Grants under the Communities First Programme are made under Section 126 of the Housing Grants, Construction & Regeneration Act 1996 which has been transferred to the Assembly and delegated to the Minister for Social Justice & Regeneration.

the relevant agencies. The witness in question posed the following rhetorical question: 'is there a famous hate crime for disabled people? I know of lots of cases where disabled people are killed.' Another participant in the same focus group retorted: 'I reported a hate crime to my Police Hate Unit and I spoke to an officer who said he "didn't do gay", that was his colleague.' In sharp contrast, we also received evidence of very successful training directed at addressing issues associated with hate crime.¹⁸⁷

- Others were of the opinion that the push towards one-stop-shops/centres of excellence should be harnessed as an opportunity to establish a generic discrimination strand. This was a recurring suggestion in the focus groups and was persuasively articulated in one of the separate interviews:

'One of the things that the Commission can do on sustainability – this has always been a problem with the voluntary sector – one of the things they could do is to work with the LSC in trying to work out how, in publicly funded work, maybe making discrimination a civil legal category in itself and issuing contracts in discrimination... I think it's worth a go. They were persuaded to establish public law and there was a lot of lobbying on that but that was some time ago and in a different climate. Discrimination with the Equality Act covers different strands, e.g. employment which as far as the DDA is concerned is Part 2, you've got Education (Part 4) and consumer contract on Part 3, so it is covering 3 strands but the LSC might say 2 of those strands might be low volume but if you bring it all together in a new generic strand recognising discrimination law where one could issue national contracts, low volume national contracts to start off with, or maybe pilot this to start off with. I think it's worth a go.'

- Unsurprisingly, there were mixed responses to the prospect of the EHRC working in tandem with the CLS. Some felt that there was a danger that the EHRC would be compromised

¹⁸⁷ To provide an example, Stop Hate UK, based in Leeds has been engaged in challenging Hate Crime and discrimination locally, regionally and nationally. See <http://www.stophateuk.org/>

and stressed the benefits that accrue from current arrangements:

‘One of the great things about EHRC funding is that it is not means tested. I can give the same advice to someone on £20,000 a year or £3,000 a year. Most of the employment cases are those who are working and have got new jobs. I am also dealing with migrant workers, or travellers. Some of the people who have come to me for advice are professional people and you cannot generalise. I deal with young people – problems with education – I deal with very old people. No one answer. The thing is no single system will suit people. I know that, if a centre of excellence was put up in Cambridge, you would get no cases in Suffolk. Geographically, it is no use to you, culturally it is like being the other side of the moon.

‘There are huge barriers. Anything that creates barriers is bad. We do have to go into the communities and develop trust and people gain awareness. Cases are quite shocking. I get referrals from police officers now as we have gained awareness from the police community from people who have experienced violent discrimination in employment and police are embarrassed about the way to support people in the workplace. It would be easy to say let’s create a national system.

‘The way you deal with a problem in Dagenham is different to how we deal with it in Suffolk. Issues of morality are hugely difficult to crack on top of everything else. Most of the people involved in discrimination law are hard to reach groups, not generally people who access legal advice generally. It is a compounding problem. We don’t have a LC in Suffolk and not much access to sources of excellent justice. We don’t have experience of people going to get help – just persuading people to go and get help – they don’t realise it. County Councils say they don’t have challenges about community care but it is not because they are doing everything right, it is because there are no lawyers out there challenging them on

community work issues. All our experience shows people worrying about who they can go to is vital. Having centres in massive regions is not a good thing. They would have to know their local community and it is trust that is hugely important.'

- However, evidence was also provided of the stability that CLS funding brings:

'The LSC has a different model and they have longer term funding and a contract regime rather than service level agreements. There are issues about how they undertake their procurement and how that applies and their commitment to open competition with the private sector. Huge criticism as to how that is applied but if you get the funding then you can keep it. We have had LSC funding for the last 11 years and it is a secure and reliable funding. We welcome moving towards a more secure model with other funders. You can't build up those sort of service we need without having the casework resources.'

- The CLS is clearly conscious of the sensitivities, and in response to our questions indicated that they were confident that quality third sector providers could, and would, rise to the challenge that centres of excellence would bring. In essence, the appeal is simply that there should be a joined up service.
- A surprising and disappointing revelation was that there is little or no evidence of formal protocols for referrals in any of the countries involved. Drafts and proposals have been discussed over time, but without exception, all the participants are currently reliant on informal arrangements that are very dependent on individual contacts and personalities. We applaud the important development work carried out by Law Centres Federation and AdviceUK, but our impression is that a great deal more needs to be done in order to ground such arrangements in practice. As things stand, present arrangements are not coherent or joined up in any coordinated way. The Working Together for Advice

Project (WFTA), a two year Big Lottery funded project,¹⁸⁸ will develop referral protocols and referral networks, but clearly continued support will be needed to ensure that the links developed become grounded and effective. Encouragingly, however, there are clear examples of good practice, which could be replicated elsewhere.¹⁸⁹

- A further common conclusion was that there has been little development of accreditation procedures. Again, we were put on notice of the embryonic developments sponsored by the Law Centres Federation and AdviceUK, but again, the developments to date are notional and not grounded in practice.¹⁹⁰ In Wales, there was general satisfaction as to the contribution of the accredited course, but there was some concern as to the looseness of current arrangements in that there was no provision for mentoring of students within a working environment. The position in Scotland seems less satisfactory, as it appears that the accredited programme formerly provided by the CRE is no longer available. A postgraduate university course on discrimination has been validated and accepts some 10 students,¹⁹¹ but there is no recognised accredited qualification in relation to advice giving.
- The evidence also suggests that there has been little activity centred on human rights legislation or the enforcement of equality duties to date. Numerous explanations were proffered for the slow development of such work, ranging from lack of expertise, alternative, less glamorous and less contentious procedures such as complaints procedures and lack of funding. For instance, one experienced lawyer explained:

‘We are doing it through casework. The reason why it is not happening is, in my experience, we are shying

¹⁸⁸ Project partners Advice Services Alliance, AdviceUK, Age Concern England, Citizens Advice, Law Centres Federation, and Youth Access.

¹⁸⁹ For example, Avon and Bristol partnership have a specific discrimination focused referral arrangement between: Bristol CAB, REC, SARI (Support Against Racist Incidents) and ACFA (Advice Centres for Avon).

ACFA comprises smaller community centres across Avon.

¹⁹⁰ The WFTA project will develop National Occupation Standards based Discrimination Materials.

¹⁹¹ Equality and Discrimination MSc, University of Strathclyde.

away from it as there is the risk of costs. We do it through police complaints, local authority complaints, and probation complaints. We are not taking legal cases and this is the hiatus where human rights work is happening. Not because lawyers don't want to do it – it is because we don't have protection on costs. I am looking at sending a couple of cases for strategic cases – involving public duty arguments but the individual client can't cope with the potential costs and I ask could EHRC address the risk of costs.'

- A similar, though not identical response was provided in Scotland:

'No strong culture of human rights thinking in Scotland and I am generalising so sometimes when you frame your argument around human rights it seems to be a frivolous, airy fairy thinking. It is not as meaty as other areas. From arguments of human race issues so every matter of discrimination whether housing, discrimination etc we try to angle into it.'

- Another Scottish lawyer said the same, but put it rather differently:

'We ask what can you actually do with it? Limited tool. We do a lot of human rights work under immigration as this is very specific and clear but under discrimination perhaps this is an area where there needs to be more work. How are discrimination workers able to use HRA.'

- Significantly, all three of the lawyers quoted above were both experienced and highly committed, which strongly suggests that there is a need for investment in training at the highest level if this legal pathway is to be opened up. Encouragingly, there is some evidence of successful project work in addressing any information deficit at a more basic level. For instance, Age Concern have been engaged in an awareness training project across the three countries – the Age Concern Age Discrimination Information & Advice Project (ACADIA). The project has been the subject of an independent

evaluation report,¹⁹² and was deemed to be a significant success. However, sustainability is again an issue,¹⁹³ with the Report concluding that ‘While there is some move towards mainstreaming of certain elements of the project, Age Concern is likely to need additional resources to continue to deliver support in relation to age discrimination and to raise awareness of the advice needs of older people with policy and decision makers.’

- Similarly, the reports we received in relation to activity in respect to goods and services suggest that take-off is slow. Significant progress is nonetheless anticipated in the context of anti-ageist developments:

‘When legislation is introduced to outlaw age discrimination in goods and services, there is likely to be a very significant demand for information and advice from individuals who believe they have been discriminated against. Age Concern and Help the Aged believe that a large proportion of this demand will come from older people, and that they will turn to our organisation and to the network of local Age Concerns for information and advice on the new law. This demand cannot be satisfied without additional funding. In its work supporting the implementation of the Equality Bill, the EHRC should press the Government to ensure sufficient resources to fund the independent information and advice services to enable people to use the new legislation effectively. The Commission’s own grant scheme should also give a high priority to supporting this work.’

- Regrettably, evidence provided during the focus groups and in written form confirms that in the context of disability,

¹⁹² The report was carried out by ADP Consultancy in 2007.

¹⁹³ Age Concern Cymru in a written response, for instance, reported that the training had been carried out by the British Institute for Human Rights (BIHR) “ Some of the volunteer advocates commented during the training that they were previously unaware of the various articles of the Human Rights Act and had no knowledge or understanding on how it linked to their work. Following the training, they commented that they were enlightened and empowered to use their newly found knowledge and were confident to apply it in their work... We have had enquiries from Age Concerns requesting contact details for the BIHR as they would like to run in house training, but unfortunately, due to financial limitations, local Age Concerns are unable to buy the training.

serious abuse persists. In this respect, the following example may be indicative:

'I made an appointment with my local Inland Revenue office.... to discuss a matter relating to my working tax credits claim. I explained on the phone that I was dyslexic and had problems with calculus. I was told they could help me.

'I attended the appointment it was a nightmare. The advisor began by throwing dates and sums of money at me at great speed I asked her if she would slow down she ignored my request in spite of me mentioning my dyslexia to her. I then asked her if she would write some brief notes breaking down the facts and figures for me she refused saying this service was not available. Again I reinforced my need for assistance due to dyslexia. To which she said that it was not dyslexia that I had an issue with but it was my ears. I then asked her if I could access a disability officer for help again she refused me this. At this point I then stated that I felt that I was not being fairly and equally treated under law with regard to accessing a public service. She then terminated the appointment and had me escorted off the premises. I had done nothing to merit this treatment.

'I was shell-shocked at this treatment I felt anger disgust and abject humiliation. I set to work by writing a formal letter of complaint to the Inland Revenue.

