

14th February 2011

**Response to Consultation Paper CP12/10 of November 2010:-
“Proposals for the Reform of Legal Aid in England & Wales”**

The attached is a copy of FRU’s response to the Consultation Paper issued by the Ministry of Justice, CP12/10 of November 2010 “Proposals for the Reform of Legal Aid in England & Wales”. Minor editorial amendments in the ordering and formatting of the material have been made, but the wording remains virtually unaltered from what was submitted. Feel free to direct any questions to one of us.

Clive Tulloch
Chief Executive

Emma Baldwin
Principal Legal Officer, Social Security

Patrons:

The Right Hon Lady Justice Arden
The Right Hon Lady Justice Black
The Right Hon Sir Henry Brooke
The Right Hon Lord Browne-Wilkinson
The Right Hon Lord Clarke of Stone-cum-Ebony
The Right Hon Lady Justice Hallett
The Right Hon Lord Judge LCJ
The Right Hon Lord Phillips of Worth Matravers

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Summary and index

The numbers shown are references to the detailed text which follows from page 4 below.

1. FRU is opposed to the withdrawal of Legal Help in social security, employment and criminal injuries compensation cases.
2. FRU handles social security, employment and criminal injuries compensation cases referred by front-line agencies for representation in tribunals (3(3)).
3. FRU does not receive legal aid in any form, but its clients have, in many cases, benefited from legal help at an early stage and this materially assists FRU's work (3(3)(e)).
4. In FRU's experience, early intervention through Legal Help is of the greatest help (3(4)(a)).
5. Early intervention through Legal Help removes cases from the judicial system when they are inappropriate for litigation, for example because the client has a weak case or no case at all (3(4)(a)(i)).
6. Early intervention through Legal Help promotes settlement by agreement or informal resolution (3(4)(a)(iii) and 3(4)(a)(iv)).
7. Early intervention through Legal Help provides invaluable guidance to clients who do end in tribunal (3(4)(a)).
8. Legal Help in social security, employment and criminal injuries compensation cases is cheap (3(4)(a)(vii)).
9. There is no evidence in the Consultation Document that the true costs of the withdrawal of Legal Help in social security, employment and criminal injuries compensation cases has been evaluated. Cost/benefit analysis cannot be completed until the costs are known (3(4)(b)).
10. Legal Help reduces the amount of litigation (3(4)(a) and 3(4)(c)).
11. The law in the area of social security, employment and criminal injuries compensation is complex and the process forbidding. In the absence of legal aid for representation, the availability of Legal Help is far better than nothing (3(4)(d), 3(4)(e), 3(4)(f), 3(5)).
12. A client who loses a case is more likely to be satisfied with Government and with judicial processes if they have received assistance such as Legal Help such that they feel that they have had a fair hearing (3(4)(d)(v)).
13. Early intervention through Legal Help can break a cycle that would otherwise end in homelessness or deprivation (3(4)(g)).

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14. Legal Help is an essential part of the rule of law in a modern, civilised society (3(4)(h)).
15. The removal of Legal Help will further increase inequality of arms (3(4)(i)).
16. The changes will hit the most vulnerable (3(4)(j)).
17. Legal Help in its present form unlocks lawyers' voluntary contributions, as lawyers, to the Big Society (3(4)(l)).
18. Pro bono agencies, including FRU, cannot fill the gap left by the withdrawal of Legal Help (3(4)(l), 49(2)).
19. Allowing Legal Help to continue in the discrimination aspects of employment cases but not other aspects will complicate cases, confuse clients, impede negotiated settlement and increase racial and other forms of prejudice (3(6)(a)).
20. Removing Legal Help from low pay claims will hinder enforcement of minimum pay legislation (3(6)(b)).
21. Telephone advice is no substitute for face-to-face advice in any legal matter (7).

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Detailed response

The questions, in bold type, are those asked in the Consultation Document. The material in plain type is FRU's response.

