



Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas

Irish Human Rights and Equality Commission

Guidelines on applications for legal assistance

BACKGROUND

1. The Irish Human Rights and Equality Commission ('the Commission') works to protect and promote human rights and equality. As part of its functions, the Commission may provide legal assistance to people in vindicating their rights.
2. The assistance that the Commission may provide includes the provision of legal advice, legal representation, or such other assistance as the Commission deems to be appropriate in the circumstances.
3. Applications for assistance are considered in accordance with the Irish Human Rights and Equality Commission Act 2014 ('the 2014 Act').
4. These guidelines are intended to outline the legislative criteria applied and the procedures adopted by the Commission in assessing applications for assistance.
5. The Commission, in performing the function of providing assistance, is mindful of its duty under the 2014 Act to have regard to the need to eliminate discrimination, promote equality of opportunity and treatment, and protect the human rights of the persons to whom it provides services.

LEGAL ASSISTANCE

6. The Commission may provide legal assistance to individuals in bringing proceedings in the following areas –
 - Discrimination in the provision of goods and the disposal of services, as provided for by the Equal Status Acts 2000 to 2015.

Examples of such proceedings might include –

- *the referral of a complaint of discrimination, harassment, sexual harassment or victimisation to the Director of the Workplace Relations Commission in relation to the provision of goods and services;*

- *an appeal to the Circuit Court in respect of a decision of the Director of the Workplace Relations Commission;*
 - *an appeal on a point of law from the decision of the Circuit Court to the High Court;*
 - *an application to the District Court to enforce a decision of the Director of the Workplace Relations Commission;*
 - *an application to the District Court for a determination as to whether a club is a discriminating club.*
- Discrimination in employment and occupation, as provided for by the Employment Equality Acts 1998 to 2015.

Examples of such proceedings might include –

- *the referral of a complaint of discrimination, harassment, sexual harassment or victimisation to the Director of the Workplace Relations Commission in relation to employment, occupation, vocational training, or professional or trade organisations;*
 - *equal pay proceedings before the Workplace Relations Commission or the Circuit Court;*
 - *an appeal to the Labour Court in respect of a decision of the Director of the Workplace Relations Commission;*
 - *an appeal on a point of law from a decision of the Labour Court to the High Court;*
 - *an application to the District Court to enforce a decision of the Director of the Workplace Relations Commission.*
- Discrimination by licensed premises, as provided for by the Intoxicating Liquor Act 2003.

Examples of such proceedings might include –

- *An application to the District Court in relation to discrimination by a licensed premises.*
- Human rights as guaranteed by the Constitution, the European Convention on Human Rights, or any other international agreement which has been given force within the State.

Examples of such proceedings might include –

- *Proceedings before the courts in which a declaration of unconstitutionality is sought;*

- *Proceedings before the courts in which a declaration is sought that an organ of the State has failed to perform its functions in a manner that is compatible with the State’s obligations under the European Convention on Human Rights;*
 - *Proceedings before the courts in which a declaration is sought that a statutory provision or rule of law is incompatible with the State’s obligations under the European Convention on Human Rights;*
 - *Proceedings in which a declaration is sought that the State’s law or practice is incompatible with the State’s obligations under the Charter of Fundamental Rights of the European Union;*
 - *Proceedings in relation to the exercise of the right to free movement of EU workers.*
7. The Commission cannot provide legal assistance to individuals in relation to legal proceedings which do not fall within paragraph 6 above.

APPLICATIONS FOR ASSISTANCE

8. Individuals may apply for legal assistance using the relevant form (Form 40.1) provided by the Commission for this purpose.
9. Completed applications should be sent to the Commission by post to 16 – 22 Green Street, Dublin 7, or by email to legal@ihrec.ie.
10. Before making a decision whether or not to grant assistance, the Commission will consider–
- Whether the assistance sought could be obtained by the applicant –
 - Under the Civil Legal Aid Act 1995,
 - Under the Criminal Justice (Legal Aid) Act 1962, or
 - By any other means, or
 - Whether a tribunal or other person has the power to award redress or grant relief, and the matter could be more effectively or conveniently dealt with by that tribunal or person.
11. Having considered these matters the Commission may decline to grant assistance to the applicant.

Statutory criteria

12. The Commission will then consider whether –
- The matter to which the proceedings relate raises a question of principle; and/or

- It would be unreasonable to expect the individual to deal with the matter without assistance, because of its complexity or for any other reason; and/or
 - There are other special circumstances which make it appropriate for the Commission to grant assistance.
13. Even where the criteria specified at paragraph 12 are satisfied, the Commission may refuse to grant assistance, in particular where the provision of assistance does not, in the view of the Commission, represent the most appropriate and proportionate exercise of its functions (see paragraphs 18 – 20 below).

Whether question of principle raised

14. In considering whether the matter to which the proceedings relate raises a question of principle, the Commission may have regard to a range of factors including, but not limited to, the following –
- The matter raises a question of principle relating to the protection and promotion of human rights and/or equality;
 - The question of principle raised is one of significant public importance;
 - The question of principle raised concerns an area of law and/or practice relating to the protection of human rights and/or equality that, in the opinion of the Commission, requires development and/or clarification;
 - The question of principle raises an issue as to the compatibility of the State's laws and/or practice with the applicant's human rights as guaranteed by the Constitution, the European Convention on Human Rights, or any other international agreement which has been given force within the State;
 - The facts as disclosed by the applicant establish a strong case that the applicant is likely to succeed in the proceedings;
 - The proceedings, if successful, are likely to have a beneficial impact on the protection of human rights and equality generally;
 - The proceedings, if successful, are likely to have a beneficial impact on persons other than the applicant for assistance;
 - The proceedings, if successful, are likely to result in a strengthening of the State's laws or practice relating to the protection of human rights and/or equality.

