

EQUALITY COMMISSION FOR NORTHERN IRELAND

Policy for the Provision of Legal Advice and Assistance to Individuals

MARCH 2022

**Equality Commission for Northern Ireland
Equality House
7 – 9 Shaftesbury Square
BELFAST BT2 7DP**

Telephone: 028 90 890890

Email: information@equalityni.org

Website: www.equalityni.org



EQUALITY COMMISSION FOR NORTHERN IRELAND

POLICY FOR THE PROVISION OF LEGAL ADVICE AND ASSISTANCE

1. Legislative Framework

Advice and assistance to individuals who are prospective complainants or claimants may be granted by the Equality Commission for Northern Ireland under the provisions of anti-discrimination legislation as set out in Appendix 1.

2. Information, Guidance and Advice

Information and guidance on legal rights and the types of assistance, which may be obtained from the Commission, will be provided by Commission staff to all prospective complainants or claimants on grounds of disability, gender, race, religious belief, political opinion, sexual orientation and/or age.

3. Authorisation of Assistance

As permitted by Schedule 8, Paragraph 8(1)(a) of the Northern Ireland Act 1998 the power to decide upon the grant of assistance has been delegated by the Commission to a Committee or Committees formed for that purpose. These Committees are known as Legal Funding Committees and will be made up of Commissioners of the Equality Commission.

4. Assistance

- 4.1 The Commission may grant any application for assistance received from an individual who is an actual or prospective complainant or claimant in relation to proceedings arising from discrimination on grounds of sex, disability, race, religious or philosophical belief, political opinion, sexual orientation and/or age.

- 4.2 The Commission can only grant assistance if the application comes within the statutory grounds specified in the relevant provisions of the enactments set out in Appendix 1, all of which in broad terms provide that the Commission may grant an application for assistance to an individual, if it thinks fit to do so, on the grounds that:
- (a) the case raises a question of principle;
 - (b) it is unreasonable having regard to the complexity of the case or the Applicant's position in relation to the Respondent, or another person involved, or to any other matter to expect the Applicant to deal with the case unaided;
 - (c) or by reason of any other special consideration.

5. Discretionary factors to consider in deciding whether to grant assistance

- 5.1 It is the Commission's aim to ensure a focus on enforcement across all of the discrimination areas. To that end the Commission will consider applications for assistance under each of the discrimination statutes; however it will retain the discretion to focus on specific areas as set out in its Corporate Plan as set out at Appendix 2.
- 5.2 In exercising its discretion to grant assistance the Commission will have regard to its obligations under the Human Rights Act 1998 and the European Convention on Human Rights. Each application will be considered individually. In reaching its decision whether it is thought fit to grant assistance the Legal Funding Committee will assess whether the application meets one or more of the statutory grounds.
- 5.3 In addition to the statutory grounds the Commission will have regard to and assess the strength of the below discretionary criteria. Each are weighted equally. The Commission will assess *the extent* to which each of the factors apply to each application for assistance. The Legal Funding Committee, in assessing each application, will *score the extent* to which the factor applies to the particular application on a scale of 1 to 5 where a score of 1 means that the factor applies to a very limited extent and a score of 5 means that the factor applies to a very significant extent. The discretionary are follows:

- a) **Impact and ripple effect** - the extent to which a successful outcome in the case is likely to have a positive effect beyond the individual's circumstances, in terms of raising awareness of the protections in law, having potential to change discriminatory practice, provide for follow up by the Commission in pursuit of its statutory objectives, or otherwise;
- b) **Legal uncertainty** - the extent to which the matter may raise an issue of legal uncertainty, or allow for a challenge of untested areas of discrimination law;
- c) **Merits of the case** - the extent to which there are reasonable grounds for believing that an act of unlawful discrimination may have been committed as alleged, or that there are reasonable prospects of success (depending upon the stage to which proceedings have progressed);
- d) **Similar cases** - the extent to which the Commission has supported same or similar cases. This means that the Commission *may* support cases where the issue has been the subject of persistent complaints to the Commission; or alternatively past support for the issue may mean that the cost of supporting another similar application is not justified;
- e) **Cost – benefit** - the extent to which the likely cost of assistance is justified in pursuit of the statutory objectives of the Commission;
- f) **Any other factor** the Legal Funding Committee considers relevant.