1 Question 1: Do you agree with the proposals to retain the types of case and proceedings listed in paragraphs 4.37 to 4.144 of the consultation document within the scope of the civil and family legal aid scheme?

Yes

For the reasons given in our answer to question 3 below, we, the Free Representation Unit (FRU), support the retention within the legal aid scheme of those types of case and proceedings where retention is proposed.

2 Question 2: N/A

3 Question 3: Do you agree with the proposals to exclude the types of case and proceedings listed in paragraphs 4.148 to 4.245 from the scope of the civil and family legal aid scheme?

No.

- (1) We do not agree with the proposed plans to withdraw legal help from all social security and criminal injuries cases and from many employment claims. We have serious concerns about how the changes will impact on the clients of the social welfare community, on the infrastructure supporting that community, on the Tribunal Service and on access to justice generally. Although we do not receive legal aid, and never have received legal aid, we comment on the consultation document because we see the benefits that our clients currently receive from legal aid and because the suggestion in the consultation document, that our existence makes the provision of legal aid, in certain areas of law, "less likely to be justified", is wrong.
- (2) A summary is set out above.
- (3) FRU
 - (a) In order to explain our comments, we first describe FRU.
 - (b) FRU is a specialist organisation set up to provide advocacy services in tribunals in social security, employment and criminal injuries compensation cases. In the calendar year 2010 we took conduct of 971 cases, being 590 employment cases, 373 social security cases and 8 criminal injuries compensation cases. We were invited to provide representation in a further 676 cases, but, for a variety of reasons, were unable to find volunteers to do so. Most of the cases referred to us, whether or not we acted in them, were to be heard in the employment tribunal or the first-tier tribunal, a small number in the appellate tribunals and a handful in the Court of Appeal. About half of the employment cases in which we provided representation were settled between the time we took conduct of the case and the date of the hearing.
 - (c) Cases are referred to FRU by CABx, law centres, legal aid solicitors and a few specialist agencies such as the Equalities and Human Rights Commission. Because those organisations are the first port of call for clients we refer to them throughout

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our response as 'front-line agencies'. They will have seen the clients themselves and refer cases to us most commonly because they do not have the resources to attend tribunals themselves.

- (d) Some of the work of the front-line agencies will have been done under the Legal Help scheme.
 - (e) When front-line agencies refer cases to us they will often have carried out some work on it. They will have ensured that it is suitable and listed for tribunal hearing and they will have done a least some of the case preparation. They will have prepared some cases to a very high standard; they will have added some value to the state of all of them.
 - (f) FRU's work is done largely by volunteers who are law students, junior qualified lawyers or at some intermediate stage. Their work is supported and supervised done by a small staff of three lawyers and three administrators. We are assisted by a number of practising barristers upon whom we call when their help is needed.
 - (g) When FRU's volunteers take conduct of a case they carry out all the case preparation that is needed, the negotiation (in employment cases) and the representation in the tribunal.
 - (h) FRU's clients are predominantly those whose means render them eligible in principle for Legal Aid, or whose means do not materially exceed those limits. 49% were from minority ethnic backgrounds; 24% declared themselves to be disabled, but observation in the office indicates that the true figure is probably higher; a significant proportion of clients do not speak English as their first language.
 - (i) We are at present running at a small annual deficit. We do not have the money, capacity or skills to replace the work done by the front-line agencies.
 - (j) We are frequently told by our clients how much they value our services. The reasons they give are primarily because the clients felt they had a genuine grievance but were unable to cope with the complexities of the legal process although of course they are partly to do with the sympathy and practical support they have received from our volunteers.
 - (k) We are also told by tribunal judges that they value FRU representatives in their hearings. One commented recently, and we believe that his comment would be echoed by many, that the most valuable service we perform is to set out the facts clearly and concisely. Others comment on our ability to bring the right legal issues to the table.
 - (l) We are not in receipt of funding from the Legal Services Commission. This is because representation at tribunal in social security, employment and criminal injuries compensation cases does not attract legal aid in any but a tiny minority of cases. Our case flow is, however, heavily dependent on front-line agencies. As mentioned, the front-line agencies are funded in part by Legal Help, which means that many of our clients depend on Legal Help to benefit from our services. Were the referral agencies to cease to operate, through lack of funding, it is not clear how we could provide our much valued service.
- (4) In our opinion, the proposal to withdraw of Legal Help from social security and criminal injuries cases and from many employment claims is wrong.