'I have had a reply to my formal letter of complaint from a senior manager at the Inland Revenue. She has made no attempt to address my complaint regarding the disability discrimination act or the lack of disability awareness training within the inland revenue What perturbs me most is the fact that legislation exists in statute which is supposed to protect disabled people from. So where do I go from here? There is an advice desert and I'm walking through it at present... I suffer from clinical depression and this incident has made me unwell again...'

- Indicative of the loose referral arrangements, noted above, was the realisation that despite the fact that most organisations belonged to some affiliate body, individual agencies had little knowledge or formal access to sources of expertise in relation to their given strand. A striking example exists in relation to legal advice and disability. The Disability Law Service, for instance, has formal contractual arrangements with only one leading national disability charity. Given the propensity and wealth of the leading charities in this area, the lack of sponsorship and investment seems inexcusable. It is worth noting that a Charity Commission Report in 2006 found that charities at the time in question were holding reserves totalling £37.5 billion.¹⁹⁴ Moreover, very large charities hold the majority of the sector's total reserves – a possible double whammy given that it is widely alleged that public funders tend to penalise organisations with large reserves. A more recent Report from the Charity Commission (March, 2009)¹⁹⁵ suggests that more than half the charities are now feeling the impact of the economic downturn and comments that, 'it is very surprising that some charities are not considering collaboration with others, as this can lead to sharing expertise and costs.' The potential for co-operation and sharing expertise is enormous.¹⁹⁶ As one focus group contributor suggested:

'It does happen in some of the disability charities and they had a legal department that took on cases but that is unusual. RNIB and RNID do similar work and in the area of benefits and legal challenges with regard to benefits, this huge experience and scope amongst the disability orgs, this is not translated into discrimination. Discrimination has never been taken on. It frustrates me as I do quite a lot of work to get disability

¹⁹⁴ Charity Commission for England and Wales, *Tell it like it is – the extent of charity and reserves policy* (2006).

¹⁹⁵ Press Release, 17 March 2009. See

<http://www.charitycommission.gov.uk/news/downturn.asp>

¹⁹⁶ Evidence presented from the Development Officer for Wales of the Disability Law Service confirms the potential. "In January and February 2009, the Disability Law Service conducted a preliminary internet search of disability and advice organisations, as part of their fifteen month development project in Wales. Using publicly available internet sources (e.g. CLS, Charity Commission, voluntary umbrella organisations etc.), the DLS found there to be at least 460 organisations (including the local branches of national organisations) where disabled people could conceivably turn for advice. It is likely that this figure is a conservative estimate, as it does not include small advice or 'drop-in' groups that might be advertised off-line on a local basis.

organisations to be aware of this. In practice, even in the disability organisations, they see discrimination as being physical access. There is nothing else that seems to be important. You are saying to very good organisations like learning disability organisations and mental health charities, why are you not taking discrimination cases and now I am saying, I am taking these cases. I get a lot from disability and advice organisations as I am saying send me your cases and I will take them on. Disability charities have never taken up discrimination as a legal issue – never – that has been a shock... It is also that you have to have someone saying to you, “I will take the cases on” as you have to be confident you are not sending someone into a black hole.’

- There is clear evidence of some lack of joined up thinking, joined up expertise, and joined up funding in the context of disability in particular. As an observer from AdviceUK astutely suggested, ‘We have been talking in projects that we have worked on with LCs and CABx about how to get money from local groups – to work with carers and specific groups. Advice organisations are not very good at tapping into that money. Nationally we might tap into guidance that might help locally.’ There is great deal of work to be done here.
- As indicated above, charities and trusts are feeling the effects of the economic downturn so the prospect of increased or continued sponsorship from such sources is open to question. However, there has been some notable success in this context, primarily in relation to the funding of advice services in rural areas that has been supported by CarnegieUK Trust. The Trust has also published a Charter for Rural Communities,¹⁹⁷ which essentially outlines the Trust’s approach to funding, namely that it looks for sustainability and thus adopts an asset-based approach. Indeed, the trust is examining the possibility of developing a new endowment fund for community land and asset requisition. In addition the trust provides small grants, and listed amongst the recipients are Age Concern Oxfordshire, to ensure that rurally isolated older people have access to

¹⁹⁷ CarnegieUK Trust (2007) *A Charter for Rural Communities*.

services and help identify their needs and ensure they are met, The Monitoring Group Nottingham, to develop the Rural Racism Project, bringing together black and ethnic minority and refugee communities in rural areas to explore their daily living experience, and Arkleton Trust Scotland, to set up a series of 15 regional seminars across Scotland to develop a Scottish Rural Network which will link rural communities with the rural development organisations which support them.

- Not surprisingly there was some scepticism amongst our contributors in relation to the prospects of future or lottery funding. The London Olympics looms large, and in any event lottery-funding regulations are likely to change and make applications more difficult. Indeed, the rules for Wales have been less protective of the third sector than in England. Clearly, however, a number of organisations, such as the Disability Law Service, have done well, but remain vulnerable because future prospects are very uncertain:

'We were absolutely thrilled when it came... and I think it's all credit to the umbrella bodies as they lobbied very hard for that but we were told at the beginning that this was it, we were never given any promise that it was going to be rolled over. I think originally it was the 3 year programme, they got worried that some of the fund would be lost if they went into 3 years so they made it 2 years but we've got up to 2012/2013 but on a sliding scale as we build in an element of sustainability through earning income so it gives us a chance that this year we will be getting some sustainability for that project work.'

'Another project that we are currently working on which is funded by the Lottery is only funded until June of next year so we are doing a lot of work now and we are going to develop training etc in order to try and fill some of the gap but come 2010 we don't know.'

- Age Concern England, have similar concerns and in a written submission suggest a fall back alternative strategy:

'Changes to the Big Lottery Fund, the largest charitable funder of our advice services, will mean that they are

unlikely to attract funding in the future – raising the prospect of cuts. Around three quarters of local Age Concerns receive local authority funding for their information and advice services, but in the majority of cases this is less than £50,000 per year. Age Concern is calling for a new cross-government strategy to co-ordinate the provision of information and advice for older people, led by the Department for Work and Pensions. This should sit within a wider government framework strategy for meeting the advice needs of the wider population – including a commitment that all policy decisions be accompanied by an impact assessment of information and advice needs to implement the policy effectively. We call on the EHRC to give its support for these proposals – especially from the perspective of independent advice and information on equality and human rights.'

- Structural funding provides a potential, though difficult to access, source of funding. A new set of Structural Funds was launched in 2007 in line with a new period of funding running from 2007 to 2013 (and in line with the long term financial framework for the EU Budget). Objective 1 (used in the 2000-06 programmes) has been replaced by the Convergence Objective, with similar criteria relating to regional GDP. Objectives 2 and 3 have been replaced by the Competitiveness and Employment Objective. While Objective 2 funding was formally allocated to specific areas, the new objective covers the whole of the UK. Some funding, such as the ESF (European Social Fund) in England, is not split regionally. West Wales and the Valleys and Cornwall and the Isles of Scilly are the two regions that are eligible under the 'Convergence' objective. Highlands and Islands is a 'phasing-out' region that previously qualified for funding but is now above the GDP per head threshold, due to the enlargement of the EU. Merseyside and South Yorkshire were previously Objective 1 area that qualifies for some additional funding as 'phasing-in' regions under the Competitiveness and Employment Objective.
- As the above complexities illustrate, there are clearly major capacity issues in relation to pulling down such resources

and even where the expertise exists the outcomes can be uncertain and problematic. As one contributor put it:

'The other funding we need to consider is first of all European funding and reminds ourselves we have come to the end of European funding and we are coming into Convergence funding. We have come out of Objective 1 funding which has all come to an end now...

'Convergence is available in Wales but only in parts of Wales – Wales and the Valleys although there is some European funding under another heading that is available. It is much more limited in what you can do with it. Our experience of European funding has been difficult even though I suppose in terms of the advice sector we are better placed than most as we are a membership organisation so we can put in a Wales wide bid – an Objective 1 area wide bid – and our bureaux work closely with themselves and with others.

'We have found European funding very difficult to extract and this round of Convergence funding, the criteria on which you are likely to get a bid are incredibly difficult from our perspective. Most of the things we think we would be likely to be successful on actually come under return to work employment heads. None of them could you fund advice – you would have to fund something where advice was the bi-product of getting people into work and you have to construct your bid around that, so I'll give you an example – we have put together a potential bid and we have got as far as expression of interest and a lot of work around developing a business plan which is to provide recruitment and training support for people who have been out of employment for a considerable time, to take up roles within the service, while they are with us they provide advice, but we support them back into employment. All the way through that process we were given lots of encouragement by Wales European Office but have been unsuccessful. We are not leaving that one alone, we think there are other opportunities for bureaux to do something like that and we are looking at

other successful bids that have been taken on by bigger organisations and where our local bureaux might fit into their bids.

'In the same sort of way, even though we are the biggest in the advice sector, we are tiny if you compare us with Job Centre Plus so we are not in there at the moment... We have been successful with others in extracting small amounts of money in equal opportunities but it is very difficult in terms of what you do with it, not difficult to get if you are willing to look at the equal funding and say right, I'm willing to do what they want me to do, rather than saying that what we want to do discrimination advice because they don't fund that.'

- Moreover, the expertise required suggests that key or lead applicants need to be tutored or encouraged to act as vanguard partners or facilitators. For instance, the All Wales Ethnic Minority Association, (AWEMA) as lead sponsor has recently been able to pull down no less than £3.9 million from the ESF towards 'Increasing Black and Minority [BME] Employment and Tackle BME Inactivity'. Interestingly, however, there are four other partners including one Equality Council.
- Another possible source of funding, perhaps particularly in the context of disability, is from health. In *R (Keating) v Cardiff Local Health Board*,¹⁹⁸ it was held that the word 'facilities' in section 3(1) (e) of the National Health Service Act 2006 could include advice provision, and accordingly a project established to provide advice and assistance in relation to patients with mental health problems could be funded. Cross cutting health/social care funding may also be available. For instance, Better Advice, Better Health (BABH) is a partnership between Citizens Advice Cymru and the Welsh Assembly Government to provide local and co-ordinated generalist and welfare rights advice by Citizens Advice Bureaux in co-operation with Primary Health Care teams across Wales. It started as a benefit take-up campaign in 2001, but due to the success of the project and

¹⁹⁸ [2005] EWCA Civ 847.

the access to the holistic service it created, the Welsh Assembly Government now fund this service from its health base budget.¹⁹⁹ The Secretary of State for Health in England until recently also had power under s. 64 of the Health Services and Public Health act 1968 to make grants to the voluntary sector to help secure provision of health and social care – a budget of £24 million in 2007-08. The new replacement scheme will fund national projects and contribute to the DOH's objective of improving health and wellbeing. The programme has two strands – a strategic partner programme and an innovation, excellence and service development fund. The danger, as one of our witness contributors suggests, is that some front-line, locally based providers may lose out:

'There's quite a lot of money out there for awareness raising. I know the Dept of Health got rid of their s.64 grant and moved to working with strategic partners which are umbrella bodies and putting their money into the umbrella bodies for capacity building and policy work but, in a sense, that's taken quite a lot of funding away from small, front line organisations. I think in orgs like ours and Law Centres, they do an awful lot of public education work and awareness raising as well.'

