

# **The Educational Institute of Scotland**

## **PROTOCOL ON CASE HANDLING FOR MEMBERS**

### **1. Introduction**

1.1 This protocol sets out the circumstances in which an EIS member can request and be provided with support, advice and representation on employment related matters.

1.2 EIS members and Officials are required to comply with this protocol.

(For the purposes of this protocol 'Officials' includes Local Association Secretaries, Local Association Elected Office Bearers, Branch Secretaries, Pensions and Pay Roll Specialist, Area Officers, National Officers, Legal Officers and Assistant Secretaries.)

1.3 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)). All case handling and funding decisions made by the Employment Relations Committee are final.

### **2. Contacting the EIS for support**

2.1 A member seeking advice, assistance or representation from the EIS should, in the first instance, approach their EIS school/college/university representative.

2.2 Where the local representative wishes guidance or where the matter is to be dealt with beyond establishment level, contact should be made with the Local Association/Branch Secretary.

2.3 There may be circumstances where it is appropriate for a member to contact the Area Officer, for example where:

(i) contact cannot be established with the appropriate Local Association/Branch Secretary and the matter requires urgent action; or

(ii) the Local Association/Branch Secretary is supporting another member in the same matter and separate support is sought.

2.4 There may be circumstances where it is appropriate for a member or representative to contact EIS Headquarters directly, for example when:

(i) the issue is particularly serious and/or sensitive such as allegations of a criminal nature or sexual misconduct; or

(ii) a member is contacted by the police for interview or is arrested and requires legal advice/representation.

2.5 Where two or more members have conflicted interests, advice/representation will not be provided by the same Official.

### 3. **Eligibility for EIS support**

3.1 The EIS shall provide support, advice and representation to members on employment related matters. The provision of support and representation is subject to the provisos set out below:

(i) **Retired/former members**

The EIS will normally only provide support to current members. However, the EIS may provide legal support to retired/former members where the matter relates to an occupational disease/illness caused during a period of employment where the retired/former member was a current member. The Employment Relations Committee will consider whether legal support will be provided on a case-by-case basis as authorised by the Employment Relations Committee.

(ii) **Maintaining membership**

If an individual cancels their membership of the EIS whilst receiving support, that support will be withdrawn. This applies to individuals who do not inform the EIS that they are cancelling their membership, but fail to pay their membership fees whilst receiving support (unless nil payment has been approved or the Employment Relations Committee is of the view that discretion should be exercised).

(iii) **Incident pre-dating membership**

The EIS will not provide support (including support during the GTCS referral process) to members in relation to incidents which are alleged to have taken place prior to the member joining the EIS or where the need for support was anticipated prior to the member joining, unless approval for such support is given by the Employment Relations Committee.

(iv) **Alternative representation**

The EIS will not normally provide support to members who have already sought legal advice from an independent adviser without the knowledge and consent of the EIS unless determined otherwise by the Employment Relations Committee.

(v) **Support to management**

The EIS supports headteachers and managers in relation to matters concerning their employment. Where the member is exercising a management function in connection with a grievance or disciplinary process (for example, where a headteacher is acting as disciplinary manager and chairing a disciplinary hearing), and the matter therefore relates to another person's employment, support will not be provided to the headteacher/manager.

It is the duty of the employer to provide advice and assistance

where necessary to employees exercising management functions on its behalf. If an employer fails in this duty the EIS will consider providing representation to the member in approaching the employer for this support, on a case-by-case basis as authorised by the Employment Relations Committee.

(vi) **Re-registration and registration conditions**

The EIS will not support a member who has been removed by the GTCS from the GTCS Register (for whatever reason) and is seeking to be re-registered, other than in exceptional circumstances as authorised by the Employment Relations Committee.

In situations where the GTCS has imposed a sanction of a conditional registration order, the EIS will not support a member in complying with conditions. If an application is made by the GTCS for a conditional registration order to be reviewed or a member wishes for a conditional registration order to be reviewed, the EIS will consider supporting a member throughout the process on a case-by-case basis as authorised by the Employment Relations Committee.