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- (a) The front-line agencies perform the invaluable function of being the first port of call for the client.
 - (i) They act as a filter for unsuitable or inappropriate cases.
 - (ii) They provide initial guidance to the clients.
 - (iii) They help to settle cases where negotiated settlement can be achieved.
 - (iv) They use formal or informal review systems within the relevant Government or other authorities to sort out cases where an error may have been made or where early resolution is achievable.
 - (v) They ensure that the clients are told what procedural steps should be followed.
 - (vi) By way of example, our current Principal Legal Officer, Social Security previously worked in a front-line agency. She handled about 120 serious welfare benefits disputes cases per year, in other words, 120 disputes which, if not resolved would have progressed to a tribunal hearing. These were in addition to many more small welfare benefits matters. She sorted out most of the serious disputes by liaising with the relevant official at the Department for Work and Pensions or, on some occasions, by advising the client that they had no valid claim. As a result, of the 120, she estimates that a no more than 10 actually reached a tribunal each year. Her primary funding was from Legal Help even though she was not, at the time, a qualified lawyer. Withdrawal of Legal Help will increase the numbers of disputes and restrict their sensible and swift settlement.
 - (vii) We understand that in most cases Legal Help attracts funding for a very few hours of work at very low rates of pay. The notion that legal aid has high costs per case does not apply to Legal Help in the areas of social security, employment and criminal injuries compensation.
- (b) We believe that the withdrawal of Legal Help in the areas of social security, employment and criminal injuries compensation will result in a significant increase in tribunal time, associated costs and costs across Government as a whole. The consultation document contains the admission that there is no properly researched study into the extent to which litigants in person put greater demands on the system:-
 - (i) In our opinion, and in the experience of our more senior volunteers and staff, the litigants will make greater demands on tribunal staff and tribunal judiciary because they will not have had any guidance elsewhere.
 - (ii) They may not have assembled their evidence at all; if they have, it is frequently not in a form suitable to enable the tribunal to evaluate it and to use it in making its decision.
 - (iii) The cases that come through without any advice will be more costly to process. The hearings will be longer, there will be more adjournments as parties are not ready to proceed, there will be more case management hearings and fewer cases will settle in advance of the hearing.
 - (iv) There will also be greater demands on other government departments and on MPs, councillors and social services.
 - (v) There will be fewer opportunities for the Department for Work and Pensions to resolve cases informally before a tribunal hearing. We set out in 3(4)(a) above

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and in our answer to question 12(8) below our experience of how work done under Legal Help can, and in the anecdotal experience set out in 3(4)(a)(vi) usually does, sort out a problem without recourse to a tribunal. The same is true of employment cases, a significant proportion of which are taken against a central or local Government department or agency.