- There was concern about the possibility of the withdrawal of funding for awareness and information programmes and limiting sponsorship to case work only. It was felt that confining support to casework could lead to serious problems, for example, an inability to gain access to very vulnerable clients such as those in prison. A solicitor practitioner reported on a programme that provided for general access to prisons which subsequently discovered examples of serious abuse such as the deprivation of essential living support equipment for disabled prisoners:

¹⁹⁹ Better Health (BA: BH). Better Advice, Better Health delivers advice in primary health locations across Wales. The aim being to improve general health by resolving non-medical factors such as debt, poor housing, relationship problems etc that have a detrimental impact on health. Better Advice, Better Health is co-ordinated centrally through Citizens Advice Cymru but locally managed to ensure flexible delivery according to community need and includes regular Citizens Advice Bureau sessions at GP surgeries or health centres, Home Visits to patients following health professionals referrals and Advice Sessions at community hospitals and mental health services. There are now over 150 health care locations in Wales participating in the Service.

‘There is a real problem in terms of accessing advice services with regard to a lot of the people who are often victims of discrimination and the way that they access services are the way that you get legitimacy to do it is from the bottom up way. You go into the communities, you go into the factories, travellers’ sites and there is a lot of work there. I have been into more prisons and chicken factories to do liaison work and get people to talk to me and that is the way to do it – you don’t do it by putting a plaque outside saying “we do discrimination work”. You don’t get travellers doing this. You have to be out gaining trust.’

- Encouragingly, there was common recognition of good practices and some enthusiasm for learning from others’ experience. For example, leading figures in CAB England cited the Newport and Flintshire CABx as models which they were keen to emulate. Similarly, it was felt that the Northumbria partnership arrangements²⁰⁰ could be replicated across rural areas. The flexibility and non-institutional characteristics of Village CAB in Salford also appealed, and we have received compelling evidence from a number of organisations relating to how they succeed in engaging individuals who would not normally make direct contact with services.
- We have received numerous suggestions as to new developments such as support for a website database which would allow for sharing of expertise and discussion of cases, as well as Instant Messaging Services for individuals contemplating coming out about their sexuality.²⁰¹ We

²⁰⁰ The Northumberland Advice Network is an informal network consisting of advice providers across levels who were previously members of the local CLSP.

The members include: 6 CABx in Northumberland, Dawn Advice Ltd (AUK member), Private practice Solicitors with LSC contracts, Local Authority, Regional EHRC funding has been provided to build capacity of 6 CABx in Northumberland to deliver discrimination advice across the county. A training programme across the partnership is provided by the Newcastle Law Centre and includes peripatetic 2nd tier support to CABx workers.

²⁰¹ The following written submission was received by Stonewall Cymru: ‘LGB people are often isolated and may not be “out” (disclosed their same-sex sexual orientation) to their parents, family, friends, work colleagues etc. They are often reluctant to go to mainstream organisations for advice as they fear the possible consequences of coming out to a stranger – change of attitude, lack of confidentiality – and sometimes seek gay-friendly solicitors etc. Most LGB groups across Wales rely on the energy of individuals and are unfunded because

recommend that the EHRC consults on the feasibility and support for such schemes.

- There was encouraging support for the work done by the Commission's helpline but some suggested that more investment is needed in order to ensure that the service has the capacity not only to advise, but to make effective referrals. As things stand, it is felt that callers were not sufficiently helped in making connections with other agencies. Moreover, agencies felt that potential complainants that had been encouraged to approach the Commission following initial investigation by community-based organisations were having to face unnecessary barriers to support by being required to put themselves through the helpline filtering system.
- There was recognition, in Scotland, that one of the impediments to cooperation and partnership was the municipal/boundary restrictions. It was suggested that perhaps recipients of EHRC contracts should be obliged to cooperate with co-recipients as a lever to bring about significant change. Whilst it is clearly dangerous to make sweeping generalisation based on the experience of one focus group, it appears that there may be a distinct lack of advice sector co-ordination at a national level, and it may be that this is an issue that the Commission may want to discuss with the providers.²⁰² Co-operation in Wales, at a

fundlers rarely categorise lesbian, gay & bisexual people as a priority group. As "coming out" and the possible consequences are key to the development of an LGB person the focus of these local groups has been on peer support and safe social opportunities... One of the aims for Stonewall Cymru in developing an e-community website, known as a Virtual Regional Network, would be to provide an inward-looking safe-space for Stonewall Cymru to work with LGB people to address issues of "coming out" in preparation for them seeking advice from the "external" mainstream advice organisations. The Virtual Regional Network would have the capacity for regional networking of local LGB people within North Wales, South Wales Mid & West Wales regions and develop greater confidence and peer support regionally and the possibility of local authorities, health boards etc of consulting on policy and practise... The website framework would be Web 2 for the provision of communication and discussion tools rather than Web 1 which provides information for reading information. A similar initiative is not seen to be a priority in England and Scotland as the development of LGB support has been different in each nation, and there are more well established LGB organisations in England and Scotland. Also Stonewall Cymru has a Service Level Agreement with the Welsh Assembly to *enable LGB people to articulate their service delivery needs at local, regional and national level.*

²⁰² A quotation from a contributor to the Glasgow focus group: 'I come to a day like this and I meet people from orgs that I did not know but I can't help feeling that what we all need across Scotland is more information and more contact with each other. We need much more co-

strategic level seems very effective.²⁰³ Participants in the Wales-based focus group placed great emphasis on the differences that existed between provision and policies in Wales and England, and stressed the need for alignment between WAG and EHRC funding policies,²⁰⁴ and suggested that some of the Commission's spending should be earmarked for Wales.

- Perhaps unsurprisingly, the jury is still out about the impact and benefit of the Children's Commissioners. There was little or no knowledge of the role of the Commissioner in England, and although knowledge and contact with the Scottish and Welsh equivalents was more evident it was clear that there was little detailed understanding about their precise role. In Wales, our contributors had mixed views of the Commissioner:

'Yes. I have heard good things about the Children's Commission just it hasn't made itself known. An organisation I used to work with - SNAP Cymru – one of our workers went to work for the Children's Commission and there was a good link then between SNAP Cymru organisation and the Children's Commissioner and when you are in that bubble you think, well, the Children's Commissioner is doing good work and when you come out of the that bubble you wonder what's going on. What the Children's Commissioner is good at is signposting when people get in touch with them. Rather than do casework themselves they signpost on.'

ordination between us. If we want to help a family who phone up from Falkirk who happen to have a racial discrimination problem we can know who to refer them to.'

²⁰³ An independent Providers Forum for Wales has been established, i.e. all the umbrella bodies for independent advice provision across Wales. Members include CAB, AdviceUK, LCF, the Law Society, Legal Aid Practitioners Group, SNAP Cymru, Age Concern, Shelter Cymru.

²⁰⁴ 'I think it also applies to how the grant programme has been run – it runs in a very London-centric way. I know we have local liaison officers; we have never met ours formally since the grants began. Everything has been dealt with remotely from London and there are very particular issues about the grant starts and how they are implemented in Wales. We have existing arrangements which were different in Wales but we weren't able to negotiate any way through that as it was one size fits all and I would really like to see much greater devolution of the grants programme and much greater control and decision making going on in Wales as the other people that have the contacts with, they are the people who know of the service delivery and cannot scrutinise our bids and performance. We have had no performance review this time round whereas previously our work was scrutinised and we were brought to account.'

- The above comment does suggest that outside of the immediate field of children's issues, little is known about what the Commissioner is actually doing. Although not ideal, this is not surprising, and it must be conceded that if children's organisations had partaken more prominently in the research, the response may have been different. However, some contributors with more direct experience of the office also expressed mixed views, with one making the following comment:

'The Children's Commissioner (I've worked for years in education so I'm in the same bubble) – there seems to be a lot of work coming out but he only has the power to make those recommendations but where they go after that, I don't know. I was talking about it at a meeting this morning – there is a recommendation by the Children's Commissioner to have a bullying co-ordinator in each LA but how much that is being pushed by WAG does not match up.'

- This highlights one of the main problems with the Commissioner model – their effectiveness is constrained by the extent to which their views are taken into account by government. More worrying was the suggestion that to some extent WAG is essentially using the offices as a 'backstop' and justification for the failure to provide other services:

'What are the outcomes of the recommendations? It's easy for us all to be cynical but you can't help it sometimes and you can go to the Assembly on a single issue like children or older people and you know the response you are going to get. We have created the role of Older People's Commissioner for Wales and then you say what you are doing now; you are just ticking the box.'

- In Scotland, one expert childcare lawyer practitioner expressed the following concerns:

'I have a lot of experience. The sad thing about the Children's Commissioner had not been given sufficient powers. The truth is the government waffled it and did

not give the Commissioner the power to investigate individual cases. Their cases get passed to us. With only two solicitors we can't undertake representation. We support the solicitors to whom we pass it on. She's done a great job of raising the profile and kids like it as they know who their Commissioner is and I hope it doesn't disappear – I have my reservations about the multiplicity of Commissioners.'

- As indicated, above, less was known about the Commissioner's role in England. Comments included, 'I have no idea what the Commissioners do and what their publications are like – are they written in a practical way?' and 'We don't know about them'. Interestingly, however, there was considerable insight in relation to some of the political/legal dilemmas that characterise the office:

'There are basic policy conflicts for example the Children's Commissioner as the government has delayed ratifying the International Disabled Peoples Rights as they have reservations about a number of areas including inclusive education and they are refusing to sign up to the elements of working towards inclusion. This is a big issue for children and parents. I totally understand why parents object to disabled children going into mainstream education. There are no facilities in place but a lot of our members have been involved in mainstream and special schools and the experience of special schools has been horrendous. I am not saying there are situations where there are young people and children who need specific support and cannot operate in all environments and it might be temporary – i.e. those young people with mental health problems. However, that makes the equality strands in relation to Children's Commissioner very difficult.'

