

The Educational Institute of Scotland

PROTOCOL ON CASE HANDLING

1. Introduction

- 1.1 This protocol provides guidance on the terms of engagement between the EIS and its members. This relates to the provision of support, advice and representation on employment matters. EIS members and officials are required to comply with this protocol.
- 1.2 The EIS will provide advice to members on matters relating to their employment subject to the conditions set out in this protocol.
- 1.3 This protocol also applies to circumstances in which members may be provided with legal advice. Legal advice is provided solely on matters relating to employment.
- 1.4 Case Handling and funding decisions are ultimately a matter for the Employment Relations Committee which under the Constitution "will act at its own discretion and with the full powers of the Council." (Rule XIII (e))

2. Engaging EIS Representation

- 2.1 In most circumstances a member seeking advice, assistance or representation from the EIS, should in the first instance approach the school/college representative.
- 2.2 Where the school representative wishes guidance or where the matter is to be dealt with beyond school level, contact should be made with the local association secretary, although it is for each local association to decide which official(s) should undertake case handling responsibilities. The school representative will not normally be expected to represent a member beyond school level.
- 2.3 At Directorate or Committee level cases should normally be conducted by local association officials. Where a local association official requires assistance, or wishes to pass on responsibility for a case, a request should be made to the appropriate Area Officer who will make the necessary arrangements.
- 2.4 In further education colleges where the Branch Secretary wishes guidance on a case contact should be made with the appropriate Area Officer. In universities where the Branch Secretary wishes guidance contact should be made with the National Officer (Further and Higher Education).
- 2.5 There may be circumstances in which the above cannot be followed and it may be appropriate for a member or representative to contact EIS Headquarters directly, for example when:
 - (i) contact cannot be established with the appropriate local association official, branch official or Area Officer and the matter requires urgent action;
 - (ii) the issue is particularly serious and/or sensitive such as allegations of a criminal nature or sexual misconduct.
- 2.6 The Area Officer or National Officer (Further and Higher Education) may seek to engage with Organisers to support in certain cases.

Such engagement will be approved by the appropriate HQ Official who will retain overall responsibility for the case.

2.7 If responsibility for a case is to be remitted to another official the following procedures should be observed:

- (i) the member should be informed that it is intended to pass on the case;
- (ii) all documentation should be passed to the official taking over the case;
- (iii) the official remitting the case should cease all involvement and direct all communications to the official now dealing with the matter.

2.8 When a case requires the official to undertake formal action on behalf of a member the Case Handling Protocol should be signed by the member.

3. **Members' Obligations**

Members are expected to:

- (i) co-operate with and provide full information to the official handling the case;
- (ii) authorise the official dealing with the case to make the necessary enquiries and otherwise act as his/her representative;
- (iii) refrain from taking independent action in connection with a matter on which representation is being provided by the EIS;
- (iv) have due regard to advice given by the official handling the case.

4. **Officials' Obligations**

The official handling the case is expected to:

- (i) clarify with the member the procedures to be followed in his/her case;
- (ii) give best advice and representation to the member at all times;
- (iii) respect confidentiality;
- (iv) consult with and keep the member informed of all developments in connection with the case.

5. **Grievance Procedure**

5.1 The EIS will provide advice to any member regarding grievance procedures, including any member acting in a management capacity, subject to the provisos set out below.

5.2 The EIS will not normally provide representation to a member who is acting in a management capacity in a grievance.

5.3 However, in certain circumstances representation may be provided. In deciding upon such representation consideration will be given to the nature of the grievance, including in particular whether the grievance relates to a decision of a member acting in a

management capacity implementing the employer's policies, or to a decision otherwise involving an action or the exercise of judgement by a manager. Account will also be taken of the level of support provided to the member by the employer.

- 5.4 In considering representation the EIS has no obligation to defend the policies, procedures and practices of any employer.
- 5.5 Where a member raises a complaint in terms of Harassment/Bullying against another member advice should be provided to both members if requested. As in 5.3 above, in certain circumstances the EIS may provide representation to a member who is acting in a management capacity.
- 5.6 It is the duty of the employer to provide legal advice and assistance where necessary to employees exercising management functions on its behalf. If an employer fails in this duty the EIS will give consideration to the provision of representation to the member to pursue a grievance against the employer.
- 5.7 Where members are in conflict on an issue advice/representation will not be provided by the same official.

6. Disciplinary Procedure

- 6.1 Where an individual member is facing serious disciplinary action and is suspended from work pending investigation (whether through formal suspension or enforced extended leave) the following arrangements should apply:
 - (i) the official responsible for dealing with the member should maintain regular contact with the member to provide support, including during periods when meetings are not required in order to prepare for hearings;
 - (ii) the Employment Relations Department or Further and Higher Education Department should be informed, in writing, if any member of the EIS has been suspended from work.
 - (iii) Local Association/Branch Secretaries may seek advice in relation to a particular case from the appropriate Area Officer or Headquarters Official.
- 6.2 The EIS will not provide representation to a headteacher or other member exercising a management function in connection with taking disciplinary action against members of staff.