- (vi) The consultation document suggests at 4.266 et seq. that there will be no overall increase in the time taken in the court or tribunal service as a result of increased numbers of litigants in person. We do not believe that this assumption is well founded:-
- This conclusion is based on the 2005 research carried out by the Department of Constitutional Affairs. Our understanding of this research is that it reached this conclusion because many litigants in person did not participate in the process of litigation. These non-participating litigants offset the impact of participating litigants – who were found take up more time than represented parties.
 - It follows that if there is an increase in the number of litigants in person this is likely to increase the demands on the court or tribunal, unless significant numbers do not participate. In the areas that we deal with – welfare benefits and employment – we do not believe that this is likely. Those applying for welfare benefits have chosen to commence tribunal proceedings by challenging a DWP decision. Similarly, claimants in employment tribunals have chosen to bring a claim. In our experience, both groups have a high rate of participation.
 - Employer respondents have not chosen to be involved in tribunal proceedings, but, in our experience, also have high rates of participation. In part, this may be because they are more likely to be represented. Even when acting as litigants in person, however, our experience is that employers recognise likely negative consequences of not engaging with a claim against them and will actively defend it.
- (vii) It appears from the consultation document that the Ministry of Justice has not properly costed the result, across Government as a whole, of the withdrawal of Legal Help in the areas proposed. Cost/benefit analysis is required and cannot be carried out until the costs are known. Until that costing has been carried out, and the results have been opened to public scrutiny, we believe it to be wrong to make any decision about the withdrawal of legal aid from any area of law.
- (c) There is an implication in the paper that legal aid encourages litigation, especially unmeritorious litigation. In our experience, in the areas of social security, employment and criminal injuries compensation cases, the reverse is true. Our experience is that legal aid practitioners divert cases away from tribunal, by resolving issues. Far from touting for business they are turning people away: we doubt whether the number of applications will fall although we suspect that the profile may change as suggested at 3(4)(j) below. We are aware of the popular belief that abuse of the system exists. That abuse might apply in a small minority of cases where legal representation is available under Legal Aid, but, in our experience, it does not apply in any, or almost any, cases that reach us where Legal Help has been provided.
- (d) The law in each of the areas with which we are concerned is complex:

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- (i) The substantive law is difficult to understand: rules are intricate, often counter-intuitive and some aspects conceptually difficult.
 - (ii) Even where the concepts are straightforward, the application to a particular client's facts is frequently not straightforward, and particularly not straightforward for the type of client now eligible for Legal Help. (We recall the case of the client claiming a social security benefit whose eligibility for the benefit was determined in part by an ability to read. During the tribunal hearing the client, who had a learning disability and lacked insight into her condition, seemingly contradicted her earlier evidence by claiming not only to be able to read but to enjoy reading. Luckily, her representative, who had been told during an interview with the same client that she could cook a main meal for one when in fact she was unable to describe how to make a slice of cheese on toast, was alive to this difficulty, and managed to demonstrate that she was indeed unable to read by the simple expedient of asking her to read out a line from a document in the case. The representative's knowledge of both her client's ability and behaviour enabled her to ensure that the relevant evidence came before the Tribunal.)
 - (iii) Without specialist advice, most clients with whom we are concerned would be unable to prepare a proper case for hearing in the tribunals in question. Hence some of the comments made by our clients and referred to at (3)(j) and (3)(k) above.
 - (iv) Our own volunteers almost invariably need considerable guidance and support. Yet they are articulate. They have studied law. They have completed an undergraduate degree or are in the final year of a law degree. Many have post-graduate qualifications. They have been trained in the relevant legal areas by FRU. They have passed a competency test which about one-third of the candidates fail. Nevertheless few can competently conduct a case in one of our areas of law without help.
 - (v) Removing the valuable help provided in the early stages of a case, as is proposed with the removal of Legal Help in these areas, will make it even more difficult for our most disadvantaged citizens to establish their rights. Of course, establishing rights includes losing a case – establishing that the individual is not entitled to a certain benefit or right. A client who loses but has received Legal Help is more likely to be satisfied that they have had a fair hearing than an individual who has not been assisted at any stage; this can only be good for the reputation of Government and the justice system.
- (e) Clients also need help from Legal Aid lawyers (or other advisers) because the process for bringing a matter to trial is not straightforward – see, again, our comments at 3(3)(j) and 3(3)(k) above:-
- (i) While the consultation document rightly says that the tribunals are less formal than some Court proceedings (although this difference is narrowing all the time) they are still frightening for many clients. Whilst great strides have been taken in the past few years in making the process accessible, for many clients eligible for Legal Help the process of filling in the right forms, preparing bundles of documents and so forth is alien.
 - (ii) In our experience, few understand what they need to prove, how to identify what evidence is legally significant and how to prove their points.

