

Legal Assistance: Funding a Claim

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1. Our Powers

2. Funding Criteria

- Lit. & Enforcement Policy
- Aims/Strategic & Business Plan

3. Examples PSED Cases

4. Requests for support

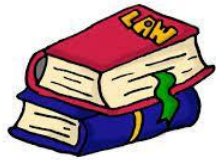
Our Powers: Equality Act 2006

Legal powers: Section 28 Support

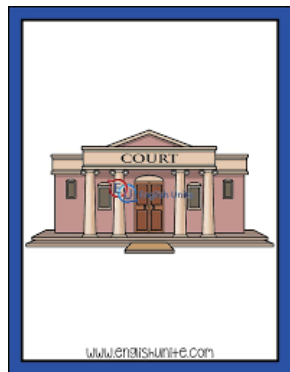
- Section **28(1)**: who we can assist/type of proceedings
- Section **28(4)** type of legal assistance provided



Section 28 Funding



LEGAL TEAM



**Costs; Court Fees,
Settlement Costs**



Tweet



EHRC @EHRC · Sep 9, 2020

Following a successful legal challenge by a disabled child, we have warned all grammar schools not to discriminate against disabled children during this year's entry exams. We funded the case in partnership with @RNIB.

Read the news here [➔](#)



Grammar school discriminated against visually impaired child, tribunal ...
Boy was refused opportunity to take 11-plus entrance exam by Reading School

Publicity & Comms Strategy

Interventions and Judicial Reviews

Section 30 Equality Act 2006

Interventions

- Equality and/or human rights, both domestically and at the ECtHR
- Adding value

Judicial review

- Breach of EA2010 or HRA 1998
- Commission can bring cases in its own name



Examples of PSED Cases

Types of cases

1. Clarifying or strengthening the PSED duty
2. Issue specific- PSED breach alleged
3. Co-exist in one case

Previous cases where EHRC involved:

- [Bracking v SSWP](#)
- [R\(Turner\) v SSWP](#)
- [S v The Scottish Ministers](#)
- [JCWI v SSHD](#)
- [Luton Community Housing Ltd v Durdana](#)

Funding criteria

S28, Legal Assistance: Strategic Litigation

Mr Justice Cavanagh, Leighton, R (On the Application of) v The Lord Chancellor [2020] EWHC 336 (Admin)

*Again, the Equality and Human Rights Commission ("EHRC") has the power to provide financial support for litigation. However, once again, the EHRC is subject to very tight financial constraints and has many other demands on its resources, and in practice it is unlikely that the EHRC will be in a position to provide financial support save **in a very small number of particularly important cases.***

Two Stage Process

Is the issue within our strategic and business plan?

Does it meet the criteria in our Litigation & Enforcement policy?

Our litigation and enforcement policy

Use of legal powers: strategic litigation

Will look at the following:

- **The scale of the problem**
size, severity, persistence, prevalence
- **The impact we will have**
which powers will be the most proportionate, are others acting
- **Resources vs Scale of problem**
- **The merits of the claim**
- **The views of external stakeholders**

Our strategic aims



Our Core Aim

Strong equality and human rights laws protect people, and data shows what is happening to people in practice



We're interested in cases which will:

- Address flagrant, systemic or serious breaches of equality or human rights law.
- Strategically strengthen or clarify equality or human rights law.
- Clarify or strengthen the application of the Public Sector Equality Duty.
- Apply equality and human rights laws in new or untested contexts, for example in relation to AI, facial recognition or predictive technologies.
- Address serious equality or human rights issues linked to the pandemic response.
- Address systemic issues relating to housing, such as the application of planning regulations and the failure to provide accessible housing.
- Provide clarity on balance of rights issues between different equality rights or human rights, such as balancing rights of transgender people and women or those with a particular religion or belief.
- Protect human rights, such as the right to protest.
- Strengthen domestic case law on the interpretive force of international human rights treaties.

Work

People in Britain have equal access to the labour market and are treated fairly at work



We're interested in cases which will:

- Address potential discrimination in employment linked to Covid-19, for example discrimination in recruitment criteria and practices, in relation to care provision or 'long Covid', linked to vaccines or face coverings, failure to make reasonable adjustments and/or withdrawal of adjustments as Covid measures are eased.
- Challenge discriminatory redundancy decisions and measures taken short of redundancy as part of rationalisation/stream-lining.
- Challenge discrimination relating to pre-employment questions relating to disability, pregnancy, maternity or family planning.
- Challenge a withdrawal of or refusal to grant reasonable flexible working requests.
- Address potential discrimination linked to the use of new technologies in decision-making.
- Address potential discrimination linked to 'gig employment'.
- Challenge potential racial discrimination in recruitment, particularly in relation to migrant workers.
- Challenge potential indirect discrimination on the grounds of race in relation to immigration.

Access to Justice

People can access redress when they are wronged and have a fair trial in the criminal justice system



We're interested in cases which will:

- Challenge potentially discriminatory legal aid regulations.
- Challenge a failure to provide consistency of protection for domestic abuse survivors in different court systems.
- Challenge policies or practices within the social security system which are potentially discriminatory or breach human rights.

Education

The education system promotes good relations with others and respect for equality and human rights.



We're interested in cases which will:

- Challenge potentially discriminatory practice linked to changes made to schooling due to the pandemic, particularly issues around access to or content of remote provision, support to reintegrate from remote learning and/or provision of resources to help children catch up.
- Challenge a failure to provide reasonable adjustments or a failure to provide them free of charge, particularly for pandemic-related issues such as exams and assessments, remote learning, Covid-safe practices, summer schools or other catch up provisions.
- Address potential discrimination linked to the provision of teacher-assessed grades.
- Challenge possible discriminatory practice linked to the use of Behaviour Hubs, Policies or Early Intervention Bases in schools, particularly linked to pupils complying with Covid-safe practices.
- Address breaches of human rights and/or discrimination linked to compliance with Covid-related regulations, including testing, vaccinations, face-coverings and subjecting behaviour outside school to schools' rules and regulations.
- Challenge possible race discrimination in schools where this is linked to the pandemic and/or exacerbated by pandemic-related issues.



Institutions

Treatment in institutions and detention settings respects people's rights.

We're interested in cases which will:

- Challenge systemic failure to protect the rights of people with learning disabilities or autism who are detained inappropriately or subject to inappropriate treatment whilst detained.
- Challenge a failure to consider the right to independent living.
- Address issues arising in care settings due to the pandemic response, such as blanket application of visiting policies, inappropriate use of DNACPR notices, inability of disabled people to be accompanied by essential carers at appointments, lack of provision of BSL or other interpreters, lack of appropriate care provision by local authorities or health bodies and/or inappropriate detention or ill treatment by providers.
- Address potential disproportionality in the use of restraint, seclusion, medication and detention under the Mental Health Act among certain ethnic groups.
- Challenge potential racial discrimination in provision of or access to healthcare.

New strategic plan for 2022...

Requests for support



Who can make a funding request?

- Legal representatives, including solicitors and barristers
- Organisations with an interest/representing the individual, e.g. charities such as RNIB
- Advisors
- We do not accept requests directly from individual members of the public - we will usually refer to Employment Advisory Support Service (EASS)

How to apply for support

Strategic litigation, interventions, proceedings in our own name

- Intelligence and impact team
- Legalrequest@equalityhumanrights.com
- Helpful to tell us:
 - What you are asking us to do: fund strategic litigation, intervene in a case, bring proceedings in our own name, investigate an unlawful act, etc
 - summary of facts and important deadlines
 - which of our aims it relates to
 - why we should use our powers (referring to our litigation and enforcement policy)

Thank you