



Equality Commission

Assistance with Discrimination Cases

Frequently Asked Questions

Equality Commission

FOR NORTHERN IRELAND

The Equality Commission for Northern Ireland provides free **advice** for people who believe they may have been discriminated against. In addition it provides legal **assistance** with some cases. This information leaflet is for people who have applied for assistance, or are receiving Commission assistance with a discrimination case.

If you are considering lodging a discrimination case with a tribunal or court, but have not already so, you should be aware that strict time limits apply. You should contact us immediately for advice.

If you would like to apply for Commission assistance with a case, and have not already done so, please contact us as quickly as possible. Do not delay, as considerable preparation is required for a discrimination case.

Our full contact details are at the end of this leaflet.

This leaflet is not a full statement of the Equality Commission's practices, policies and procedures regarding complainant assistance. It is a guide to the questions that we are most frequently asked.

Q 1. Who decides whether my case should be assisted?

The Equality Commission appoints a panel of its Commissioners known as a Legal Funding Committee (LFC) to decide which cases to assist.

Q 2. On what basis are cases assisted and when does this happen?

The Commission receives many more applications for assistance than it has funds to assist. The Commission decides which cases to assist based on whether or not each particular case meets its strategic grounds for the grant of assistance. This is set out in its *Policy for the Provision of Legal Advice and Assistance*. This will be given to you and explained by Commission staff. Applications for assistance will be considered as soon as possible and in any case within 16 weeks of receipt of your application. Occasionally the Commission will delay its decision in order to seek more information. You will be advised if this is the case.

Q 3. If my case is not granted assistance does this mean that I have a poor case?

No. The Commission decides which cases it would like to support based on its legal assistance policy (see above). Your case may have merit but may not be considered a strategic case for the Equality Commission to assist. You are free to take your case yourself, notwithstanding that the Commission will not be involved. Commission staff can advise you of alternative sources of support.

Q 4. If my case is granted assistance will I have to pay legal fees?

Commission assistance is free of charge and it is not means tested. The Commission will normally bear the cost of proceedings, for as long as it is involved in the case. This only applies to your assisted discrimination case. The Commission will not be responsible for costs incurred prior to the grant of assistance, nor costs incurred in other proceedings.

Q 5. Who will carry out the legal work on my case?

The Commission has its own specialist in-house legal team. If your case is assisted you do not need to employ your own solicitor.

You will be assigned a legal officer who will act as your legal representative throughout. S/he is managed by a senior legal officer. The legal team is part of our Strategic Enforcement Division. The Commission's Strategic Enforcement Division has been accredited with the LEXCEL practice management standard, as approved by the Law Society for Northern Ireland,

The Commission may also employ a barrister. The barrister will provide an independent opinion on the merits of your case. The barrister may also be involved in any settlement negotiations and present your case at hearing. In exceptional circumstances the Commission may employ an external solicitor.

The Commission will make every effort to ensure that you retain the same legal officer and barrister throughout the duration of assistance of your case. However, this is not always possible and where any legal representative has to be replaced, they will be replaced with a fully briefed legal officer or barrister.

Q 6. Are there any conditions that I will have to comply with, if I am granted assistance?

Yes. The Commission's Conditions of Offer are sent to you in writing when assistance is granted. You are advised to read this document carefully so that you may clearly understand the basis on which you are offered assistance. For example you are required to co operate with Commission staff, attend all meetings arranged for you and co operate with any publicity the Commission may wish to initiate concerning your case. Commission staff can answer any questions you may have on the Conditions of Offer.

Q 7. Will assistance continue right through to the end of my case?

Not necessarily. A grant of assistance does not guarantee that you will be assisted to a court or tribunal hearing. Commission assistance is granted subject to review by a Legal Funding Committee.

Q 8. In what circumstances does the Commission normally review its grant of assistance?