- There was considerable interest in ensuring that strategic and meritorious cases were recognised and complimentary comments about the improved support given by the EHRC in helping to bring cases forward. However, it was also noted that, to some extent, the expertise available from the Commission mirrored that was already available on the ground at higher-level service providers. It was suggested

that what was needed was early access to senior counsel in order to facilitate effective progression. It was also suggested that perhaps the lack of progress was to be understood in terms of case ownership and man agent issues. Encouragingly, however, clear evidence was also provided about how such issues are sympathetically and well managed by the Commission and perhaps the example cited needs publishing as an exemplar of good and actual practice.²⁰⁵

- There was also some concern about new communities versus older communities. It was suggested that there was a need to put money into addressing some of the tensions created by government monies going into new migrant communities and the fall out from that. As one contributor suggested, 'We are not just dealing with angry white residents, but also black communities who feel they have been pushed aside by the public sector embracing new migrant communities'.
- There was also some support for the idea that the Commission should sponsor preventative work in the employment context. For instance, the City of London CAB has reported an increased workload due to the very large number of redundancies being made within the City of London's financial sector. The notion that formerly well-off individuals could be discriminated against on the basis of their previous wealth is interesting but there is no doubt that there is considerable concern about the failure of advice agencies to undertake preventative intervention.
- Senior caseworkers were complaining about the fact that they had to combat cases on an uneven playing field in that

²⁰⁵ 'The experience was very good. I was slightly worried initially. It was an interesting situation as we were quite a way down – almost at hearing from employment tribunal – they funded specialist Counsel and I remained the instructing solicitor and this was helped by the short timescales rather helped and the fact that they felt that the case had been well prepared. I was the link person and it worked well. It was very much a partnership feeling about it. I didn't feel that they wanted to take over the case. Just wanted to make sure they spent their money wisely. I didn't get any heavy pressure to not be allowed to continue dealing with the case. I was impressed by the recognition of the relationship with the client and the fact that one of the dangers in taking the case away from the local organisation is that the clients had a very close personal relationship with their advisor and if they were moved to Manchester or London you would lose that initial contact. I just felt it was a success. I would refer more cases on that basis.'

they were without access to the kind of support systems available to more prosperous opponents. In particular, they referred to the fact that they have no access to helpful databases and comment on the fact that they often deliberately 'poach' students in order to indirectly access university facilities.

- There was some concern expressed about the possibility that gypsies and travellers have fallen through the EHRC radar.
- As illustrated in Chapter 4, above,²⁰⁶ there is some evidence to suggest that services are not effectively making the necessary adaptations to meet the needs of potential users of advice services. The following witness statement is included almost in full because, without exception, all the contributors, including directors of national provider organisations conceded that existing provision consistently falls short of what is required:

'For the deaf person seeking advice there are additional barriers as when they come across a little oasis of advice, there is no guarantee that they can access the advice on hand. Unfortunately, the advice system of CABs, law societies, union sources and private firms of solicitors are often still inaccessible to profoundly deaf people in spite of the DDA having been on the statute books since 1995. Lack of knowledge of palantype transcription services, BSL interpreters, induction loops etc., all of which are inclusive methods of communication, coupled with low levels of understanding of DDA reasonable adjustment duties contribute to the exclusion of deaf people from the oasis in the desert.

'I can tell you of a couple of local examples of times when the unions had not protected their deaf members from discrimination. This happened by failing to provide interpreters at branch meetings when BSL using deaf people were in attendance and for agreeing that an employee HGV driver's deafness and a false

²⁰⁶ See 4.8, above.

assumption that he was a 'safety risk' could be used as criteria to select him for redundancy in spite of him having a clean driving licence when other hearing drivers not selected for redundancy had points. All these deaf people mentioned were paid up members of their unions. How could they ever have the confidence to ask their own unions for legal advice in the future?

'The problems accessing CABs and private solicitors varies from place to place depending on the level of awareness of reasonable adjustments. I have encountered a deaf person who hired a family law solicitor to represent them during their divorce proceedings but ended up being charged for both the solicitor's service and that of a BSL interpreter who was needed to facilitate communication. Some CABs are very inclusive such as Deeside CAB who employ a DDA caseworker, but others will question who will pay for an interpreter if a deaf person needs to access their service. There isn't a consistent approach yet to funding interpreters that I'm aware of. A ballpark figure for the cost of hiring a BSL interpreter for a one-hour meeting is in the region of £150 to £200 plus travel expenses.²⁰⁷

'Behind all this is the sad fact that many profoundly deaf people are effectively non-readers and can't access advice from websites (unless BSL signing is an option), leaflets or books. Conrad's 1979 study is very old now but still holds true; the average reading age of the profoundly deaf school leaver is approx 8-9 years (based on a study of 4,000 school leavers). As recently as 2005, only 31% of deaf school leavers gained Level 2 (5 GCSE's or more in grades A-C). This makes it even more essential that the services of BSL interpreters are available for those wishing to access advice.

'The underdeveloped literacy skills also results in the sad reality that few BSL using deaf people can use textphones/minicoms to access telephone helpline

²⁰⁷ According to the web page- Languageline charges 2.49 per minute(ex vat)

advice centres. These deaf people require face-to-face advice with an interpreter present. Telephone helpline services which install a textphone, such as EHRC, still do not get the proportional volume of deaf calls as the language of the textphone remains English. With call centre helplines often centralised, the option of a face-to-face meeting does not exist.

'Once we have understood the barriers that profoundly deaf people face in accessing legal advice, or any information for that matter be it from the GP, social services etc., then we need to think about other non-readers of English and their access needs. Where are the studies that show that translator supply for migrant workers is adequate, are ESOL classes meeting demand, can people with learning difficulties access advice and what about asylum seekers too? When we review the provision of legal advice, we need to question the accessibility of it for a wide diversity of people...It would be erroneous if an advice provider was to group together all the data from disabled people who have used the service. It is not a great difficulty for a wheelchair user with no sensory impairment or impairment of cognitive ability to access advice over the phone, or from the internet. When disabled people are treated as a homogenous group then the specific obstacles facing deaf people and those with learning difficulties often slip through the net – they are left in not so much an advice desert, but on a whole planet of sand.'

- Others also warned about the danger of providing services in a manner that implied that users can be treated as a homogenous group. Age Concern England, for instance, warned about over-reliance on technology:

'It is important to recognise the effect of the 'digital divide' on many groups that are most at risk of discrimination and human rights abuses. For example, over 14 million people aged 50 and over in the UK have not used the internet. As well as web-based materials, it is important for the EHRC to offer

information and guidance through alternative media, such as printed materials and local and national radio.

'The Commission should also explore the possibility of working in partnership with the Public Legal Education Network, which has been set up to bring together organisations with an interest in public legal education – the range of activities that gives people a better understanding of common legal issues and the confidence and skills to resolve law-related problems.'

- Conversely, a Scottish Charity engaged in providing legal services for vulnerable children emphasised the enormous benefits of technology:

'As a national charity we are dependent on them being able to contact us. We get a lot of people trying to contact us from the remote islands. We do have a freephone line for under 18s which the grown ups use! We have not had a problem with some one who is hearing disabled as they contact us by email. Visually disabled use the talking email or visual so that has not proved to be a problem for us. The advantage for us because of the nature of the work we do as they are afraid that it might not be confidential is that the telephone is an advantage to have that system and the nature of the people sometimes the advice workers have that security with the distance – as we do have contact with the police.'

- The evidence presented by the focus groups in all three countries was consistently negative about the quality of support generally provided by trade union officials. Given the limitations of this project, it would be dangerous to generalise but such evidence is clearly very disappointing in the light of concerted efforts in all three countries to 'up-skill' officials. The TUC in England has developed an 'Equality Representatives Project', the Scottish TUC a 'One Workplace Project', and the Wales TUC an 'Equal at Work Project'. The latter, for instance, covered all six equality strands, and the hope was that the good practice developed from the project could be mainstreamed into the work of the TUC. Indeed, project reports commissioned by the TUC

indicate some success. The conflicting testimony warrants further and more detailed investigation, and there is a clear need for the EHRC to engage with the trade union movement to facilitate positive progress.

- As indicated at the outset, this Report has not focussed on the important contribution of the private legal sector. A detailed interview was arranged with a legal practice that had withdrawn from CLS work in order to identify some key issues. Perhaps the most significant and surprising revelation was that the practice in question had subsequently removed all publicity concerning funded legal services from the office and openly admitted that, save for a directory of CLS funded solicitors, they had no knowledge of, and made no referrals to, other providers of legal services. Alarming, a somewhat similar comment was made by a solicitor operating from a Law Centre:

'I wouldn't know who to refer people to. We were referring people previously to the commissions. I don't know anyone in private practice. I am sure there would be solicitors who would take on cases but I could not identify someone specific. Perhaps those practitioners who specialise in general litigation who would take on such cases but I don't know whether there would be a specialist there.'

- We received a number of submissions and petitions lobbying for changes and reform in relation to existing legal arrangements:

'The EHRC should also lobby the Government to address the limitations of the legal aid scheme for advice and representation on discrimination claims. There is no legal aid for representation in Employment Tribunals, which handle employment-related discrimination claims (that is, the majority). Legal Help for advice on these employment cases operates under a fixed fee scheme, with providers receiving £225 per case (equating to less than four hours' work).'

- Many commentators fear that the fixed fee system encourages providers to focus on more straightforward

cases, and those clients who are vulnerable or who have complex cases are likely to lose out. This could exclude many victims of employment-related discrimination – a notoriously complex area of law:

‘Representative claims (as opposed to group litigation) are not currently permitted under our tribunal/civil procedure rules. We believe that the EHRC should press the Ministry of Justice to amend the procedure rules so that such claims can be pursued. We accept that there would need to be a permission stage to filter out unmeritorious claims, and to assess the credentials of the organisation representing the group of claimants. Were this procedure to be introduced, we believe that the EHRC should have no difficulty in obtaining permission to bring representative claims of suitable merit.’

- There is clearly a need for further investigation of such issues, together with a closer and more detailed dialogue with the legal profession. The imminent publication of the Bach Report would seem to present an opportune moment for such work to take place.

BIBLIOGRAPHY

ADP Consultancy, '*Age Concern Age Discrimination Information & Advice Project – an Independent Evaluation for Age Concern England*', (June 2007)

ADP Consultancy, '*Working Together for Advice, Discrimination Workstream, Advice UK Survey, Summary of Findings*' (November 2008).

