



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Policy for Granting Legal Assistance

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Introduction

1. The Northern Ireland Human Rights Commission (NIHRC) was established by the Northern Ireland Act 1998 for the promotion and protection of human rights in Northern Ireland. The NIHRC is a national human rights institution with 'A' status under the UN Paris Principles.¹
2. The NIHRC's powers to provide legal assistance, including in respect of its role as the Dedicated Mechanism under Article 2(1) of the Windsor Framework, are set out in the Northern Ireland Act 1998.
3. Section 70(1) of the Northern Ireland Act 1998 permits the NIHRC to provide assistance in respect of:
 - a) proceedings involving law or practice relating to the protection of human rights which a person in Northern Ireland has commenced, or wishes to commence; or
 - b) proceedings in the course of which such a person relies, or wishes to rely, on such law or practice.
4. Section 78C of the Northern Ireland Act 1998 also permits the NIHRC to:
 - a) bring judicial review proceedings in respect of an alleged breach (or potential future breach) of Article 2(1) of the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;
 - b) intervene in legal proceedings, whether for judicial review of otherwise, in so far as they relate to an alleged breach (or potential future breach) of Article 2(1).

Assistance

5. The NIHRC may grant assistance, in relation to those proceedings identified in paragraphs 3 and 4 above, on the grounds specified under sections 70(2) and 78D(2) of the Northern Ireland Act 1998. These are:
 - a) that the case raises a question of principle;
 - b) that it would be unreasonable to expect the person to deal with the case without assistance because of its complexity, or because of the person's position in relation to another person involved, or for some other reason;

¹ Adopted by General Assembly resolution 48/134, 20 December 1993.

- c) that there are other special circumstances which make it appropriate for the Commission to provide assistance.
6. NIHRC legal staff will process applications for assistance. These will be submitted for a decision by the Board of Commissioners at the next available meeting. Although the NIHRC will be mindful of statutory time limits, any applicable to the application will remain the responsibility of the applicant.
 7. An emergency application may be progressed if a decision is required as a matter of urgency. This will be at the discretion of the Chief Executive. Matters will not normally be considered as an emergency if the emergency arises because of a delay on the part of the enquirer, or their representative in making contact with, or supplying information to the NIHRC. In this situation, a decision from the NIHRC may be sought, in accordance with the Commission's standing orders.

Forms of Assistance

8. Where the NIHRC makes the decision to grant assistance in respect of an applicant, the forms of assistance possible are specified under sections 70(3) and 78D(3) of the Northern Ireland Act 1998. The Commission may provide assistance in the following forms:
 - a) provide, or arrange for the provision of, legal advice;
 - b) arrange for the provision of legal representation;
 - c) provide any other assistance which it thinks appropriate.
9. Practically, the ways in which the NIHRC can provide legal assistance include the following:
 - a) Issuing legal proceedings in the individual's name
 - b) Applying to intervene as a third party in existing proceedings
 - c) As amicus curiae, at the request of a court or tribunal
 - d) Initiating own motion proceedings, under sections 71(2B) or 78C(1) of the Northern Ireland Act.
10. The NIHRC will not usually fund an external solicitor to initiate or continue with a human rights case. However, the NIHRC will consider this option in exceptional circumstances, in line with our strategic objectives and business needs.

11. The NIHRC may offer indemnification for legal costs in respect of an externally conducted human rights case. However, the NIHRC will only consider this option in exceptional circumstances, in line with our strategic objectives and business needs.
12. The NIHRC may, on consideration of an application, offer an alternative form of assistance than that requested. This may take the form of another type of legal assistance or utilise the NIHRC's other statutory powers.

Factors taken into consideration

13. Each application received by the NIHRC will be considered individually and on its own merits.
14. In assessing each application, the NIHRC will have regard to the statutory provisions set out above in paragraph 5.
15. It will also have regard to the following list of questions, which will assist in establishing whether the NIHRC should exercise its powers to grant assistance. This list is non-exhaustive.
 - a) Does the issue fall within the NIHRC's Strategic Plan?
 - b) Does the case allege a violation or abuse which will significantly affect the protection of human rights?
 - c) Is another body better placed to assist the applicant?
 - d) Will the case progress in the absence of the NIHRC's support?
 - e) Has the NIHRC assisted another case raising the same point of law?
 - f) Does the case appear to have a reasonable chance of success?
 - g) Is it a strategic use of the NIHRC's funds to assist?
 - h) Is there any other action in relation to the application that is strategically appropriate for the NIHRC to take?
 - i) Is it practicable for the NIHRC to take the required action in view of the time and resources available?

Granting assistance

16. The applicant, or their representative, will be informed of the decision of the NIHRC in writing. The letter of grant will set out the specific assistance granted by the NIHRC.

17. The assistance will be limited to that provided in the letter of grant and not to any subsequent appeal, should it arise. A fresh application of assistance would be required to seek support to defend or initiate any further legal proceedings.
18. The grant of assistance will be subject to the NIHRC's general conditions of offer.

Refusing assistance

19. The applicant, or their representative, will be informed of the decision of the NIHRC in writing. They will be provided with the reasons for the NIHRC's decision. The decision does not preclude the individual from taking the matter forward independently.
20. The decision of the NIHRC may be reconsidered only where there is a material change in circumstances. An applicant must request such a review in writing, setting out the material change in circumstances.
21. In the situation where assistance is refused, the NIHRC may, of its own motion, review a decision or the subject matter of a decision at a later date. The NIHRC may decide to take action in respect of an issue, separate to the initial application. The NIHRC may contact the original applicant, but it is not obliged to do so.

Reviewing a grant of assistance

22. The NIHRC may, at any stage, review the decision to grant assistance. Generally, the NIHRC will review the decision to assist in the following circumstances:
 - a) Where new evidence and/or advice and/or information becomes available that appears to undermine the case.
 - b) When all the evidence relevant to the court proceedings being assisted has been gathered and where legal opinion advises the NIHRC that the case no longer appears to enjoy a reasonable prospect of success in court.

- c) Where the assisted person has failed, without just cause, to comply with any conditions attached to the offer of assistance.
 - d) Where the assisted person has failed, without just cause to disclose to the NIHRC material, information or documentation relating to the case being assisted.
 - e) Where the assisted person has failed, without just cause, to co-operate with requests from the NIHRC.
 - f) Where the assisted person knowingly misrepresents material information or knowingly makes false or misleading statements to the NIHRC.
 - g) Where the assisted person fails, without just cause, to act in accordance with the advice given by the NIHRC and/or his/her appointed legal representative.
 - h) Where there is unreasonable conduct by the assisted person, including unreasonable conduct towards the staff of the NIHRC and/or any appointed legal representative.
 - i) Where it is no longer a strategic use of the NIHRC's resources to continue to fund the case.
23. The assisted person will be notified in writing that the NIHRC intends to review its decision to assist and the reason(s) for the review. The assisted person will normally be given up to 28 days within which to make a written submission to the NIHRC. The assisted person will be notified in writing of the outcome of the review and the reason(s) for any decisions taken.
24. The decision of the NIHRC may be reconsidered where there is a material change in circumstances. A request for this must be made in writing, setting out the material change in circumstances.

Costs

25. The NIHRC is entitled, under sections 70(4) and 78D of the Northern Ireland Act 1998, to make provision for the recovery of costs from the individual.

End.