The Commission has a "staged" approach to the grant of assistance. Assistance will routinely be reviewed by LFC after a legal opinion on the case has been received and will also be reviewed again before the matter proceeds to a full hearing. A review may result in the case receiving continued assistance, or it may result in assistance being withdrawn.

At the outset assistance is granted to carry out preliminary legal work and to obtain all information necessary to make an informed decision on the prospects of success for the case. This will normally, but not always, include obtaining a barrister's opinion on the case. The Commission will review the case on the basis of whether it is considered the case has reasonable prospects of success and/or it continues to meet the Commission's strategic grounds for the grant of assistance.

If assistance is continued this will include the remaining legal work to prepare the case for hearing and may include settling the case. The matter will be further reviewed before a full Tribunal or Court hearing of the case. If a case is listed for hearing the Commission will ensure that a review is carried out at least one month before the start of the hearing.

It is important to note that a grant of assistance is always **subject to review** and may be reviewed by LFC **at any time** throughout the course of proceedings. For example if you fail to co-operate with the Commission or breach your Conditions of Offer.

Before a case is reviewed you will have an opportunity to discuss it fully with your legal officer who will ensure that your comments or views are made known to the LFC.

Q 9. If assistance is withdrawn from a case, can I appeal?

A decision by LFC to withdraw assistance can be reconsidered. The Senior Legal Officer can advise on how to do this.

Q 10. Can I continue with my case, even if the Commission decides not to continue with support?

Yes. You will then become responsible for any legal fees from that date forth.

In employment cases, taken in an Industrial or Fair Employment Tribunal, normally each side pays their own costs, no matter who wins the case. However, costs have been awarded against parties, by Tribunals in certain circumstances.

In goods, facilities and services cases, taken in the County Court, normally the party who is unsuccessful pays the other party's costs. This means that if you continue with your case and lose then you may have to pay your opponent's legal costs, as well as your own. If you win you may be able to recover your costs.

Q 11. Will I have to do any work to prepare my case?

Yes. It is important that you are active in your own case. You must ensure that all information is provided to your legal officer, including any new information or documents that you become aware of during your case. You must ensure that all correspondence received by you during the case is provided promptly to your legal officer, who will reply on your behalf. You may be asked to provide written details of your case for your legal representatives. You may have to read and be prepared to give

your views on information obtained by the Commission in connection with the case. You must attend all meetings, consultations and, if necessary, medical appointments arranged by the Commission. You must be prepared to listen carefully to advice and be prepared to make active choices in the progress of your case. Your legal officer will let you know what is required of you. Additional help will be provided for people who have communication difficulties or difficulties with reading and writing.

Q 12. Does the Commission settle cases before hearing in a tribunal or “out of court”?

The Commission may enter negotiations to settle your case, if it is in your interests and the Commission’s interests to do so. This will be discussed with you and you will be kept fully informed of any such negotiations. The Commission will seek appropriate compensation for the case and additional clauses such as a commitment to equality issues or that the Respondent agrees to liaise with the Commission regarding equality policies, practices and procedures. The Commission will not agree to “no publicity” clauses.

If you do not wish to accept an offer of settlement that the Commission considers to be a reasonable settlement, the matter will be reviewed by LFC and this may result in the withdrawal of assistance.

Q 13. If my case goes to hearing will I and my witnesses (if any) be helped to prepare for this?

You, and any witnesses, will have a full pre-hearing consultation with your legal officer and barrister. All court or tribunal procedures will be explained to you. You will be expected to give evidence and to be cross examined at the hearing. Except in special circumstances, courts and tribunals are open to the public and there may be press present. However most cases are unattended by anyone, other than the parties to the proceedings, their representatives and their witnesses.

Q 14. Will I have to go to tribunal/court only once?

There may be a number of tribunal or court appearances required prior to your case being listed for a full hearing. For example, tribunal cases are

progressed by Case Management Discussions (CMDs) where the issues to be decided are agreed and cases are timetabled. You must contact your legal officer once you receive notification of a CMD. Usually you will not be required to speak at a CMD but your Legal Officer will advise if your attendance is required.

