

2018 Standard Civil Contract
Specification
Category Specific Rules:
Discrimination

Category Specific Rules

Section 17 Discrimination Specification

This part of the Specification sets out the rules relating to cases undertaken in the Discrimination Category of Law. Discrimination Providers must satisfy themselves before undertaking work in the Discrimination Category that the work is within scope.

Legal Help in relation to a "Gateway discrimination matter" (as defined by regulation 20 of the Procedure Regulations) must be referred to the Gateway, subject to limited exceptions described in the Procedure Regulations.

Clients who have been through the Gateway and have been assessed as eligible for face-to-face advice will have been provided with a CLA reference number, which will act as evidence that this assessment has taken place. This number should be recorded and retained on file whenever you take on a case that has come through the Gateway.

If, during the Contract Period, the Gateway provisions in the Procedure Regulations are removed or amended, such that the requirement to refer work in the Discrimination Category to the Gateway no longer applies, Providers may from that point undertake such work in accordance with this Contract without first having to refer it to the Gateway.

Supervisor Standards

- 17.1 In order to receive or maintain a Schedule Authorisation in the Discrimination Category of Law you must have at least one part time equivalent Supervisor in this Category of Law. For the purpose of this Paragraph "part time equivalent" means the equivalent of an individual working 17.5 hours a week during business hours excluding breaks.
- 17.2 An individual may qualify as a Supervisor in this Category by meeting the requirements of either:
- (a) the Discrimination Supervisor Standard; or
 - (b) the Transitional Discrimination Supervisor Standard.

Discrimination Supervisor Standard

- 17.3 In order to meet the Discrimination Supervisor Standard, an individual must:
- (a) comply with the Case Involvement Standard set out at Paragraphs 2.14 to 2.17 of the Specification; and
 - (b) comply with the Supervision Standards set out at Paragraphs 2.18 to 2.23 of the Specification; and
 - (c) comply with the Legal Competence Standard for the Discrimination Supervisor Standard set out at Paragraphs 17.5 to 17.8 below; and

- (d) be either a sole principal, one of your employees, or a director of, or partner in or member of your organisation (where you are a company, partnership (other than an LLP) or LLP respectively).

Transitional Discrimination Supervisor Standard

17.4 In order to meet the Transitional Discrimination Supervisor Standard, an individual must:

- (a) comply with the Legal Competence Standard set out at Paragraphs 17.9 to 17.12 below; and
- (b) comply with the reduced Case Involvement Standard set out at Paragraphs 17.13 to 17.16 below; and
- (c) comply with the Supervision Standards set out at Paragraphs 2.18 to 2.23 of the Specification with the exception of the supervisory skills requirements in paragraph 2.19; and,
- (d) comply with the supervisory skills standards set out at Paragraph 17.17 below; and,
- (e) be either a sole principal, one of your employees, or a director of, or partner in or member of your organisation (where you are a company, partnership (other than an LLP) or LLP respectively).

Legal Competence Standard - Discrimination Supervisor Standard

17.5 At any time during the Contract Period the Supervisor must, in the previous 12 months, have undertaken work on the minimum number of cases in the Discrimination Case categories in Table One below:

Table One		
	Discrimination case type	Minimum number of case files required
1	Discrimination	7 case files (of which 4 must relate to discrimination at work)
2	Cases involving arguments about reasonable adjustments.	2 case files

17.6 At any time during the Contract Period the Supervisor must, in the previous 12 months, have undertaken work on the minimum number of cases in each of the 5 case types in Table Two below:

Table Two		
	Discrimination case type	Minimum number of case files required

1	1 Advice and assistance on preparing an appeal/claim, or advice on a potential appeal/claim, to an employment tribunal (ET) or the County Court	2 case files
2	Advice to Client about the merits of a review/appeal to the EAT or review of an ET decision.	1 case file
3	Consideration of procedural points, for example: 1. Application for discovery; 2. Representation at a preliminary hearing; or 3. Request for further and better particulars or written answers to questions.	1 case file
4	Advice to the Client about enforcing an award.	1 case file

17.7 The Supervisor must maintain a portfolio (including case name and reference) of cases to demonstrate compliance with Paragraphs 17.5 and 17.6. The same case file can be used to demonstrate compliance with Paragraphs 17.5 and 17.6.