ADP Consultancy, '*Working Together for Advice, Discrimination Workstream, Citizens Advice Survey*' (November 2008).

ADP Consultancy, '*Working Together for Advice, Discrimination Workstream, Law Centres Federation Survey, Summary of Findings*' (November 2008).

ADP Consultancy, '*Working Together for Advice, Discrimination Workstream, AdviceUK Discrimination Advice Survey, Summary of Findings*' (November 2008).

AdviceUK, '*Identifying existing and potential referral networks and partnerships in the provision of discrimination advice provision across England AdviceUK member organisations*' (2008).

AdviceUK, Workstream, '*Signposting Survey Summary of Findings*' (November 2008).

Bamforth, N, Malik N, and M and O' Cinneide, C, *Discrimination Law: Theory and Context: Text and Materials*, London (2008) Thomson, Sweet & Maxwell.

Batey, A, and Page A, '*Scotland's other Parliament: Westminster legislation about devolved matters in Scotland since devolution*' [2002] *Public Law* 501.

CAB, BIS 2007/8- 'Equality and Diversity.'

Carnegie UK Trust, *Annual Report 2004*.

Carnegie UK Trust, Carnegie Commission for Rural Community Development, '*A Charter for Rural Communities*'(June 2007).

Chaney, P, and Fevre, R, *'An Absolute Duty: Equal Opportunities and the National Assembly for Wales'*, (2002) Institute of Welsh Affairs, Disability Rights Commission.

Charity Commission for England and Wales, *'More than half of charities now feeling impact of downturn'* (17 March 2009).

Charity Commission for England and Wales, *'Tell it like it is – the extent of charity and reserves policy'* (2006)

Charlotte Williams, *'Advice and Information Support for Discrimination Cases in Wales'* (2006).

Children's Commissioner for Wales: *Annual Report and Accounts 2003-2004* (2004).

Citizens Advice Bureau, *'Enquiry Issue Statistics 2007/08 Corporate Management Information Team.'*

Citizens Advice Bureau, *'Tackling Rural Disadvantage.'*

Citizens Advice Bureau, Scotland, *'Annual Report 2007/08.'*

Citizens' Advice Bureau, *'Our First Thematic Study,'* (April 2005).

Department for Communities and Local Government, *'Discrimination advice and the Commission for Equality and Human Rights: How can we make sure people have access to advice and justice?'* (2006).

Douglas, G, and Hollingsworth, K, *'Creating a children's champion for Wales? The Care Standards Act 2000 (Part V) and the Children's Commissioner for Wales Act 2001,'* (2002) 65 *Modern Law Review* 58.

Equal Opportunities Review, *'CABs receive £944,000 from EHRC to tackle discrimination'*, Issue 177, (June 2008).

Equalities and Human Rights Commission *'Discrimination Advice Project City of London Citizens Advice Bureau'* (2008/2009).

Equalities and Human Rights Commission, Business Plan 2008/9.

Equality and Diversity Forum, '*Multi-dimensional Discrimination: Justice for the Whole Person*' 2nd Edn (November 2008).

Flintshire District Citizens' Advice Bureau, '*Equality Matters Project*'.

Free Representation Unit: '*Voices for Justice*', Law Society Gazette (2008).

Freidman, S, '*The Future if Equality in Britain,*' Equal Opportunities Working Paper No. 5 (Manchester; EOC, 2002).

Griffith, A, '*Clacks are they Worth it?*' Legal Action, (June 2008).

Hudson, M, Barnes, H, Brooks and Taylor, R, '*Race Discrimination Claims: Unrepresented claimants' and employers' views on Acas' conciliation in employment tribunal cases,* Policy Studies Institute (2007).

Hurley, N and Stevenson, B , '*A Methodological workshop on attitudes to equality in Scotland*', EHRC, Research Report: 3, Blake Stevenson, (2008).

Hynes, S, '*Availability of Advice Survey: six months on*', Legal Action, (September 2008).

Ipswich and Suffolk Council for Racial Equality (ISCRE) '*Outreach discrimination advice in Lowestoft: Providing accessible services in a rural area.*'

Labour and Plaid Cymru: *One Wales: A progressive agenda for the government of Wales* (2007).

Lester, A, '*Equality and United Kingdom Law: Past, Present, and Future*', Public Law 77 (2001).

Lost in Care: Report of the Tribunal of Inquiry into the abuse of children in care in the former county council areas of Gwynedd and Clwyd since 1974, (2000) HC 201.

Mapping Advice & Information: Equality and Human Rights Scotland OSDC Edinburgh.

National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009.

National Assembly for Wales Equality of Opportunity Committee, *'Issues affecting migrant workers in Wales, their families and the communities in which they live and work'* (2008).

O' Cinneide, C, *'The Commission For Equality and Human Rights: A New Institution for New And Uncertain Times'*, *Industrial Law Journal* 36(2) (2007).

Patel, A , Balmer, N. J, and Pleasance, P, *'Geography of Advice Seeking'*, *Geoforum*. Vol 39, Issue 6 (2008).

Pawb Oldbell Equalta, *'WTUC Equal at Work Project, Evaluation of the Equal Work Project Final Report'* (June 2008).

Peters, M, Seeds, K, and Harding, C, *'Findings from the Survey of Claimants in Race Employment Tribunal Cases'* (SETA RRA). *Employment Relations Research Series No. 54* (2006).

Rees, O, *'Beyond the hype: a year in the life of the Children's Commissioner for Wales'* [2002] *Family Law* 748.

Rees, O, *'Devolution and the development of family law in Wales'* (2008)
Child and Family Law Quarterly 45.

Rees, O, *'The Children's Commissioner for Wales: The First Five Years'* (2006) 226 *childRIGHT* 16.

Richard Commission Report, *'The Powers and Electoral Arrangements of the National Assembly for Wales'* (2004).

Sandbach, J, (2004) *Geography of Advice* (2004).

Scottish Executive Report: Advocacy Standards Agency, *'A Map of Independent Advocacy across Scotland'* (2004).

Scottish Government, *'Equality Strategy: Working together for Equality'* (2000).

UK Statistics Authority, *'Neighbourhood Statistics'* (2009).

Welsh Assembly Government and Legal Services Commission, *'Making Legal Rights a Reality in Wales: A policy document by the Welsh Assembly Government and Legal Services Commission'* (2007).

Welsh Assembly Government, *'Statistical Bulletin – Sources of Ethnicity, National Identity and Religion Statistics in Wales'* (March 2009)

Welsh Assembly Government, *'Working for Equality in Wales: The Ninth Annual Report on Equality 2008-2009'* (2009).

Williams C , Borland, J, Griffiths, A, Morris, E, and Roberts G , *Snakes and Ladders: Advice and Support for Employment Discrimination in Wales*, (2003).

Williams C, *Advice and Information Support for Discrimination Cases in Wales* (2006).

Williams, J, *'Effective government structures for children?: The UK's four Children's Commissioners'* [2005] *Child and Family Law Quarterly* 37.

Websites

http://21.enable.com/rubenstein_mrp
<http://allwalesconvention.org/>
<http://home.btconnect.com/sifc/>
<http://news.bbc.co.uk/1/hi/wales/7678556.stm>
<http://wales.gov.uk/caec/publications/equality/rescheme/item?lang=en>
<http://wales.gov.uk/consultations/closedconsultations/equality/singleequalityscheme/?lang=en>
<http://wales.gov.uk/topics/equality/?lang=en>
<http://wales.gov.uk/topics/equality/publications/descheme/?lang=en>
<http://wales.gov.uk/topics/equality/publications/gescheme/?lang=en>
<http://wales.gov.uk/topics/equality/rightequality/disability/accessiveness/guidance/?lang=en>
<http://wales.gov.uk/topics/equality/rightequality/faith/faithforum/?lang=en>
<http://wales.gov.uk/topics/equality/rightequality/race/actionplans/?lang=en>
<http://wales.gov.uk/topics/equality/rightequality/race/croesocampaign/?lang=en>
http://www.croesoproject.org/croeso/index.php?lp_lang_pref=en
<http://wales.gov.uk/topics/olderpeople/?lang=en>
<http://wales.gov.uk/topics/olderpeople/strategy/?lang=en>
<http://www.acas.org.uk/index.aspx?articleid=1949>
<http://www.accymru.org.uk/>
<http://www.adpconsultancy.co.uk>
<http://www.ageconcernscotland.org.uk/>
http://www.asauk.org.uk/fileLibrary/pdf/CLACs_are_they_worth_it.pdf
<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-eoc-home.htm>
<http://www.assemblywales.org/bus-home/bus-legislation/bus-legislative-competence-orders/bus-legislation-lco-2009-no10.htm>
<http://www.assemblywales.org/cr-ld7303-e.pdf>
<http://www.barnardos.org.uk/apna.htm>
<http://www.bemis.org.uk/>
<http://www.ben-network.org.uk>
<http://www.bordersdisabilityforum.org.uk/>
<http://www.cab.org.uk>
<http://www.carnegieuk.org>

<http://www.cas.org.uk/>
<http://www.cemvo.org.uk/scotland/index.asp>
<http://www.charitycommission.gov.uk/news/downturn.asp>
<http://www.childcomwales.org.uk/>
<http://www.children1st.org.uk/>
http://www.citizensadvice.org.uk/index/campaigns/policy_campaign
<http://www.cvsfife.org/directory/org0139.htm>
<http://www.dgcdp.co.uk/>
<http://www.dialuk.info/>
<http://www.digg.org.uk/>
<http://www.dwl.demon.co.uk/>
<http://www.edf.org.uk>
<http://www.equalatwork.org>
<http://www.equalities.gov.uk/Default.aspx>
<http://www.equalities.gov.uk/PDF/GEO%20Annual%20Report%202007%20-%202008.pdf>
<http://www.equality-network.org/>
<http://www.ethnicenable.org.uk/>
<http://www.gcil.org.uk/> <http://www.capability-scotland.org.uk/>
<http://www.glgbt.org.uk/>
<http://www.govanlc.com/salc>
<http://www.gyip.org.uk/>
http://www.helptheaged.org.uk/NR/rdonlyres/09E92589-F8A7-4C70-ADBA-F51F9B188B67/0/HtA_Wales_whatwedo_300908.pdf
<http://www.lag.org.uk/advicesurvey>
<http://www.equalatwork.org>
http://www.legalservices.gov.uk/civil/innovations/community_legal_advice_centres_and_networks.asp
http://www.legalservices.gov.uk/civil/innovations/community_legal_advice_centres_and_networks.asp
<http://www.lgbtyouth.org.uk/>
<http://www.lsa.org.uk/>
<http://www.nilbymouth.org/>
<http://www.olderpeoplewales.com/>
<http://www.paih.org/>
<http://www.penumbra.org.uk/>
<http://www.rapecrisisscotland.org.uk/>
<http://www.samh.org.uk/>
<http://www.sccyp.org.uk/>
http://www.sccyp.org.uk/webpages/pr_single.php?article=Children'sRightsImpactAssessment:TheSCCYPModel&id=27
<http://www.scotland.gov.uk/Publications/2003/02/mper/0>