Whether unreasonable to deal with matter without assistance

15. In considering whether it would be unreasonable to expect the applicant to deal with the matter without assistance, the Commission may have regard to a range of factors including, but not limited to, the following –
- The complexity of the issues raised;
 - The legal novelty of the issues raised;

- The forum in which the proceedings are being brought;
- The fact that the applicant has a disability which may impair the capacity of the applicant to represent themselves without assistance.

Whether special circumstances

16. In considering whether there are any other special circumstances which make it appropriate to grant assistance, the Commission may have regard to a range of factors including, but not limited to, the following –

- The gravity of the issues raised by the applicant for assistance;
- The severity of any discrimination, injury, loss or damage suffered or apprehended by the applicant by reason of the matters to which the application relates.

17. The factors outlined at paragraphs 14 – 16 are intended as guidance only, and do not represent an exhaustive or determinate list of the range of factors to which the Commission may have regard in applying the statutory criteria at paragraph 12.

Proportionality

18. The Commission, in exercising the function of providing assistance, is required to do so in a manner that it considers to be most appropriate and proportionate in the circumstances.

19. The Commission may decline to grant assistance where it considers that the provision of such assistance would not represent the most appropriate and/or proportionate use of the Commission's functions.

20. In particular, the Commission may decline to grant assistance where the circumstances of the case are such that the anticipated costs of the proceedings outweigh the potential benefit to the applicant and/or other persons affected by the proceedings.

REQUESTS FOR INFORMATION

21. In assessing an individual's application for assistance, the Commission may request that an applicant furnish relevant information or documentation to it.

22. Any data, including sensitive personal data, furnished to the Commission will be processed in accordance with the Data Protection Acts 1988 and 2003.

23. The failure or refusal, without reasonable excuse, of an applicant to furnish any additional information or documentation sought by the Commission within a specified timeframe may result in a decision not to give further consideration to an application for assistance.

24. The Commission will give an applicant reasonable notice of a decision not to give further consideration to an application for assistance in writing, setting out the reason for the decision, and will afford the applicant concerned the opportunity to make representations to the Commission in this regard.

CORRESPONDENCE WITH DEFENDANT/RESPONDENT

25. The Commission may write to the potential defendant/respondent (e.g. the relevant employer, service provider, or public body) to seek its views in relation to the issues raised by the applicant. The Commission will seek the consent of the applicant to enter into correspondence with the defendant/respondent. Any response received will be furnished to the applicant, and the applicant will be afforded an opportunity to make representations to the Commission in this regard.

DECISION TO GRANT OR REFUSE APPLICATION FOR ASSISTANCE

Decision to refuse assistance

26. Decisions as to whether or not to grant legal assistance will be made by the Commission's Head of Legal in the first instance.
27. Where the Head of Legal has formed the view that the application for assistance should be refused, the Head of Legal will inform the applicant in writing of his or her preliminary decision, and set out his or her reasons for reaching this preliminary decision.
28. The preliminary decision of the Head of Legal will become final on the expiry of 28 calendar days from the date of the decision, unless the applicant appeals this decision to the Director of the Commission in the prescribed manner.
29. An applicant may appeal the preliminary decision of the Head of Legal to the Director by notice in writing to the Commission. Written notice may be furnished by post to the Legal Team, Irish Human Rights and Equality Commission, 16 – 22 Green Street, Dublin 7, or by email to legal@ihrec.ie.
30. Written notice of an appeal must be received by the Commission not later than 28 calendar days from the date of the Head of Legal's preliminary decision.
31. On appeal, the Director may confirm, vary, or revoke the preliminary decision of the Head of Legal. The Director will inform the applicant in writing of his or her decision on appeal, and set out his or her reasons for reaching this decision. The decision of the Director on appeal shall be final.
32. In this section, reference to the date of the Head of Legal's preliminary decision is to the date on which correspondence communicating this decision issued by post to the applicant.

Decision to grant assistance

33. Where the Commission decides to grant an application for assistance, it will assign a solicitor to provide such assistance as may be appropriate in the circumstances, subject to the applicant's agreement to the Commission's terms of engagement.
34. The relationship between a solicitor employed by the Commission (or any barrister retained by him or her) and a person granted assistance will be the same as the relationship between a solicitor or barrister and a client who is not such a person. This is without prejudice to the

rights and responsibilities of the Commission, and the obligations arising out of the relationship between the Commission and the solicitors employed by it.

35. The assistance that may be provided by the Commission may include any or all of the following:

- legal advice;
- legal representation;
- such other assistance as the Commission considers appropriate in the circumstances.

36. Where the Commission provides legal advice or representation to an individual, it may recover expenses from the applicant incurred by or on behalf of the Commission.

Withdrawal of assistance

37. The Commission may decide to withdraw, suspend or discontinue the provision of assistance. The Commission will give an individual reasonable notice of such a decision in writing, setting out the reason for the decision, and will afford the individual concerned the opportunity to make representations to the Commission in this regard.