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- (iii) Tribunal judges frequently bend over backwards to be helpful to litigants in person. The personal qualities of the judges are often very high. Nevertheless, there are limits to what they can do. They have to preside over a fair trial for both sides and manage the case within a sensible timetable.
- (iv) The environment will be the most formal that most clients have been involved with.
- (v) While Legal Help is not available for representation, some earlier help goes at least some of the way to enabling the judge to run the trial and for the client to achieve justice (whether they win or lose). In some cases, that may be because the judge has seen material prepared by the adviser under Legal Help; however much the claimant may, in ignorance, obfuscate the issues by failing to understand the law and the process, at least the work done under Legal Help is available to the judge.
- (f) The law in the area of social security, employment and criminal injuries compensation is thus complex and the process is forbidding to legally aided clients. In the absence of legal aid for representation, the availability of Legal Help is far better than nothing.
- (g) The consultation document suggests at 4.127 that there is a clear line to be drawn between loss of home or liberty, still proposed to attract legal aid, and loss of money, where it is proposed that legal aid be withdrawn. The difficulty with this argument is that it ignores the value of early intervention. Those applying for welfare benefits are often among the most disadvantaged in society for the period of their lives in question. Without their benefits many would be unable to afford food and basic amenities, and would risk becoming homeless. The advice given under the Legal Help scheme about welfare benefits ensures that many individuals do not get to the stage where they are facing fundamental issues concerning their safety or liberty. Similarly, good advice in employment matters can make the difference between a good outcome for a dismissed employee and years of subsisting on welfare benefits unable to find another job.
- (h) We do not accept that it is appropriate in a society based on the rule of law that access to legal remedies is forbidding and difficult to those who cannot afford to pay for their own legal advice. As we understand it, the vision of those, on all sides of the political spectrum, setting up Legal Aid in the 1940s was to give reasonable access to legal remedies to all sectors of society. It developed over the years towards achieving that initial vision. Indeed, even in the early 1970s it was assumed that it would be extended in due course to cover representation in tribunals. The retrograde steps envisaged in the consultation document are quite contrary to that vision. The accessibility of the law to all members of society is necessary to keep intact the reputation of the legal system, whether it is the enforcement of international commercial contracts, challenges to employers or challenges to Government authorities. Legal Help is an important contributor to keeping the United Kingdom a just and prosperous society in which the rule of law flourishes.
- (i) It is important to have reasonable equality of arms in litigation so far as that is achievable. This is obviously relevant in employment cases where employers, including public sector employers at the taxpayer's expense, are often represented. The DWP employ legal officers who prepare cases for Tribunal: part of this

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includes setting out the Secretary of State's case, commenting on the law, facts and evidence relevant to the individual issue – very similar work, in fact, to that currently authorised under the Legal Help scheme. The Secretary of State also sends presenting officers to legally or factually complex cases, and where necessary instructs counsel to act.

