

EQUALITY COMMISSION FOR NORTHERN IRELAND

Policy for the Provision of Legal Advice And Assistance

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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 the following legislation:

- Sex Discrimination (Northern Ireland) Order 1976, as amended - Art 75
- Race Relations (Northern Ireland) Order 1997, as amended - Art 64
- Fair Employment and Treatment (Northern Ireland) Order 1998, as amended - Art 45
- Equality (Disability etc) (Northern Ireland) Order 2000 - Art 9 (1) & (2)
- Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003; Reg 40
- Equality Act (Sexual Orientation) Regulations (NI) 2006 - Reg 45
- Employment Equality (Age) Regulations (Northern Ireland) 2006 - Reg 47

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. Where a prospective complainant or claimant makes a written request for advice in relation to prospective proceedings under the Fair Employment & Treatment (Northern Ireland) Order such advice will be given unless the request is considered to be frivolous.

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 will be known as Legal Funding Committees.

Normally a Legal Funding Committee will consist of three members. Any member who has a conflict of interest in respect of any application which comes before a Legal Funding Committee will declare that conflict of interest and will not take part in the decision on whether or not to grant assistance. In such circumstances the decision may be made by two members, providing they are in agreement. Where there is a difference of opinion between them the matter will be deferred to a future three member committee.

In exercising its discretion to grant assistance the Commission will have regard to the Human Rights Act 1998 and the European Convention on Human Rights.

4. Assistance

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 belief, political opinion sexual orientation and/or age.

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 section 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. Factors for guidance in considering whether it is fit to grant assistance

Where the Commission considers that the application comes within any of the grounds specified in the above-mentioned relevant provisions, it must proceed to consider whether it thinks it fit to grant assistance on that ground.

Each application will be considered individually. In reaching its decision whether it is thought fit to grant assistance the Commission will assess each of the statutory grounds.

In addition the Commission will have regard to and assess the following and any other relevant factors:

- (i) the potential to contribute to outcomes in one or more of the strategic priority areas of the Commission as set out in the Corporate Plan 2019- 2022
- (ii) the extent to which the matter may raise an issue of legal uncertainty;
- (iii) the extent to which the case is likely to raise public awareness regarding individual complaints and about the protection afforded by the law;
- (iv) the extent to which the case is likely to have a significant impact, either in terms of bringing about changes in discriminatory practices and procedures, or otherwise;
- (v) the extent to which the case is likely to have potential for follow up by the Commission in discharging its statutory functions.
- (vi) 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).
- (vii) whether the complaint appears to be out of time, in which case assistance should normally be refused, unless it is reasonable to believe that case should be supported if the Tribunal or Court might make a ruling that is just and equitable to consider it in all the circumstances of the case;
- (viii) the extent to which the Applicant is co-operating (or has cooperated) with the staff of the Commission including unreasonable conduct towards staff of the Commission or in relation to the Commission itself. The Commission will bear in mind its obligations as a service provider and as an employer and will make reasonable adjustments as and when required;
- (ix) the extent of assistance already granted to an individual complainant who is making a second or subsequent application.
- (x) the extent to which the Commission has supported similar cases;
- (xi) the extent to which the likely cost of assistance is commensurate with the benefits to be gained in pursuit of the statutory objectives of the Commission;
- (xii) any other factor the Commission considers relevant.

6. The Grant of Assistance

A decision by a Committee granting assistance constitutes authority to provide all those forms of assistance specified in Article 40(2) of the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, Article 45 of the Equality Act (SO) Regulations (NI) 2006, Article 9 of the Equality (Disability etc) (Northern Ireland) Order, Article 45 of the Fair Employment and Treatment Order, Article 64 of the Race

Relations (Northern Ireland) Order, Article 75 of the Sex Discrimination (Northern Ireland) Order and Article 47 of the Employment Equality (Age) Regulations 2006 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 or her/his representative will be notified in writing of the grant of assistance.