17.8 Prior to the appointment as Supervisor the individual must have demonstrated to our satisfaction a portfolio of cases which meet the requirements in Paragraphs 17.5 and 17.6. For the avoidance of doubt, the case files required for the purposes of Paragraph 17.7 and this Paragraph 17.8 do not need to be have been funded by Legal Aid.

Legal Competence Standard – Transitional Discrimination Supervisor Standard

17.9 At any time during the Contract Period the Supervisor must, in the previous 12 months, have undertaken work on the minimum number of cases in the 2 case types in the tables below:

Table One		
	Discrimination case type	Minimum number of case files required
1	Discrimination	3 case files
2	Case involving arguments about reasonable adjustments.	1 case file

17.10 At any time during the Contract Period the Supervisor must, in the previous 12 months, have undertaken work on the minimum number of cases in each of the 5 case types in Table Two below:

Table Two		
	Discrimination case type	Minimum number of case files required
1	Advice and assistance on preparing an appeal/claim, or potential appeal/claim to an employment tribunal (ET) or the County Court.	2 case files

17.11 The Supervisor must maintain a portfolio (including case name and reference) of cases to demonstrate compliance with Paragraph 17.9 and 17.10. The same case file can be used to demonstrate compliance with Paragraphs 17.9 and 17.10.

17.12 Prior to the appointment as Supervisor the individual must have demonstrated to our satisfaction a portfolio of cases which meet the requirements in Paragraphs 17.11 and 17.12. For the avoidance of doubt, the case files required for the purposes of Paragraph 17.11 and this Paragraph 17.12 do not need to be have been funded by Legal Aid.

Case Involvement Standard – Transitional Discrimination Supervisor Standard

17.13 Supervisors must meet, in the Discrimination Category of Law, a minimum Case Involvement Standard of 56 hours over defined periods. There are minimum and maximum allowances by which Supervisors can meet the 56 hours and they are as follows:

- (a) direct (personal) casework (this may include direct (documented) supervision) – minimum of 37 hours (of which direct (documented) supervision cannot make up more than 19 hours);
- (b) file review (including face-to-face) – maximum 19 hours (i.e. approximately 50% of 37 hours);
- (c) external training delivery (meeting any professional development requirements of your Relevant Professional Body) - maximum 19 hours;
- (d) documented research and the production of publications - maximum 19 hours; and/or
- (e) other supervision - maximum 19 hours.

17.14 If a Supervisor works part time, then to meet the Case Involvement Standard the Supervisor must have undertaken a total of 168 hours over the last five years (measured from the Contract Start Date). This requirement is subject to the same minimum and maximum allowances set out in Paragraph 17.13, adjusted pro-rata.

- 17.15 The Case Involvement Standard will be measured:
- (a) at the Contract Start Date where the 56 hour requirement will be measured across each of the previous 3 years; and
 - (b) on a rolling basis during the Contract Period where the Supervisor must be able to meet the 56 hour requirement in the previous 12 months.
- 17.16 For the avoidance of doubt, compliance with the Case Involvement Standard in Paragraphs 17.13 to 17.15 can be demonstrated using work that was not funded by Legal Aid.

