

## Funding and legal assistance from EHRC for cases concerning discrimination in education

We are pleased to let you know that from 11<sup>th</sup> September 2017, the Commission will be offering funding and other assistance for claims concerning discrimination in education.

Our objective is to increase access to justice for victims of discrimination involving schools, further or higher education institutions, or general qualifications bodies. We will consider assisting claims relating to any of the protected characteristics in the Equality Act 2010.

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

### FREQUENTLY ASKED QUESTIONS

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

- If you are dealing with a complaint of discrimination in education, we would really like to hear from you if your client may not be able to access justice without further funding or assistance. We may be able to help by:
  - offering funding for front line advice and representation – by you and / or others; or
  - taking appropriate cases “in-house” to be progressed by our dedicated team of discrimination lawyers
- Unfortunately, if you do not charge a fee to clients for your services, we cannot provide you with funding to do work under this scheme. Nor can we offer assistance for work that you would have carried out anyway without our help. However, we may be able to offer funding for the costs of disbursements.

- But if you have offered some assistance to an individual who has experienced discrimination in education, but you cannot continue to offer assistance due to lack of resources then we may be able to offer funding or take the case “in-house.”
- But if you have been approached by or know of an individual who may have experienced discrimination in education and cannot access the legal assistance they need, we would really like to hear from you.

### **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 in education.
- These claims must relate to Part 6 of the Equality Act 2010. This sets out duties that apply to schools, education authorities, further and higher education providers, and general qualifications bodies. Although education providers will have duties under more than one Part of the Equality Act - where, for example, they employ people or provide services – we will only provide assistance under this project for claims relating to their role in providing education to students under Part 6.
- Claims must involve discrimination on grounds of one or more of the protected characteristics in the Equality Act 2010. However, we cannot assist claims that only relate to the public sector equality duty under this particular project.
- Our objective 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?**

- 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
  - 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).
- Assistance under this scheme is provided through the exercise of the Commission's statutory power under section 28 Equality Act 2006 to provide assistance to victims of discrimination. Unfortunately, if you do not charge a fee to clients for your services, we cannot provide you with funding for those services under this scheme. We will only make payment for actual fees incurred in relation to the specific case in question and on submission of an invoice. Nor can we offer assistance for work that you would have carried out anyway without our help.
- 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 in education.

### **What are the Commission's aims?**

- To increase access to justice for individuals who have experienced discrimination in education.

- To gather intelligence about issues where students face systemic or repeated non-compliance under 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 wish 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 (£/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 3 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 Pt 6 of the Equality Act 2010
  - 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 EHRC 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 - is of particular interest
  - 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 won't 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, or
    - We have previously declined a request for assistance, or
    - There is public or other funding already in place which covers the work for which assistance is being sought, or
    - Even if the Commission provided assistance, 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 any non-Part 6 education 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 scheme run for?

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

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

- We will start accepting referrals from 11<sup>th</sup> September 2017.
- From that date, 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 from 11<sup>th</sup> September 2017 on **0141 228 5951** if you have any questions.