- (j) In practice the changes are likely to disadvantage particularly those who are less articulate, less persistent or who find greater difficulty dealing with authority, perhaps for reason of education, language or disability. The proposals will do nothing to reduce the number of unmeritorious cases taken to tribunal.
 - (k) Legal Help provides a significant opportunity for realising substantial amounts of pro bono activity. The work done under Legal Help will, as mentioned, sort out the elements of the case, achieve settlement in some cases and put the case in the right channel to take it forward. There is then a gearing effect: very few hours of work paid by Legal Help can, and frequently does, release several times that amount of work carried out pro bono by law students and the legal profession. This sort of work is lawyers' primary contribution as lawyers to the Big Society. Remove Legal Help and the lawyers' contributions will disappear.
 - (l) Nevertheless, the assumption that pro bono agencies can fill the gap that would be left by Legal Help providers leaving the market is misconceived. We deal with this more fully in our answer to question 49 below.
- (5) In the case of social security law, we have these additional concerns.
- (a) A significant proportion of social security cases is legally aided. If Legal Help is withdrawn, we wonder if this complex area of law will retain a critical mass of specialists in order that the law continues to be monitored, clarified and developed.
 - (b) Benefits law, while self-contained, is not straightforward. At the time of writing there are there are at least 4 cases pending judgement in the Supreme Court and 12 pending judgement in the Court of Appeal. All such appeals need leave before they are heard so all will have at least some merit. Several of the cases have involved references to the ECJ on complex points of European law. This is in addition to the references to the ECJ which were separately made by the very experienced judges of the Upper Tribunal (Administrative Appeals Chamber). At least 2 social security cases are awaiting full hearings in the ECJ.
 - (c) Similarly, we worry that there will be no effective method of challenging the DWP's decisions. Since our clients win a majority of the cases that come to us, we do not believe that the DWP's processes are sufficiently robust for it to be safe, even if it were appropriate, to withdraw the ultimate means of challenging them.
 - (d) We note that discrimination claims are to continue to receive Legal Help because of the "issues at stake addressing societal prejudice and ensuring equality of opportunity". It seems to us that precisely the same should be said of welfare benefits.
- (6) In the case of employment law, we have further concerns.
- (a) We do not believe that it is practical or sensible to provide Legal Help for employment cases only to the extent of any discrimination element of the claim.
 - (i) In our experience, the majority of employment cases involving alleged discrimination also involve some other element, for example unfair dismissal, improper deductions from wages or wages below the statutory minima. Indeed,

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the underlying claim is usually connected with dismissal or wages, and, when discrimination is cited, it is cited as a cause, or the cause, of the substantive claim and not merely as an issue in its own right. Among our clients, namely those eligible, or close to eligibility, for Legal Help at an earlier stage of their claim, pure discrimination claims, as might arise when an individual is not selected for recruitment or promotion, are rare.

- (ii) Limiting legal aid in employment cases to the discrimination element will create significant problems in advising clients or conducting work on their cases. A client will have the discrimination aspects properly explained but not the rest. The drafting of their initial formal claim will be professionally carried out only insofar as it relates to the discrimination element. The mixture of professional and amateur efforts will be confusing for all concerned. The best result of most tribunal claims is settlement in advance; settlement will however be impeded if the client has received advice on the strength of their negotiating position only on the discrimination elements and not on other aspects of the claim and the client may as a result seek too low or too high an amount of compensation because of an assumption that the strength of only one aspect of the claim applies to the rest of it.
 - (iii) Restricting assistance to discrimination cases will also inevitably encourage employees and their advisers to identify and focus on discrimination issues claims even where discrimination may not be the main issue, or one of the main issues, in the case. Human nature dictates that discrimination issues will be brought into claims more often, and more prominently, than they should be. This in return can only raise the temperature on discrimination issues and encourage people to focus on age, gender, race and so on even if they are not in fact relevant. This is likely, in our opinion, to increase prejudice rather than reduce it.
- (b) It has been the wish of successive Governments to increase minimum pay rates, most recent through minimum wage legislation. Those most affected are those most likely to be financially eligible for Legal Help. It is perverse to make it more difficult for individuals to bring claims against employers paying below the minima.

4 Question 4: Do you agree with the Government's proposals to introduce a new scheme for funding individual cases excluded from the proposed scope, which will only generally provide funding where the provision of some level of legal aid is necessary to meet domestic and international legal obligations (including those under the European Convention on Human Rights) or where there is a significant wider public interest in funding Legal Representation for inquest cases? Please give reasons.

No.