Additionally in some cases there may be a Preliminary Hearing or a Pre-Hearing Review. Your legal officer will explain and help you prepare if these hearings arise in your case.

Most full hearings in employment discrimination cases in tribunals are listed for one to two weeks. County Court cases are often dealt with in one or two days.

Q 15. My witnesses and I are worried that we may be victimised because of my case. Is there anything I should do?

The law protects people from victimisation. Talk to your legal officer, who may be able to provide reassurance or in certain circumstances may advise you to take further legal action. You should speak to your legal officer as soon as you have any concerns, as time limits may apply.

Q 16. How long will it take to resolve my case?

This varies greatly from case to case. Some complex discrimination cases in Tribunals have been ongoing for several years. The tribunals are now aiming to have most cases listed for hearing within nine months to one year from the date on which proceedings were originally lodged. The timescales are similar in the County Court. Of course some cases may be settled at an earlier stage.

Q 17. What happens when my case is over?

Usually a written decision will be given to you by the tribunal or court some weeks or months after the hearing ends. If you are successful there may be a separate hearing to decide on the compensation. When compensation has been awarded (or agreed in a settlement) this will be forwarded to you within a few weeks. The Commission may then wish to discuss publicity, if this seems appropriate in all of the circumstances.

Q 18. What publicity can I expect?

All settled and decided cases will be reported in an annual publication. Past *Decision and Settlements Reviews* are available on our website or in paper copy from the Commission. Additionally a small number of cases may be reported in the media. You will be expected to co-operate with any publicity the Commission may choose to initiate. The Commission will support you in any dealings you may have with the media. You must not speak to the press or media concerning your case without the express permission of the Commission. If you have any concerns about publicity you should discuss this with your legal officer.

Q 19. What communication can I expect between me and the Commission throughout my case?

The legal officer will meet with you from time to time and will also write to you and telephone you with updates on a regular basis. There may be periods in which there is very little to report.

You are obliged to inform the legal officer of any developments in your case, or of any new information that you receive. You must ensure that the Legal Officer has your current address and telephone number.

If a barrister is appointed, you will be given an opportunity to meet with him/her to discuss your case. This will also give the barrister and the legal officer an opportunity to assess your ability to give evidence and deal with cross examination. The barrister will be fully briefed with all information provided by you and all documents and information obtained during the progress of the case. All cases have strengths and weaknesses and both strengths and weaknesses will be discussed with you. Occasionally a barrister may be in a position to provide a written legal opinion without the need for a meeting.

Q 20. Is there any additional help available for me if I need it because of a disability, because of a communication barrier or because I am under 18 years old?

The Commission will ensure that its legal services are accessible to everyone. This will include, for example - fully accessible meeting rooms; home visits if appropriate; sign language interpreting by qualified

personnel; foreign language interpreting and documents translation. The courts and tribunals should also make these services available.

Children and young people who are claiming discrimination may be accompanied by a parent or guardian. The legal officer will explain how Court and/or Tribunal procedures operate in a case taken by a child or young person.

Each person's needs are different and you should discuss your needs with the legal officer, who will ensure that all reasonable adjustments are made.

Q 21. What should I do if I am not satisfied with the service provided by the Equality Commission?

The Equality Commission operates a Complaints Procedure that covers - the standard of service provided by the Commission; the behaviour of the Commission staff; and any action or lack of action by our staff which has affected you. The procedure does not cover dissatisfaction with the Commission's policies or decisions about individual cases or funding.

If you believe you have cause for complaint please contact the Case Work Director who can provide you with the Complaints Procedure.

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The Equality Commission for NI
Equality House
7 – 9 Shaftesbury Square
Belfast
BT2 7DP

Telephone	028 90 890 890
Textphone	028 90 500 589
Fax	028 90 331 047
Email	xxxx@xxxxxxxxxxx.xxx

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