7. Legal Advice and Representation

- 7.1 Legal advice or representation may be authorised only by the appropriate Headquarters Official, through the Employment Relations Committee.
- 7.2 Legal advice is provided to members only in relation to matters arising from their employment. This includes legal advice relating to referral to the General Teaching Council for Scotland following conviction in a court of law.
- 7.3 Legal representation for an employer's internal grievance and disciplinary procedures will not be provided.

- 7.4 Where legal advice or representation is sought the member will be provided with a copy of this protocol unless previously provided under paragraph 2.7 and he/she will be required to sign the appropriate form to confirm acceptance of its terms.
- 7.5 Legal expenses incurred by a member prior to securing legal advice and representation from the Employment Relations Committee will not be met by the EIS.
- 7.6 Court and tribunal proceedings may only be pursued with the prior consent of the Employment Relations Committee.
- 7.7 A member who has had his/her case referred to the EIS advising solicitors must ensure that he/she:
- (i) does not take legal advice separate from that provided by the EIS solicitors;
 - (ii) does not require that the case be conducted in an unreasonable manner;
 - (iii) accepts the legal advice provided;
 - (iv) does not reject an offer of settlement which is considered as reasonable by the EIS advising solicitors.

NB: Failure to comply with the above conditions may result in the Employment Relations Committee withdrawing EIS funding from a case.

- 7.8 Where funding is provided by the Committee to pursue a claim at Employment Tribunal that funding shall include the Tribunal fee required to raise a claim and, if necessary, the fee required to proceed to a hearing. In the event of such fees being recovered following a decision of the Tribunal the member shall agree to repay such fees to the Institute.
- 7.9 Where a member unreasonably abandons a case in respect of which legal expenses have been incurred and/or behaves unreasonably during the course of Tribunal or Court proceedings, the EIS reserves the right to seek recovery of all or part of the costs from the member.
- 7.10 Where a case is unsuccessful, is withdrawn or discontinued on the advice of the EIS solicitors the member will not otherwise be subject to any costs.

8. Procedure to be Adopted on Disputes regarding Representation

- 8.1 Decisions on the provision or discontinuation of representation rest with the Employment Relations Committee.
- 8.2 Any member dissatisfied with the conduct of his/her case by a local official or college/university branch representative should raise the matter with the local association or branch concerned. Each local association/college or university branch should have an established mechanism for dealing with such matters in an appropriate and confidential manner.
- 8.3 Where a complaint has been raised in 8.2 above against a local official or college/university branch representative the local association/college or university branch should consider offering

alternative representation in light of the circumstances. If this cannot be agreed with the member then the matter will be referred to the appropriate Headquarters' Official for consideration and decision. Any appeal on this decision will be considered by the Employment Relations Committee.

- 8.4 Where a member is dissatisfied with the conduct of his/her case by an Area Officer or Headquarters' Official he/she should write to the General Secretary.
- 8.5 Where a complaint has been raised against an Area Officer or Headquarters' Official a decision on alternative representation will be made by the appropriate Headquarters' Official or General Secretary and any appeal on this decision will be considered by the Employment Relations Committee.

Footnote: 1 The term "official(s)" includes both officer(s) and official(s) of the EIS and refers to elected representatives and full-time officers and officials.

Employment Relations Department
Educational Institute of Scotland
46 Moray Place
EDINBURGH
EH3 6BH

Protocol on Case Handling

I have been provided with a copy of EIS Protocol on Case Handling by

_____ (LA Secretary/Area Officer).

I have read and agree to abide by the relevant provisions of the Protocol on Case Handling.

Name _____ Membership No _____

Date _____

Employment Relations Department
Educational Institute of Scotland
46 Moray Place
EDINBURGH
EH3 6BH

The EIS would be grateful if you could provide information to enable us to comply with our monitoring procedures. Provision of this information is voluntary.

Name _____ Membership No _____

Please tick as appropriate*:

Sex: Female Male

Black/Minority Ethnic**

White

Other (please specify) _____

Ethnicity _____

* The above classification complies with TUC recommendations.

**The term black is used in a socio-political sense to unite peoples who, because of their skin colour, have experienced racism and discrimination. Not all people are comfortable with this term and, therefore, black/minority ethnic (BME) is also used.

Do you perceive the issue on which you are seeking advice involves discrimination on the following grounds?

Sex

Gender Reassignment

Sexual Orientation

Race

Disability

Religion or Belief

Why the EIS wishes to monitor:

Monitoring is accepted as a key tool in combating discrimination in employment. It is supported by the STUC, TUC and the statutory agencies (EOC, CRE, and DRC). Any information gained from this exercise will be treated confidentially and only for the purposes of monitoring trends in case work.