- (1) We believe that the proposed restriction will be too tight.
- (2) Our reasons are those set out in our answer to question 3 above, especially
 - (a) because the law is difficult (see 3(4)(d) above);
 - (b) because the process is difficult for those eligible for Legal Aid (see 3(4)(e) above);and

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(c) because it is important that the law is developed properly with equality of arms between the two sides (see 3(4)(i) above).

- (3) We are not clear why it is thought that the current criteria need to be changed. The proportion of the legal aid budget involved must be tiny. If the MoJ could provide more information on its concerns with the current regime it might be easier to comment more constructively and we would be glad to do so.

5 Question 5: Do you agree with the Government's proposal to amend the merits criteria for civil legal aid so that funding can be refused in any individual civil case which is suitable for an alternative source of funding, such as a Conditional Fee Arrangement? Please give reasons.

No

- (1) We doubt whether alternative funding will often be available in our areas of law. It is hardly ever available in welfare benefits cases. Most legally aided employment cases have a value well below that which is economic for lawyers to take on a conditional fee basis.
- (2) Our experience of employment cases among those eligible for legal aid, or close to eligibility, is that there is some results-based funding available but that the providers are of poor quality.

6 Question 6: We would welcome views or evidence on the potential impact of the proposed reforms to the scope of legal aid on litigants in person and the conduct of proceedings.

- (1) We have essentially answered this question at 3 above.
- (2) The key issues are these:-
- (a) The withdrawal of funding from agencies who are the first port of call for clients will increase the number of cases which should not be taken at all (see 3(4)(a) above).
 - (b) Hearings will take longer (see 3(3)(c) above).
 - (c) The law is complex and litigants in person, without prior briefing, will often not understand what they need to establish or how to establish it (see 3(4)(d) above and 3(5) above).
 - (d) The process is not straightforward and litigants in person, without prior briefing, will not understand how to set about establishing their claim (see 3(4)(e) above).
 - (e) The cases are often of great significance to the individual claimant (see 3(4)(h) and 3(4)(j) above).
 - (f) The changes will be especially harmful to the less articulate or persistent (see 3(4)(j) above).
 - (g) The ring-fencing of discrimination law is likely to create more problems than it solves (see 3(6)(a) above).
 - (h) It is counter to Government policy on poverty, and in principle wrong, to withdraw assistance in minimum wage claims (see 3(6)(b) above).

7 Question 7: Do you agree that the Community Legal Advice helpline should be established as the single gateway to access civil legal aid advice?

No.

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- (1) Although, as presently proposed, the areas of law with which we are concerned will not be eligible for the telephone service, we do not think that this is an appropriate way to provide initial advice. The experience in this office of dealing with legally-aided clients, indeed with all sorts and conditions of client, is that telephone advice works only
 - (a) for answering simple factual questions or
 - (b) for dealing with a client whom the adviser has already met and with whom there is mutual understanding.
- (2) Over the telephone, an adviser frequently cannot tease out facts which are personal or complex, frequently cannot evaluate the veracity of what is said, and frequently cannot acquire the confidence of the client. Telephone advisers have especial difficulty with clients whose first language is not English.
- (3) We regularly find in the office that a client's telephone arrangements are not physically appropriate for making a telephone call of the type envisaged: they often have poor reception, can telephone only from a noisy place and so on.
- (4) In summary, telephone advice provides considerable scope for mistake and mutual misunderstanding. It is no substitute for face-to-face advice in any legal matter.

8 Question 8: Do you agree that specialist advice should be offered through the Community Legal Advice helpline in all categories of law and that, in some categories, the majority of civil Legal Help clients and cases can be dealt with through this channel? Please give reasons.

No

See our answer to question 7 above.

9 Question 9: What factors should be taken into account when devising the criteria for determining when face to face advice will be required?

We believe that a telephone service would be best limited to a signposting service for the reasons given in our answer to question 7 above.

10 Question 10: Which organisations should work strategically with Community Legal Advice and what form should this joint working take?