<http://www.scotland.gov.uk/Publications/2008/05/22092418/0>
<http://www.scotland.gov.uk/Publications/2008/06/12114733/0>
<http://www.scotland.gov.uk/Publications/2008/11/28092741/0>
<http://www.scotland.gov.uk/Publications/2008/12/15103651/0>
<http://www.scotland.gov.uk/Resource/Doc/1032/0054791.pdf>
<http://www.scotland.gov.uk/Topics/People/Equality>
<http://www.scotland.gov.uk/Topics/People/Equality/18500/13411>
<http://www.scotland.gov.uk/Topics/People/Equality/18934/RaceEqualityStatement>
<http://www.scotland.gov.uk/Topics/People/Equality/18934/workinggroupreligion>
<http://www.scotland.gov.uk/Topics/People/Equality/disability/disabilityministersduty>
<http://www.scotland.gov.uk/Topics/People/Equality/SexualOrientation>
<http://www.scotland.gov.uk/Topics/People/OlderPeople/>
<http://www.scottishrefugeecouncil.org.uk/>
<http://www.scottishwomensaid.org.uk/>
<http://www.slab.org.uk/reform/index.htm>
<http://www.statistics.gov.uk>
<http://www.equalatwork.org>
<http://www.statisticsauthority.gov.uk>
<http://www.stgeorgeswest.com/centre/erc.htm>
<http://www.stonewallcymru.org.uk/>
<http://www.stonewallscotland.org.uk/>
<http://www.wales.gov.uk/statistics>
<http://www.waverleycare.org/>

LIST OF PARTICIPATING ORGANISATIONS

Advice UK
Age Concern Cymru
Age Concern England
Age Concern Scotland
Allied Services Alliance
AWEMA
Barking and Dagenham CAB
CAB Cymru (Director Wales)
Cardiff and Vale Coalition of Disabled People
Cardiff Law Centre
Castlemilk Law Centre
Central Scotland Race Equalities Council
Cheshire Halton & Warrington REC
CYTUN
DIAL UK
Disability Advice Service
Disability Law Service
Disability Law Service (Cymru)
Ethnic Minorities Law Centre Glasgow
Flintshire CAB
Grampian Race Equality Council
Head of Equalities and Service CAB (London)
Help the Aged
Ipswich and Suffolk Council for Racial Equality
Law Centres Federation
Legal Services Commission
Leicester Money
LGBTB Centre of Excellence in Wales
Lochaber Disability Access Panel
Maidstone CAB
Manchester Disabled People's Access Group
Newcastle CAB
Newport CAB
NWREN
Professor Charlotte Williams OBE
Race Equality First
Regional CAB Officer
Salford CAB
SCOPE
Scottish Child Law Centre
Scottish Legal Aid Board

Solicitor in private practice
South Ayresshire Access Panel
Speakeasy
Stonewall Cymru
Stonewall England
Stonewall Scotland
Stop Hate UK
TUC
Update Scotland
Village CAB
West of Scotland Race Equality Council

Appendix 1

Review of Legal Advice and Representation Survey

Review of provision of legal advice & representation.

This survey is being carried out on behalf of the Equality & Human Rights Commission by Exellink.

Q1	Please complete the following contact information.	
	Name of organisation	
	Address [including postcode]	
	Phone no	
	e-mail	
	website	

Q2	Which of the following services and activities are carried out by your organisation. [please tick all that apply.]					
		<i>Do not provide</i>		<i>Sometimes provide</i>		<i>Provide regularly</i>
	Campaigning on equalities issues	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
	Self help	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
	Support	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
	awareness raising	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
	Provision of information - including signposting, and some diagnosis	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
	General advice - identification of issues & possible outcomes or solutions	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
	General casework - including attempts at informal resolution, without going to court or tribunal	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
	Specialist casework - involving preparation for court, tribunal, or alternative dispute resolution	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
	Specialist casework - including representation in court or tribunal where necessary	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>

Q3	What is the staffing & volunteering profile of your organisation? Please indicate the number of paid and volunteer workers in each of the following categories.			
		<i>paid staff</i>		<i>volunteers</i>
	Campaign and self help workers			
	Information workers			
	Generalist advisors			
	Specialist advisors			
	Solicitors/barristers			

Q4	What is the activity profile of your organisation. In the last 12 months for which you have figures, how many cases were dealt with in each of the following categories?
	<i>no of cases</i>
	Provision of information and/or signposting
	Generalist advice
	Specialist advice
	Representation in court or tribunal, or alternative dispute resolution process.

Q5	In which areas of discrimination does your organisation provide advice? [tick all that apply]
	Age <input type="checkbox"/>
	Disability <input type="checkbox"/>
	Gender <input type="checkbox"/>
	Race <input type="checkbox"/>
	Religion or belief <input type="checkbox"/>
	Sexual orientation <input type="checkbox"/>
	All of the above <input type="checkbox"/>

Q6	What methods does your organisation use to deliver discrimination advice? [tick all that apply]
	Drop-in sessions <input type="checkbox"/>
	Appointments <input type="checkbox"/>
	Outreach <input type="checkbox"/>
	Home visits <input type="checkbox"/>
	Telephone <input type="checkbox"/>
	e-mail <input type="checkbox"/>

Q7	Which of the following are provided by your organisation? [tick all that apply]	
	<i>fully & easily available</i>	<i>Partial or conditional availability e.g. 'on request'</i>
	wheelchair accessible accommodation <input type="checkbox"/>	<input type="checkbox"/>
	language Interpretation services <input type="checkbox"/>	<input type="checkbox"/>
	British sign language <input type="checkbox"/>	<input type="checkbox"/>
	Documents in Braille or large print <input type="checkbox"/>	<input type="checkbox"/>
	Documents available in 'easy read' format <input type="checkbox"/>	<input type="checkbox"/>
	<i>other: please give details</i>	

Q8	Is your organisation currently in receipt of funding from the Equalities & Human Rights Commission?
	yes <input type="checkbox"/>
	no <input type="checkbox"/>

Thank you for taking the time to complete this questionnaire. Please return it to exellink@aol.com by march 2nd 2009.

Alternatively, return it to:

Exellink, 8 Menaiville Terrace, Menai Bridge, Anglesey. LL59 5ES

Appendix 2

England Focus Group Questions

1 **RESPONDING TO DISCRIMINATION: THE GEOGRAPHY AND GEOMETRY OF
ADVICE PROVISION IN ENGLAND, WALES, AND SCOTLAND**

London Focus Group

4 March 2009

2 **Introduction (i)**

The Equality & Human Rights Commission has commissioned us to undertake a short review of the current provision of legal advice and representation in England, Wales, and Scotland, with a view of informing them as to how to shape their new grants scheme to organisations engaged in addressing issues of discrimination. We are a University based research team consisting of geographers, lawyers, and methodologists and our aim is to update the data on both the availability and nature of advice provision.

3 **Introduction (ii)**

To this end we are sending short questionnaires to a wide range of organisations across the three countries involved and are pleading for an immediate response. In addition we are arranging focus group and in depth witness interviews with key stakeholders in order to collate and update the evidence.

4 **Introduction (iii)**

We apologise for having to ask for a very immediate response to the questionnaire, almost by return, but would explain that the time frame is challenging. We understand that the Commission is intending to act upon its grant making powers this Spring so we are being pushed to prepare a Report very quickly. We are also aware that some of the questions in both the questionnaire and the Focus Groups may not be applicable to every organisation but we have attempted to devise generic methodological tools which build on similar projects carried out previously.

5 **Introduction (iv)**

We thank you in advance for your cooperation, and would be pleased to speak to you directly about the project, and about our eventual Report. We would also welcome any additional written testimony that you might want to volunteer about the challenge of ensuring good quality advice and representation in discrimination cases and how your organisation could contribute. Indeed we would be happy to contact you for an in-depth telephone interview or make alternative arrangements to record your contribution.

6 **The Basic Brief**

Our Report has to assist the Equality and Human Rights Commission in achieving a number of aims:

7 **Aims (i)**

To ensure that EHRC's legal grants programme is properly targeted at areas of greatest need, especially 'advice deserts'.

To secure greater geographical coverage and extension into hard-to-reach communities.

8 **Aims (ii)**

To maximise the impact of EHRC's legal grants programme through more efficient use of (voluntary sector) resources.

To lever additional resources from other sources e.g. local authorities, Legal help & representation (or legal aid), Big Lottery, etc, through the provision of its grant funding and to help direct them into advice and assistance to EHRC target groups.

9 **Aims (iii)**

To identify possible linkages that may be made with other funders of legal advice provision, and to consider joint commissioning consortia, pooling of resources and the scope for establishing centres of excellence.

To ensure, through the grant conditions (which may have to be refined further), that the objectives of funded organisations are aligned with the EHRC's own strategic objectives.

10 **Aims (iv)**

To focus on the objectives and the key priorities of the EHRC legal strategy so as to identify the most strategically important cases which it can support whilst enabling the

majority of other cases needing advice and representation to be tackled by funded bodies and by others.

- To examine how the EHRC could have greater impact at the ECJ & the ECtHR (either by itself or through partnership arrangements with external funded groups) by having certain strategic cases referred for determination.

11 **The Ambitious Brief**

The review should also consider how best the EHRC:

- can raise the level of availability of such advice/representation, especially in the "advice deserts";
- can utilise the "additionality" aspects of its unique grants and statutory duties to best effect as EHRC funding is not a substitute for mainstream sources of funding for providers of legal advice services, and will therefore has to be targeted at areas of most acute need; and
- can best work with and support its funded providers of advice/representation and partner agencies so as to enable it to have greater impact in achieving the EHRC's legal duties and objectives.

12 **The Other Policy Imperative**

- The Commission last year funded some 76 projects and it is clear that one of the hidden priorities is that it facilitates developments in the new areas of statutory responsibility, namely resources for age, sexual orientation and religion and belief so any specific recommendations in that context will be welcome.

