

## Extension of the Legal Support Project for cases in Scotland: Services and Housing

In September 2017, the Commission announced the launch of its Legal Support Project. Our objective under this Project was to increase access to justice for victims of discrimination involving schools, further or higher education institutions or general qualifications bodies.

As part of our ongoing commitment to increasing access to justice, the Commission is now **extending the Project** in Scotland to include claims relating to services and housing.

As an organisation dealing with issues in this field, we believe this Project could help you help others.

### FREQUENTLY ASKED QUESTIONS

#### What kind of cases will now be considered under the Project?

- The Commission is now offering support with claims of discrimination relating to **services and housing** in Scotland.
- The Equality Act 2010 has a broad definition of ‘services’, which includes services such as hospitals, pubs and restaurants, cinemas or shops. It doesn’t matter whether the service is paid for or is free so services provided by local authorities, charities and private companies are covered, as well as services like the benefits system. It also includes public bodies carrying out their formal duties such as HMRC collecting tax or the Police carrying out arrests. We can also assist with complaints of discrimination in housing. This can occur

when someone buys or rents a house, whether from a social landlord or a private one. It can also cover commercial properties.

- Many organisations in these sectors are also employers whose employees are also protected under the Equality Act 2010. However the Project is **not** offering any assistance in relation to employment rights.
- As this is an extension of the existing Legal Support Project, we will continue to accept requests for assistance in complaints of discrimination in education e.g. schools, universities and colleges and General Qualification Bodies.

### **What does this mean for me as a lawyer or adviser in this field?**

- If you are dealing with a complaint of discrimination relating to services or housing and your client may not be able to access justice without further funding or assistance, we would really like to hear from you.
- We may be able to help by:
  - offering funding for front line advice and representation – by you and /or others;
  - taking appropriate cases “in-house” to be progressed by our dedicated team of discrimination lawyers;
  - offering funding to cover certain outlays, such as obtaining medical reports or Counsel’s opinion.
- If you have already started acting for an individual who has experienced discrimination, but you cannot continue to offer assistance due to lack of funding or resources, then we may be able to offer funding or take the case “in-house.”
- We cannot provide funding to do work under this scheme if you do not charge a fee to clients for your services, nor can we offer assistance for work that you would have carried out anyway without our help. We may however be able to offer funding for the costs of outlays.
- We will only make payment for actual fees incurred in relation to the specific case in question and on submission of an invoice.

## What kind of matters can I seek assistance with?

- Under this Project, we can provide in-house legal assistance or funding for front line advice and representation for individual claims and potential claims of discrimination relating to education, services and housing.
- These claims must relate to Part 3, Part 4 or Part 6 of the Equality Act 2010. Although these bodies or organisations may have duties under more than one part of the Equality Act – for example, as employers – we will only provide assistance under this project for claims relating to their role as either education bodies, service providers or in the provision of housing.
- Claims must involve discrimination on grounds of one or more of the protected characteristics in the Equality Act 2010.
- We cannot assist claims that only relate to the Public Sector Equality Duty under this Project.
- Our objective under the Project is to improve access to justice for victims of discrimination. For this reason, we will only provide assistance where we think that this will help someone to access justice in circumstances where they might not otherwise be able to do so. This means we are particularly interested in complaints where legal proceedings are underway or are contemplated and our funding is likely to make a difference. This might be because our funding will help you carry out preparatory work to help establish merits of the claim, or because we can enable good claims to progress that otherwise might not. We can also fill gaps in existing funding arrangements for legal proceedings – for example, to cover representation.

## What assistance can be provided?

- Assistance under this Project is provided through the exercise of the Commission's statutory power under Section 28 of the Equality Act 2006 to provide assistance to victims of discrimination.
- We can fund:
  - pre-claim work, which may include some or all of the following: fees for initial advice, preparation, evidence collection, witness statements, legal research and correspondence/negotiations before action, letters to Defenders and consideration of response;

- lodging of claims and preparation for and representation at hearings;
- counsel's advice if required; and
- necessary disbursements such as medical or other expert reports.
- Alternatively, we may take the case "in-house" so that our dedicated team of discrimination lawyers can progress it. We would not normally consider this option if the referral is from a solicitor already acting for an individual.
- Any offer of assistance will require solicitors and clients to accept our standard terms and conditions for assistance. Please speak to us for more details.
- Assistance is solely at the discretion of the Commission.

### How is this different to the Commission's usual request for cases?

- We usually only assist "strategic" cases.
- Under this Project, we are taking a different approach and can assist **first instance and non-strategic** cases to improve access to justice for more victims of discrimination.

### What are the Commission's aims?

- To increase access to justice for individuals who have experienced discrimination in relation to education, service provision or housing.
- To gather intelligence about issues where individuals face systemic or repeated non-compliance under Part 3, Part 4 or Part 6 of the Equality Act 2010 with a view to undertaking enforcement action or policy work where appropriate.