- (1) We see no objection in principle to the provision of telephone-based signposting.
- (2) Nevertheless, we believe that such a telephone service is manifestly unsuited to acting as a replacement for Legal Help in its current form. We therefore doubt whether the additional Government expenditure could be justified.

11 Question 11: Do you agree that the Legal Services Commission should offer access to paid advice services for ineligible clients through the Community Legal Advice helpline? Please give reasons.

- (1) We see no objection in principle to the provision of access to paid advice services through the Community Legal Advice helpline. Indeed, the more routes there are to the right source of advice the better.
- (2) Again, however, since we believe that such a telephone service should not replace Legal Help in its current form, we doubt whether the additional Government expenditure could be justified.

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12 Questions 12 to 48:

Questions 12 to 48 were not answered as they fall outside FRU's experience.

49 Question 49: Do you agree that we have correctly identified the range of impacts under the proposals set out in this consultation paper? Please give reasons.

No.

- (1) Our answers to previous questions set out in more detail why we believe that the impacts have not been correctly evaluated in the consultation document and the related material.
- (2) A glaring error is made in the paper, particularly in paragraph 4.218 and in the table on page 193. The assumption is made that that voluntary organisations like ours can provide advice services that will replace those that would lose their funding under the Government proposals. This is just not the case.
- (3) We, like, as we understand it, similar charities, have limited resources and are not in a position to replace services currently funded by legal aid. As we explain in answer 3(2) above, we are fully stretched providing our existing case-preparation and advocacy service.
- (4) The consultation document in paragraph 4.218 and in the table on page 193 gives a misleading impression of FRU. It wrongly uses the role of FRU to support one of its conclusions. It points out correctly that FRU represents clients in tribunals. It then illogically uses FRU's representation work in tribunals as part of the justification for withdrawing Legal Help for initial advice work in welfare benefits cases. FRU does not provide initial advice to clients. The work that FRU does can therefore be no part of the justification for withdrawing Legal Help in this area. It is illogical to use the representation work carried out by FRU as any justification for withdrawing Legal Help, given the scope of that scheme.
- (5) FRU's size and the scope of its work is set out in 3(2) above. FRU is in no position to replace the invaluable work of publicly funded solicitors, law centres and Citizens' Advice Bureaux in giving initial advice. We have nowhere near the infrastructure that would be required to take over the role of the front-line agencies and would require funding at the current levels of Legal Aid to provide it. We see no way of funding such a role in the foreseeable future. Nor do we have the skills that are present in the front-line agencies to provide their services.
- (6) The point in any event overlooks the funding structure of the not-for-profit sector: most front-line agencies have a mixture of Legal Aid contracts, local authority funding and, in many cases, other funding as well. Some agencies have been driven out of the sector, or out of providing services in our areas of law, and, we understand, many are on the edge of viability now. Charitable funding is dropping; for example, we have in the past 18 months already lost the equivalent of 1½ posts in trainee placements from City firms which helped with supervising volunteers and running of the office. In our opinion, there is every reason to believe alternative sources of advice are under threat and will be significantly be more so if these proposals, or anything like them, are implemented.
- (7) In our opinion the number of cases which will settle in advance of a tribunal hearing will reduce. Some 50% of the employment cases we receive settle in the small window we have between taking on the case and the hearing. We believe that the front-line agencies manage to settle many more cases before we become involved. The

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withdrawal of initial Legal Help seems to us to be bound to reduce the proportion of cases that settle before a hearing.

- (8) Social Security cases do not settle in the same way. But the involvement of a front-line agency will in practice achieve the same result – see 3(4) above.

50 Question 50: Do you agree that we have correctly identified the extent of impacts under these proposals? Please give reasons.

- (1) No
- (2) Our the reasons are set out in our answers to questions 3, 4, 5, 6, 7 and 49.

51 Question 51: Are there forms of mitigation in relation to client impacts that we have not considered?

- (1) None that we are aware of.