6. Whilst retaining discretion, assistance will not normally be granted by Legal Funding Committees in the following circumstances:

- a. **Non-compliance with statutory time limits** – a case that appears to have not been lodged with the relevant court or Tribunal and the time limit for lodgement has expired; or a case has been lodged late and outside of the deadline for the relevant proceedings, will not be assisted unless a tribunal or court has ruled (or is likely to rule) that it is just and equitable for that case to be heard;

- b. **Non-cooperation** - where an applicant fails to co-operate with the staff of the Commission in relation to an application for assistance, (including unreasonable conduct towards staff of the Commission or in relation to the Commission itself) assistance will not normally be granted, or will be withdrawn. The Commission will bear in mind its obligations as an employer and as a service provider and will make reasonable adjustments to service provision to ensure that there are no barriers that may impede any individual's cooperation with the Commission.

7. Grant of Assistance

A decision by a Committee granting assistance constitutes authority to provide all those forms of assistance specified in the legislation as set out in Appendix 1 which are essentially:

- providing or arranging for the provision of legal advice
- arranging legal or other representation which may include that usually given by a solicitor or counsel
- seeking to procure a settlement
- providing or arranging for any other assistance as appropriate.

The applicant and/or her/his representative will be notified in writing of the offer of assistance, subject to their acceptance of the Conditions of Offer.

8. Review of Decision to Offer Assistance

A Legal Funding Committee may at any stage review the decision to offer assistance; in particular a case will be reviewed when sufficient evidence is available to indicate whether or not the case enjoys a reasonable prospect of success; where information becomes available that impacts on the statutory grounds or discretionary factors; and/or when the case has been listed for hearing. A review of assistance may result in assistance being continued or discontinued.

9. Reconsideration of decision to refuse or withdraw assistance

A decision of a Legal Funding Committee not to grant assistance in the first instance; **or** to withdraw from an assisted case may be reconsidered. An individual may request a reconsideration if they have new or additional information that they think is relevant to their case and/or if they wish a Legal Funding Committee to consider views on the application of the criteria for the grant of assistance, to the case. Any information received with a request for a reconsideration, will be considered by a Legal Funding Committee. The Committee will consider the relevance of the information presented to criteria for the grant of assistance. The Committee will retain its discretion to assist cases. The Committee may either uphold or overturn the original decision to refuse/withdraw assistance.

10. Representation

Where assistance is granted pursuant to the provisions of paragraphs 6 to include representation before the Industrial Tribunal, Fair Employment Tribunal or County Court, such representation may be provided by staff of the Commission, or an appointed external solicitor and/or by Counsel, as appropriate.

11. Assistance in Related Proceedings

The grant of assistance covers assistance to the conclusion of proceedings, subject to review as set out above. However, where a decision of a Tribunal or County Court is to be challenged on appeal in the High Court, Court of Appeal or the UK Supreme Court, or an action commenced to enforce the terms of decision or settlement, then a fresh application for assistance must be submitted to the Committee.

12. Conditions of Offer to Complainants

This policy should be read in conjunction with the conditions of offer furnished to Applicants and, as appropriate, outside legal representatives. Acceptance of an offer of assistance is acceptance of the Terms of Engagement under the Law Society Communications Regulation for the Equality Commission to act for an individual in legal proceedings.

13. Publicity

The Commission will normally publicise decisions and settlements secured under its auspices with the aim of educating potential applicants and respondents as to their respective rights and responsibilities.

14. Variation of Policy

The Commission may at any time and at its discretion, revise, vary or amend this policy. The policy will be reviewed every three years in line with the time frame for each new Corporate Plan of the Equality Commission. Any proposed significant change to the substance of the policy will be the subject of public consultation.

The Commission will, as a service provider, comply with its statutory duty to make reasonable adjustments to this policy and its procedures and practices implementing the policy, if any of these make it impossible or unreasonably difficult for individuals to make use of the Commission's service of providing advice and assistance.

Appendix 1

Disability Discrimination Act (Amendment) Regulations (Northern Ireland) 2004

Equality Act (Sexual Orientation) Regulations (NI) 2006

Employment Equality (Age) Regulations (Northern Ireland) 2006

Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003;

Equality (Disability etc) (Northern Ireland) Order 2000

Fair Employment and Treatment (Northern Ireland) Order 1998, as amended

Race Relations (Northern Ireland) Order 1997, as amended

Sex Discrimination (Northern Ireland) Order 1976, as amended

Special Educational Needs and Disability (Northern Ireland) Order 2005

Appendix 2

Corporate Plan 2022-2025 – Priority Areas

The five strategic priorities to guide our work over the period 2022 – 2025 are:

- Working for a stronger legal and policy framework for equality
- Using our powers to combat discrimination and promote equality of opportunity
- Safeguarding our rights and protections post Brexit
- Promoting equal access to and equal opportunities for all at work
- Addressing inequalities in educational attainment and tackling bullying