### Who will the Commission fund and on what terms?

- If you are a solicitor already instructed by the individual, and you and your client want that arrangement to continue, we can consider providing funding for your fees and agreed disbursements. Fees we will pay for solicitors are calculated on an hourly rate basis and capped at the rates below:

| <b>SOLICITORS FEES - Maximum rates</b>              | <i>Maximum rates (£ per hour, exc VAT)</i> |                        |
|---|--|------------------------|
|   | <i>Central London</i>                      | <i>All other areas</i> |
| <i>8+ years post qualification experience (PQE)</i> | <i>160</i>                                 | <i>140</i>             |
| <i>4 to 8 years PQE</i>                             | <i>140</i>                                 | <i>120</i>             |
| <i>1 to 4 years PQE</i>                             | <i>110</i>                                 | <i>90</i>              |
| <i>Trainee solicitors, paralegals</i>               | <i>50</i>                                  | <i>40</i>              |

- If Counsel is already instructed, we can also consider providing funding for their fees (capped at the levels of those we pay to our panel of Counsel) and agreed disbursements.
- If Counsel is required but not yet instructed, we would normally expect Counsel to be selected from [our panel](#). Our agreed panel rates would apply.
- Our panel rates are calculated on an hourly rate basis and capped at the rates below:

| <b>COUNSEL FEES – Maximum rates</b> |  | Seniority       | Maximum rates<br>(£/per hour exc VAT) |
|-------------------------------------|--|-----------------|---------------------------------------|
| Panel List or equivalent            |  |                 |                                       |
| A                                   | Typically at least 10 years' call and/or QC; considerable experience in equality and / or human rights law | Queen's Counsel | £240                                  |
|                                     |  | Counsel         | £180                                  |
| B                                   | Typically at least 5 years' call; significant experience in equality and/or human rights law               | Counsel         | £160                                  |
| C                                   | Typically at least 2 years' call with experience in equality and/or human rights law.                      | Counsel         | £120                                  |

- In the event that you refer a matter to us involving an individual who has yet to instruct a solicitor, we will consider offering to assist the matter “in-house”. This will involve the Commission’s lawyers taking conduct of the matter. If it is not appropriate to bring the matter in-house, we may consider appointing external solicitors whose fees will be capped at our standard rates for solicitors (see page 5 above).

## How will the Commission decide which cases to assist?

- As you would expect, we are applying criteria to ensure that we maximise the impact of this project. All matters must satisfy the following:
  - The dispute concerns discrimination under Part 3, Part 4 or Part 6 of the Equality Act 2010; **and**
  - It appears likely that the client may not be able to access justice without assistance from the Commission.
- Other factors we will then weigh up when deciding whether to assist a particular case are:
  - Whether the victim or alleged victim is agreeable to publicity;
  - Any significant risks to the Commission (including reputational, financial (including any third party costs liability) and legal);
  - Whether the claim involves significant detrimental impact on an individual or a group of people sharing a particular characteristic or characteristics;
  - The extent of the opportunity to achieve positive change ;
  - If the merits of the claim are unclear (for example, because a litigant in person has not been able to articulate their claim so as to demonstrate sufficient prospects of success), whether Commission assistance will enable legal representatives to conduct preparatory work – such as legal analysis and collation of evidence – which will help identify claims with good prospects of success;
  - Whether our assistance will enable the promotion of arguments that align with the Commission’s positions on relevant issues;
  - Recognising that some claimants will not be able to face the prospect of litigation, whether funding would enable the gathering of evidence that would be likely to form the basis for using our enforcement powers;
  - Intersectionality – cases raising issues across more than one protected characteristic are of particular interest; and
  - Whether providing support furthers our aim of selecting cases that span a range of protected characteristics and issues.
- To help us focus on matters where we can really make a difference, we will not be able to assist matters where:

- The resources required to achieve a successful outcome will significantly outweigh the benefit to the individual and/or wider society;
- We have previously declined a request for assistance;
- There is public or other funding already in place which covers the work for which assistance is being sought; or
- There is no reasonable prospect or limited prospect of success.

### **If you agree to offer assistance, will it cover the case through to conclusion?**

- We expect that in many cases, we will be able to assist a case through to conclusion but this is not guaranteed. In some cases, we may limit our assistance to a defined aspect or aspects of the case.
- We will always ensure the extent of any offer of assistance is made clear at the outset.

### **Are you continuing to assist other types of cases during this project?**

- Yes, throughout this project we will continue to provide assistance for strategic cases, where appropriate, in accordance with our [strategic litigation policy](#).
- We can also intervene in existing litigation or bring judicial review proceedings.
- To talk to us about a case that raises strategic issues, please call **0141 228 5951** or email [legalrequestscotland@equalityhumanrights.com](mailto:legalrequestscotland@equalityhumanrights.com)

### **How long will this Project run for?**

- We will monitor the response to and the impact of the Project and in due course agree an appropriate end date.

## How do I refer a case to you or get more information?

- You can get in touch with us by completing the “request for assistance” form accompanying this letter and sending it to [legalrequestscotland@equalityhumanrights.com](mailto:legalrequestscotland@equalityhumanrights.com).
- You can also call us on **0141 228 5951** if you have any questions about the Project.