



Public Law Project



Legal Aid for Discrimination Claims

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Funding

- Legal Help – telephone gateway
- Legal Aid
- Exceptional Case Funding

Civil Legal Advice

Telephone gateway

Client journey

- Contact by phone or online (ask for call back)
- Third party can call on behalf of client
- Operator Service – “triage”
- Specialist Provider
- Determination – merits (nature of claim, time limits)
- Ongoing Work

Eligibility – scope and finances

- Initially determined by Operator Service
- Confirmed by Specialist Provider
- Discrimination as defined in the Equality Act 2010 is “in scope” under LASPO – see *para 43, Part 1 Sch 1, LASPO*
- Assessment of client’s household finances required by phone and on paper

Legal Help scheme

- Employment cases but NOT representation
- Non-employment cases but not on court record
- Pre-action correspondence/negotiation

What is covered under Legal Help – benefits examples

- Writing to DWP regarding reasonable adjustments to computer terminals in a JCP to accommodate a wheelchair user.
- Writing to DWP regarding reasonable adjustments to medical assessment appointments for PIP where client is housebound.

What is not covered

- Challenging decisions on benefits awards

What is covered under Legal Help – housing examples

- Writing to a private landlord regarding allowing an assistance dog in a let property.
- Writing to a Housing Association about the provision of disabled parking spaces.
- Writing to a Local Authority Landlord about their housing allocation policy/requirement to bid online.

What is covered under Legal Help – education examples

- Challenging University/FE providers about failures to assess the need for/provide reasonable adjustments
- Advising on issues arising from work placements

What is not covered

- Any issues with SEN and discrimination in schools – dealt with by specialist education law providers.

Legal Aid

Funding after Legal Help

Public Funding Certificate

- Full Representation
 - Issue a claim and conduct litigation
 - Funding for lawyer
 - Cost protection for client
- Investigative Representation
 - Investigate prospects of claim succeeding
 - Funding for lawyer
 - Cost protection for client

Full Representation

- Civil Legal Aid (Merits Criteria) Regulations 2013
- Standard criteria – Regulation 39
 - No other means of funding
 - No one else who could bring the case
 - No reasonable alternative to bringing proceedings
 - Need for representation
- Cost benefit – Regulation 42
- Prospects of success – Regulation 43
 - Very good, good, moderate; or
 - Borderline with SWPI or overwhelming importance

Cost-benefit conundrum

- Cost-benefit criteria:
 - Primarily a claim for damages: Ratios
 - Not primarily a claim for damages or other sum and not of SWPI: Privately paying individual
 - SWPI: Proportionality
- Ratios and discrimination claims
- Is this a problem
 - Importance of the cases
 - Article 6 ECHR

Solutions?

- Does the claim involve a significant wider public interest?
- Could the claim fall into a different paragraph of Part 1 Schedule 1 LASPO?
- Is it primarily a claim for damages?
- Are the cost-benefit criteria consistent with Art 6 ECHR?

Significant wider public interest

- Regulation 6
- Is it a case appropriate to realise:
 - Real benefits to the public at large, other than those which normally flow from cases of the type in question; and
 - Benefits for an identifiable class of individuals, other than the person, or his or her family, to whom civil legal services are provided.
- If so, proportionality test applies

Alternative paragraph of Part 1 Schedule 1 LASPO

- Most appropriate merits criteria used:
 - Regulation 47
- Breach of Convention rights by public authority: Para 22 P1 S1 LASPO:
 - Significant breach of Convention rights by public authority
 - Proportionality test applies - Regulation 58

Is it primarily a claim for damages?

- If not, and no SWPI:
 - Privately paying individual test
 - Less restrictive than ratios, more restrictive than proportionality
- Why not primarily a claim for damages?
 - Importance of other remedies to claimant
 - Societal importance of discrimination claims
- Question to ask:
 - What is most important to the claimant?

Art 6(1) ECHR

- Can claimant present her case “*effectively and without obvious unfairness*”?
- Fact specific:
 - importance of the issues at stake;
 - complexity of the procedural, legal and evidential issues;
 - ability of the individual to represent themselves without legal assistance, having regard to age and mental capacity
- If not in-scope under P1 S1 LASPO:
 - Section 10 LASPO and ECF
 - Funding available if required to prevent a risk of a breach of Convention or EU rights

Art 6(1) ECHR continued

- No equivalent for means and merits criteria:
 - Breach of Convention rights?
 - *R (I.S.) v Director of Legal Aid Casework & Anor* [2016] 1 WLR 473
 - “*the Merits Regulations offer, in my judgment, a balanced – proportionate – approach to the grant of legal aid which cannot be condemned as arbitrary.*” Laws LJ at §65
 - Supreme Court

Practice and Procedure

- Notify EHRC
- Assessors
- Transfer to court with experienced Judge
- Nature of Relief available – question of where to issue the claim (High or County Court) less significant, save where the proposed claim contains a public law issue (*i.e.* the public sector equality duty)
- Time limit issues
- Expert evidence?



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ANY QUESTIONS?