13 **EHRC Policy Aims Question One**

- How do you think the EHRC's legal grants programme could best be targeted at areas of greatest need, especially 'advice deserts'?

14 **EHRC Policy Aims Question Two**

- How could greater geographical coverage and extension into "hard-to-reach" communities be facilitated?
- What are your experiences in this respect?

15 **EHRC Policy Aims Question Three**

- How could the impact of the EHRC's legal grants programme be maximised by the more efficient use of voluntary sector resources?

16 **EHRC Policy Aims Question Four**

- How could the EHRC and other sources work together so as to improve the provision of advice and assistance to EHRC target groups?

17 **EHRC Policy Aims Question Five**

- What other funders of legal advice provision could pool resources or jointly commission services, and would there be scope for the establishment of what the EHRC terms 'centres of excellence' in this respect?

18 **EHRC Policy Aims Question Six**

- What are your views on the suggestion that the objectives of funded organisations should, through grant conditions, be aligned with the EHRC's own strategic objectives?

19 **Operational Issues Question One**

- Public authorities have positive duties to promote race equality, equality for disabled people and gender equality.
- To what extent do you consider these duties to be effective, and is there a need for further duties?
- Do you have any experience of attracting funding to help public authorities meet their duties in this respect?

-
- 20 **Operational Issues Question Two**
 CLACS and CLANS have been established in England, and may well increase in number. What, in your opinion, has been the impact of these developments, and to what extent are you supportive of these models being further developed?
- 21 **Operational Issues Question Three**
 What are your experiences, if any, and expectations in relation to the Children's Commissioner for England? Do you think that similar institutions to represent other groups would be desirable, such as the recently established Older People's Commissioner for Wales?
- 22 **Operational Issues Question Four**
 Trade Union support is often crucial to individuals who decide to bring complaints based on the various forms of discrimination. What experience, if any, have you of co-operating with a Trade Union in trying to support an aggrieved individual who complains of discrimination? How supportive and effective was the Union support?
- 23 **Operational Issues Question Five**
 There are numerous Law Centres across England. Have you had any contact or experience of working with any Law Centres, and if so, to what extent do you think such services should be expanded or developed?
 Are there any formal connections in terms of referrals?
- 24 **Operational Issues Question Six**
 Finding a specialist solicitor and negotiating the funding for an individual involved in discrimination case requires special skill or good fortune. What experiences, if any, have you of trying to negotiate such a service for one of your clients or group members?
- 25 **Operational Issues Question Seven**
 There are numerous Race Equality Councils (RECs) across England, and although they vary in strength and experience there are some who believe that they could be encouraged to develop into equality councils and thus become a hub for consultation and planning services. To what extent do you think that such a proposal is feasible or desirable?
- 26 **Operational Issues Question Eight**
 Problem noticers such as religious leaders and others such as disability organisations, Age Concern etc. should be encouraged to work in partnership with the EHRC and advice sector to support identification and referral in discrimination cases. How might this be best achieved?
- 27 **Operational Issues Question Nine**
 Comment on the availability and suitability of existing accredited training on discrimination issues in England.
- 28 **Operational Issues Question Ten**
 Are you aware of any innovative and good practice examples in the fields of advice provision and service delivery? Please provide details.
- 29 **Operational Issues Question Eleven**
 Much of the advice provided in the voluntary and public sector is telephone based. What concerns, if any, do you have about the nature of existing provision for special client groups such as clients with learning or hearing difficulties?
- 30 **Operational Issues Question Twelve**
 There is a tendency to limit discrimination advice to employment issues, and ignore the broader human rights challenges. To what extent are your organisations using human rights provisions in order to promote equality and what barriers have you encountered to date?
- 31 **Thank you for your contribution.**
 We would be very happy to receive any further evidence from you, either in the form of a written statement or alternatively by a follow up phone call.
 Please contact Ms Jennifer Pritchard-Jones at 01248 383223 (email

j.pritchardjones@bangor.ac.uk

Appendix 3

Scotland Focus Group Questions

- 1 **Responding to Discrimination:
The Geography and Geometry of Advice Provision in England, Wales, and Scotland**
Glasgow Focus Group
10 March 2009
- 2 **Introduction (i)**
 The Equality & Human Rights Commission has commissioned us to undertake a short review of the current provision of legal advice and representation in England, Wales, and Scotland, with a view of informing them as to how to shape their new grants scheme to organisations engaged in addressing issues of discrimination. We are a University based research team consisting of geographers, lawyers, and methodologists and our aim is to update the data on both the availability and nature of advice provision.
- 3 **Introduction (ii)**
 To this end we are sending short questionnaires to a wide range of organisations across the three countries involved and are pleading for an immediate response. In addition we are arranging focus group and in depth witness interviews with key stakeholders in order to collate and update the evidence.
- 4 **Introduction (iii)**
 We apologise for having to ask for a very immediate response to the questionnaire, almost by return, but would explain that the time frame is challenging. We understand that the Commission is intending to act upon its grant making powers this Spring so we are being pushed to prepare a Report very quickly. We are also aware that some of the questions in both the questionnaire and the Focus Groups may not be applicable to every organisation but we have attempted to devise generic methodological tools which build on similar projects carried out previously.
- 5 **Introduction (iv)**
 We thank you in advance for your cooperation, and would be pleased to speak to you directly about the project, and about our eventual Report. We would also welcome any additional written testimony that you might want to volunteer about the challenge of ensuring good quality advice and representation in discrimination cases and how your organisation could contribute. Indeed we would be happy to contact you for an in-depth telephone interview or make alternative arrangements to record your contribution.
- 6 **The Basic Brief**
 Our Report has to assist the Equality and Human Rights Commission in achieving a number of aims:
- 7 **Aims (i)**
 To ensure that EHRC's legal grants programme is properly targeted at areas of greatest need, especially 'advice deserts'.
 To secure greater geographical coverage and extension into hard-to-reach communities.
- 8 **Aims (ii)**
 To maximise the impact of EHRC's legal grants programme through more efficient use of (voluntary sector) resources.
 To lever additional resources from other sources e.g. local authorities, Legal help & representation (or legal aid), Big Lottery, etc, through the provision of its grant funding and to help direct them into advice and assistance to EHRC target groups.
- 9 **Aims (iii)**
 To identify possible linkages that may be made with other funders of legal advice provision, and to consider joint commissioning consortia, pooling of resources and the scope for establishing centres of excellence.
 To ensure, through the grant conditions (which may have to be refined further), that the objectives of funded organisations are aligned with the EHRC's own strategic objectives.
- 10 **Aims (iv)**
 To focus on the objectives and the key priorities of the EHRC legal strategy so as to identify the most strategically important cases which it can support whilst enabling the

majority of other cases needing advice and representation to be tackled by funded bodies and by others.

- To examine how the EHRC could have greater impact at the ECJ & the ECtHR (either by itself or through partnership arrangements with external funded groups) by having certain strategic cases referred for determination.

11 **The Ambitious Brief**

The review should also consider how best the EHRC:

- can raise the level of availability of such advice/representation, especially in the “advice deserts”;
- can utilise the “additionality” aspects of its unique grants and statutory duties to best effect as EHRC funding is not a substitute for mainstream sources of funding for providers of legal advice services, and will therefore has to be targeted at areas of most acute need; and
- can best work with and support its funded providers of advice/representation and partner agencies so as to enable it to have greater impact in achieving the EHRC’s legal duties and objectives.

12 **The Other Policy Imperative**

- The Commission last year funded some 76 projects and it is clear that one of the hidden priorities is that it facilitates developments in the new areas of statutory responsibility, namely resources for age, sexual orientation and religion and belief so any specific recommendations in that context will be welcome.

13 **EHRC Policy Aims Question One**

- How do you think the EHRC’s legal grants programme could best be targeted at areas of greatest need, especially ‘advice deserts’?

14 **EHRC Policy Aims Question Two**

- How could greater geographical coverage and extension into “hard-to-reach” communities be facilitated?

What are your experiences in this respect?

15 **EHRC Policy Aims Question Three**

- How could the impact of the EHRC’s legal grants programme be maximised by the more efficient use of voluntary sector resources?

16 **EHRC Policy Aims Question Four**

- How could the EHRC and other sources work together so as to improve the provision of advice and assistance to EHRC target groups?

17 **EHRC Policy Aims Question Five**

- What other funders of legal advice provision could pool resources or jointly commission services, and would there be scope for the establishment of what the EHRC terms ‘centres of excellence’ in this respect?

18 **EHRC Policy Aims Question Six**

- What are your views on the suggestion that the objectives of funded organisations should, through grant conditions, be aligned with the EHRC’s own strategic objectives?

19 **Operational Issues Question One**

- Public authorities have positive duties to promote race equality, equality for disabled people and gender equality.

To what extent do you consider these duties to be effective, and is there a need for further duties?

Do you have any experience of attracting funding to help public authorities meet their duties in this respect?

- 20 **Operational Issues Question Two**
 What are your experiences, if any, and expectations in relation to the Scottish Commissioner for Children and Young People? Do you think that similar institutions to represent other groups would be desirable, such as the recently established Older People's Commissioner for Wales?
- 21 **Operational Issues Question Three**
 Trade Union support is often crucial to individuals who decide to bring complaints based on the various forms of discrimination. What experience, if any, have you of co-operating with a Trade Union in trying to support an aggrieved individual who complains of discrimination? How supportive and effective was the Union support?
- 22 **Operational Issues Question Four**
 There are numerous Law Centres in Scotland. Have you had any contact or experience of working with any Law Centres, and if so, to what extent do you think such services should be expanded or developed?
 Are there any formal connections in terms of referrals?
- 23 **Operational Issues Question Five**
 Finding a specialist solicitor and negotiating the funding for an individual involved in discrimination case requires special skill or good fortune. What experiences, if any, have you of trying to negotiate such a service for one of your clients or group members?
- 24 **Operational Issues Question Six**
 There are numerous Race Equality Councils (RECs) in Scotland, and although they vary in strength and experience there are some who believe that they could be encouraged to develop into equality councils and thus become a hub for consultation and planning services. To what extent do you think that such a proposal is feasible or desirable?
- 25 **Operational Issues Question Seven**
 Problem noticers such as religious leaders and others such as disability organisations, Age Concern etc. should be encouraged to work in partnership with the EHRC and advice sector to support identification and referral in discrimination cases. How might this be best achieved?
- 26 **Operational Issues Question Eight**
 Comment on the availability and suitability of existing accredited training on discrimination issues in Scotland.
- 27 **Operational Issues Question Nine**
 Are you aware of any innovative and good practice examples in the fields of advice provision and service delivery? Please provide details.
- 28 **Operational Issues Question Ten**
 Much of the advice provided in the voluntary and public sector is telephone based. What concerns, if any, do you have about the nature of existing provision for special client groups such as clients with learning difficulties or hearing impediments?
- 29 **Operational Issues Question Eleven**
 There is a tendency to limit discrimination advice to employment issues, and ignore the broader human rights challenges. To what extent are your organisations using human rights provisions in order to promote equality and what barriers have you encountered to date?
- 30 **Operational Issues Question Twelve**
 The Scottish Legal Aid Board has continued to operate using a traditional model of funding. To date, it has resisted commissioning services, as in England and Wales. To what extent do you think the traditional model works in Scotland, and what reforms, if any, would you suggest?
- 31 **Operational Issues Question Thirteen**
 The Scottish Legal Aid Board has established the Civil Legal Assistance Office in Inverness. The office was set up to help people in the Highlands and Islands who are eligible for legal aid in civil cases to access advice from a solicitor. It works in partnership with private sector solicitors and advice agencies. Have you had any contact with the Office, and are you of the opinion that the model should be rolled out to other areas of

the UK?