7. Review of Decision to Offer Assistance

The Commission may, at any stage, review the decision to offer assistance, either in the following circumstances or otherwise, and may decide to discontinue the provision of assistance:

- (a) the availability of fresh evidence and/or advice and/or information which undermines the complaint or any material change of circumstances with regard especially to the statutory grounds and the other guidance factors;
- (b) the complaint does not enjoy a reasonable prospect of success;
- (c) one of the statutory grounds no longer applies or there has been a re-assessment of circumstances in relation to the factors upon which the statutory ground is based;
- (d) there has been a re-assessment of circumstances in relation to the other guidance factors;
- (e) the Applicant has failed, without just cause, to comply with the written conditions of offer;
- (f) the applicant, fails without just cause to disclose material information or documentation relating to his/her complaint of unlawful discrimination to the Commission or its appointed legal or other representative;
- (g) the applicant knowingly misrepresents material information or makes false or misleading statements to the Commission or its appointed legal or other representative;
- (h) the applicant fails, without just cause, to co-operate with requests from the Commission or its appointed legal or other representative for information or comments;

- (i) the applicant fails, without just cause to attend interviews or consultations arranged by the Commission or its appointed legal or other representative;
- (j) the applicant fails, without just cause, to notify a change of address;
- (k) the applicant fails, without just cause, to act in accordance with the advice given by the Commission and/or its appointed legal or other representative;
- (l) unreasonable conduct by the Applicant including unreasonable conduct towards the staff of the Commission or its appointed legal or other representative.

Should the Committee decide that the Applicant should continue to receive assistance, such a decision shall be subject to any conditions, financial or otherwise, placed upon the grant of assistance.

8. Refusal of Assistance

Where an application for assistance is refused or discontinued on review the Applicant is notified and is given written reasons for the decision. The Applicant is also advised that s/he retains the right to pursue the matter independently to the Industrial Tribunal, Fair Employment Tribunal or Court.

9. Reconsideration of Decision to Refuse or Withdraw Assistance

A decision of the Legal Funding Committee

- (a) not to grant assistance in the first instance; **or**
- (b) to withdraw from an assisted case

may be reconsidered where there has been a *material change of circumstances* which warrants a reconsideration.

A request for reconsideration should normally be made in writing, setting out clearly what is the material change in circumstances. The Committee will consider the case and all new information provided to it, in light of the statutory grounds for the grant of assistance and the factors for guidance, as set out above.

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, an appointed external solicitor or, as appropriate, by Counsel.

The Commission may decide to instruct an external solicitor to act in a matter where:

- (a) the proceedings also incorporate complaints under legislation other than the relevant legislation set out in section 1;
- (b) it considers itself to be constrained from providing assistance 'in house' because of a conflict of interest;
- (c) it has insufficient internal legal resources to deal with the case;
- (d) or there is any other good reason to do so.

In deciding whether Counsel should be instructed, regard shall be had to the availability of resources, the complexity of the case and the likely duration of the hearing before the Tribunal or Court.

Solicitors will be required to confirm their acceptance of instructions in writing and will also be required to provide progress reports as and when requested by the Commission.

11. Assistance in Related Proceedings

A. Judicial Review, Appeals or Applications under the European Convention on Human Rights, European Community Law

The grant of assistance covers assistance to the conclusion of proceedings subject to review. However, where a decision of the Tribunal or Court is to be challenged by way of judicial review or in the High Court, Court of Appeal or House of Lords or by application to the European Court of Human Rights or European Court of Justice, a fresh application for assistance must be submitted to the Committee. At this stage in the prosecution of any complaint it will have already been decided that one of the statutory grounds applies and the Committee will consider:

- (i) whether it is considered fit to grant assistance in the light of the factors set out in paragraph 5;
- (ii) whether the appeal or application enjoys a reasonable prospect of success.

The Applicant will be notified in writing of the decision and if assistance is refused the reasons for this will be provided.

B. Assistance to enforce the terms of a decision or settlement

Where a decision has been issued or a settlement has been reached and the terms are signed by the parties and/or their representatives but one of the parties defaults, assistance for the purposes of enforcement will normally be provided on foot of the Committee's initial grant of assistance but this decision may be reviewed and revoked at this stage if it is not considered appropriate to provide such assistance in the circumstances.

12. 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.

13. Emergency Applications

If a decision on an application for assistance is for any reason required as a matter of urgency, the application may be determined by an ad hoc committee comprised of 3 Legal Funding Committee members, providing they:

- (a) agree that it is proper to expedite the application; and
- (b) determine the matter in accordance with the procedure already outlined.

Any decision made on an emergency basis will be reported at the next meeting of the Committee.

14. Conditions of Offer to Complainants and Outside Legal Representatives

This policy should be read in conjunction with the conditions of offer furnished to Applicants and, as appropriate, outside legal representatives.

15. Variation of Policy

The Commission may, at any time and at its discretion, vary or amend this policy.

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 this policy if any of these make it impossible or unreasonably difficult to make use of the Commission's service.