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?
ANY QUESTIONS?