32 **Operational Issues Question Fourteen**

The Scottish Parliament has been providing direct grants to advice agencies, but apparently is reviewing its policies in this respect. Please comment on your experience of the grants that have been made available, and any concerns about the vulnerability of services if these grants are withdrawn.

33 **Thank you for your contribution.**

We would be very happy to receive any further evidence from you, either in the form of a written statement or alternatively by a follow up phone call.

Please contact Ms Jennifer Pritchard-Jones at 01248 383223 (email j.pritchardjones@bangor.ac.uk)

Appendix 4

Wales Focus Group Questions

1 **RESPONDING TO DISCRIMINATION: THE GEOGRAPHY AND GEOMETRY OF
ADVICE PROVISION IN ENGLAND, WALES, AND SCOTLAND**

Wales Focus Group

Cardiff, 24 February 2009

2 **Introduction (i)**

The Equality & Human Rights Commission has commissioned us to undertake a short review of the current provision of legal advice and representation in England, Wales, and Scotland, with a view of informing them as to how to shape their new grants scheme to organisations engaged in addressing issues of discrimination. We are a University based research team consisting of geographers, lawyers, and methodologists and our ambition is to update the data on both the availability and nature of advice provision.

3 **Introduction (ii)**

To this end we are sending short questionnaires to a wide range of organisations across the three countries involved and are pleading for an immediate response. In addition we are arranging focus group and in depth witness interviews with key stakeholders in order to collate and update the evidence.

4 **Introduction (iii)**

We apologise for having to ask for a very immediate response to the questionnaire, almost by return, but would explain that the time frame is challenging. We understand that the Commission is intending to act upon its grant making powers this Spring so we are being pushed to prepare a Report very quickly. We also are very aware that some of the questions in both the questionnaire and the Focus Groups may not be applicable to every organisation but we have attempted to devise generic methodological tools which build on similar projects carried out previously.

5 **Introduction (iv)**

We thank you in advance for your cooperation, and would be pleased to speak to you directly about the project, and about our eventual Report. We would also welcome any additional written testimony that you might want to volunteer about the challenge of ensuring good quality advice and representation in discrimination cases and how your organisation could contribute. Indeed we would be happy to contact you for an in-depth telephone interview or make alternative arrangements to record your contribution.

6 **The Basic Brief**

Our Report has to assist the Equality and Human Rights Commission in achieving a number of aims:

7 **Aims (i)**

To ensure that EHRC's legal grants programme is properly targeted at areas of greatest need, especially 'advice deserts'.

To secure greater geographical coverage and extension into hard-to-reach communities.

8 **Aims (ii)**

To maximise the impact of EHRC's legal grants programme through more efficient use of (voluntary sector) resources.

To lever additional resources from other sources e.g. local authorities, Legal help & representation (or legal aid), Big Lottery, etc, through the provision of its grant funding and to help direct them into advice and assistance to EHRC target groups.

9 **Aims (iii)**

To identify possible linkages that may be made with other funders of legal advice provision, and to consider joint commissioning consortia, pooling of resources and the scope for establishing centres of excellence.

To ensure, through the grant conditions (which may have to be refined further), that the objectives of funded organisations are aligned with the EHRC's own strategic objectives.

10 **Aims (iv)**

To focus on the objectives and the key priorities of the EHRC legal strategy so as to identify the most strategically important cases which it can support whilst enabling the

majority of other cases needing advice and representation to be tackled by funded bodies and by others.

- To examine how the EHRC could have greater impact at the ECJ & the ECtHR (either by itself or through partnership arrangements with external funded groups) by having certain strategic cases referred for determination.

11 **The Ambitious Brief**

The review should also consider how best the EHRC:

- can raise the level of availability of such advice/representation, especially in the "advice deserts";
- can utilise the "additionality" aspects of its unique grants and statutory duties to best effect as EHRC funding is not a substitute for mainstream sources of funding for providers of legal advice services, and will therefore has to be targeted at areas of most acute need; and
- can best work with and support its funded providers of advice/representation and partner agencies so as to enable it to have greater impact in achieving the EHRC's legal duties and objectives.

12 **The Other Policy Imperative**

- The Commission last year funded some 76 projects and it is clear that one of the hidden priorities is that it facilitates developments in the new areas of statutory responsibility, namely resources for age, sexual orientation and religion and belief so any specific recommendations in that context will be welcome.

13 **EHRC Policy Aims Question One**

- How do you think the EHRC's legal grants programme could best be targeted at areas of greatest need, especially 'advice deserts' in Wales?

14 **EHRC Policy Aims Question Two**

- How could greater geographical coverage and extension into hard-to-reach communities be facilitated?

15 **EHRC Policy Aims Question Three**

- How could the impact of the EHRC's legal grants programme be maximised by the more efficient use of voluntary sector resources?

16 **EHRC Policy Aims Question Four**

- How could the EHRC and other sources work together so as to improve the provision of advice and assistance to EHRC target groups?

17 **EHRC Policy Aims Question Five**

- What other funders of legal advice provision could pool resources or jointly commission services, and would there be scope for the establishment of what the EHRC terms 'centres of excellence' in this respect?

18 **Welsh Issues Question One**

- The National Assembly for Wales has a unique statutory duty under section 77 of the Government of Wales Act (2006) to make appropriate arrangements with a view to securing that its functions are exercised with due regard to the principle that there should be equality of opportunity for all people'. As such it goes beyond the legal equalities framework applying to the government in Scotland and England.

- To what extent are you aware of the duty and how, if at all, have you been working towards helping the WAG to implement the duty?

19 **Welsh Issues Question Two**

- Similarly the legislation requires the National Assembly to implement formal partnership

schemes with local government and the voluntary sector, and schemes of co-working with police authorities, fire authorities and national parks in Wales, and to carry out consultations (and legislative impact assessments relating to future legal enactments) with organisations representative of business. These arrangements have no direct constitutional parallel in Scotland or England.

Have you been involved in any such schemes partnerships? If not why not? If so what are your observations about the experience?

20 **Welsh Issues Question Three**

The Welsh Assembly Government has implemented a number of innovative social policy initiatives including the establishment of the UK's first Children's Commissioner, and an Older People's Commissioner for Wales, again the first institution of its type. What are your experiences, if any, and expectations in relation to these institutional developments?

21 **Welsh Issues Question Four**

Trade Union support is often crucial to individuals who decide to bring complaints based on the various forms of discrimination. Unions in Wales have a higher profile than the other part of the UK. What experience, if any, have you of co-operating with a Trade Union in trying to support an aggrieved individual who complains of discrimination? How supportive and effective was the Union support?

22 **Welsh Issues Question Five**

We have only one Law Centre in Wales which is based here in Cardiff. Have you had any contact or experience of working with the Centre, and if so, to what extent you think the services should be expanded or developed?

23 **Welsh Issues Question Six**

Finding a specialist solicitor and negotiating the funding for an individual involved in discrimination case requires special skill or good fortune. What experiences, if any, have you of trying to negotiate such a service for one of your clients or group members?

24 **Welsh Issues Question Seven**

There are a number of Race Equality Councils (RECs) in Wales, and although they vary in strength and experience there are some who believe that they could be encouraged to develop into equality councils and thus become a hub for consultation and planning services. To what extent do you think that such a proposal is feasible or desirable?

25 **Welsh Issues Question Eight (i)**

A number of Report on delivery of Services in Wales stress the need for Partnerships. However, the lack of formalised protocols for referral may be a significant impediment, as currently the system relies on informal networks which vary across the country. To date, partnerships between private solicitors, the LSC and the advice sector appear somewhat Cardiff-centric, with few partners in north and west Wales...

26 **Welsh Issues Question Eight (ii)**

... In some areas of Wales those consulted spoke not only of an 'advice desert' but of an 'engagement desert' where there were loose or non-existent links between key providers. Building robust partnerships across Wales will be an important activity for the Commission. What has been your experience, if any, of working in Partnerships? How can the necessary protocols be put in place?

27 **Welsh Issues Question Nine**

Problem noticers such as religious leaders and others such as disability organisations, age concern etc. should be encouraged to work in partnership with the EHRC and advice sector to support identification and referral in discrimination cases. How might this be best achieved?

28 **Welsh Issues Question Ten**

Comment on the availability and suitability of existing accredited training on discrimination issues in Wales.

29 **Welsh Issues Question Eleven**

- Are you aware of any innovative and good practice examples in the fields of advice provision and service delivery in Wales? Please provide details.
- 30 **Welsh Issues Question Twelve**
 Much of the advice provided across Wales is telephone based. What concerns, if any, do you have about the nature of existing provision for special client groups such as clients with learning or hearing difficulties?
- 31 **Welsh Issues Question Thirteen**
 Providers of public services in Wales are required to act in accordance with the provisions of the Welsh language Act 1993. What challenges does this requirement create for advice services, and to what extent is the challenge being met? Please give examples of good practice and or problems in relation to other minority languages.
- 32 **Welsh Issues Question Fourteen**
 There is a tendency to limit discrimination advice to employment issues, and ignore the broader human rights challenges. To what extent are your organisations using human rights provisions in order to promote equality and what barriers have you encountered to date?
- 33 **Thank you for your contribution.**
 We would be very happy to receive any further evidence from you, either in the form of a written statement or alternatively by a follow up phone call.
 Please contact Ms Jennifer Pritchard-Jones at 01248 383223 (email j.pritchardjones@bangor.ac.uk)
 Diolch am eich cydweithrediad.