4. **Members' obligations**

4.1 In order to receive EIS support (including legal support) and to continue to be supported, members must:

- (i) co-operate with and provide full information to the Official/Solicitor handling the case;
- (ii) respond to requests for information or instructions from the Official/Solicitor handling the case within a reasonable timescale;
- (iii) authorise the Official/Solicitor dealing with the case to make the necessary enquiries and otherwise act as his/her representative;
- (iv) refrain from seeking advice from an alternative Official or independent advice (including separate legal advice) in connection with a matter on which representation is being provided by the EIS;
- (v) accept and follow the advice given by the Official/Solicitor handling the case;
- (vi) understand that a case will not be conducted in an unreasonable or vexatious manner; and
- (vii) not reject an offer of settlement which is considered as reasonable by the EIS advising Official/Solicitor.

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

## 5. **Legal Advice and Representation**

- 5.1 Legal advice may be provided to members in relation to:
- (i) employment matters;
  - (ii) personal injuries arising from employment;
  - (iii) criminal proceedings which are likely to affect employment and relate to incidents which are alleged to have occurred during the member's period of membership;
  - (iv) referrals to the General Teaching Council for Scotland; and
  - (v) referrals to Disclosure Scotland.
- 5.2 In exceptional circumstances, and with the authority of the Employment Relations Committee, legal advice and representation may be given to members in relation to other civil matters where it is determined that those matters could significantly impact a member's livelihood.
- 5.3 The EIS will not provide advice, support or representation in relation to matters which are unrelated to employment or matters which could potentially impact reputation but not the member's employment directly. If a member faces criminal charges which do not relate to an employment-related incident but could impact a member's employment, the EIS will support a member through the GTCS referral process but will not fund any criminal representation.
- 5.4 Legal representation will not be provided for an employer's internal grievance and disciplinary procedures.
- 5.5 Legal advice or representation may be authorised only by the appropriate Official with authorisation from the Employment Relations Committee. The Employment Relations Committee may authorise such assistance in advance of it being provided or, in order to allow for the day-to-day management of casework, may homologate the Official's decision to assist after the event.
- 5.6 A member is required to sign a copy of this protocol to confirm acceptance of its terms before any support will be provided.
- 5.7 Legal expenses incurred by a member prior to securing EIS approval will not be met by the EIS.
- 5.8 If funding is sought to pursue Court or Tribunal proceedings, such funding may only be approved by the Employment Relations Committee. In deciding whether to provide funding, the Committee may consider whether legal aid would otherwise be available to the member.
- 5.9 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 legal costs from the member. When considering whether a member has acted unreasonably either in abandoning a case or during the course of proceedings, the Employment Relations Committee will consider all relevant information. This may include, but is not limited to, the advice the member had been given by

their representative throughout the case; whether that advice was followed; and whether the member acted reasonably.

5.10 Where a case is unsuccessful, is withdrawn or discontinued on the advice of the EIS solicitors the member will not be subject to any legal costs.

## 6. Dissatisfaction regarding representation

6.1 Any member dissatisfied with the conduct of his/her case by a Local Association Secretary, Local Association Elected Office Bearer or Branch Secretary should raise the matter with the Local Association Secretary, Local Association Elected Office Bearer or Branch Secretary concerned in the first instance. If the member's concerns are not resolved satisfactorily after raising them directly with the Local Association Secretary, Local Association Elected Office Bearer or Branch Secretary, the member should contact the appropriate Area Officer/National Officer for advice.

6.2 Where a member is dissatisfied with the conduct of his/her case by a Pension and Pay Roll Specialist/Area Officer/National Officer/Legal Officer he/she should write to the Assistant Secretary for Employment Relations.

6.3 Decisions on the provision or discontinuation of representation are made by the Assistant Secretary for Employment Relations in the first instance. Should any dispute arise on the issue of representation, the final decision regarding the provision or discontinuation of representation rests with the Employment Relations Committee.

## Agreement to terms

Please confirm your acceptance of the Protocol on Case Handling's provisions by completing the following:

I, ..... (Name)      Membership No .....

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

..... (LA Secretary/Area Officer/Legal Officer).

I confirm that I have read and agree to comply with the relevant provisions of the Protocol on Case Handling and I understand that if I fail to comply, EIS support may be withdrawn:

Signature .....      Date .....

**Consent to data sharing**

The EIS is committed to protecting and respecting members' privacy. Please consider our privacy statement which can be found at [www.eis.org.uk](http://www.eis.org.uk). This privacy statement explains how we use any personal information we collect about our members.

If you consent to your personal data (including contact details and copies of documents/information relating to you) being processed, stored and shared by the EIS (both internally and externally as appropriate) for the purposes of handling your case appropriately and providing an effective and supportive trade union service, please indicate below:

Signature ..... Date .....