Supervisory Skills – Transitional Discrimination Supervisor Standard

- 17.17 Supervisors must as a minimum meet one of the following supervisory skills standards:
- (a) the Supervisor has supervised at least one Caseworker who regularly undertook work in the Discrimination Category of Law for at least one year in the previous eight-year period;
 - (b) the Supervisor has completed the Level 3 or higher National Vocational Qualification (NVQ) standard in supervising in the previous eight-year period;
 - (c) the Supervisor has completed training covering key supervisory skills in the previous 12-month period; or
 - (d) the Provider nominates another individual to assist the Supervisor in carrying out the functions of a Supervisor. This fee earner must:
 - (i) be either a sole principal, one of your employees, or a director of, or partner in or member of your organisation (where you are a company, partnership (other than an LLP) or LLP respectively);
 - (ii) have completed the Level 3 or higher National Vocational Qualification (NVQ) standard in supervising in the previous five year period; and
 - (iii) actively assist the Supervisor in carrying out the functions of a Supervisor in the Contract Specification.
- 17.18 The individual nominated under Paragraph 17.17 (d) must be in addition to the Supervisor who meets the Legal Competence Standard and Case Involvement Standard for the purposes of the Transitional Discrimination Supervisor Standard. For the avoidance of doubt, the nominated individual is not required to have experience of carrying out Contract Work in the Discrimination Category of Law or meet either of the Legal Competence Standards or Case Involvement Standards.

Delivering the Service

17.19 Subject to Paragraph 17.20 below, when you undertake Contract Work you must comply with the provisions of Sections 2 and 3, including Paragraphs 3.15 to 3.17 of the Specification.

17.20 From 1 June 2020, subject to Paragraphs 17.24 to 17.26 below, you must in relation to each case provide Clients with a choice of service delivery method from either:

- (a) provision of advice in person; or
- (b) Remote Advice (as defined at Paragraph 17.22 below)

and you must place a written record on the file of the service delivery method selected by the Client.

17.21 From 1 June 2020, the requirements at Paragraph 3.17 of the Specification will be disapplied to Contract Work undertaken in this Category and instead we will monitor the number of Claims where your Client does not attend you in person. Where these Claims exceed 50% of your total Claims in any Schedule period we may request to review the case files for the Clients who have been provided with Remote Advice and or raise any other enquiries concerning the way you operate the service delivery methods set out in Paragraphs 17.22 to 17.33 and take such action as we deem appropriate in the circumstances.

Remote Advice

17.22 For the purposes of this part of the Specification relating to the Discrimination Category, "Remote Advice" is advice delivered other than in person and shall include advice delivered:

- (a) via email;
- (b) telephone;
- (c) Web-cam;
- (d) post; or
- (e) such other method of delivery as may be agreed between the parties from time to time.

17.23 Remote Advice will include the supply and performance of all activities and services that form part of an end to end legal advice service, including the services set out in this Specification.

17.24 Subject to Paragraphs 17.25, 17.26 and 17.29 you may provide Remote Advice to Clients under this Contract where the Client requests it and it is in the Client's best interests.

17.25 You may only provide Remote Advice if you have an appropriate procedure in place to assess whether, taking into account all Service Adaptations and Reasonable Adjustments that are reasonably available to be implemented in respect of the relevant Client, the provision of Remote Advice can reasonably be expected to enable:

- (a) you to understand and act on the Client's instructions; and
- (b) the Client to understand and act on your advice.

17.26 If, following assessment you consider that the provision of Remote Advice referred to in Paragraph 17.22 cannot reasonably be expected to satisfy the requirements set out in Paragraphs 17.25(a) and 17.25(b), then you must provide the Client with Face-to-Face Advice under the Contract.

Means Assessment

17.27 Where a Client asks to receive Remote Advice and there has been no face to face contact with the Client you must assess the Client's eligibility to receive services under this Contract including means eligibility in accordance with Section 3 of the General Specification. Subject to the exceptions in Section 3 of the General Specification you must obtain the Client's signature on a Legal Help Form and obtain proof of financial eligibility before you Claim a Standard Fee.

17.28 The fact that the Client was receiving Remote Advice shall not meet the criterion in Paragraph 3.24(c) regarding assessment of means.

Remote Advice via telephone

17.29 You must ensure that any Caseworker who delivers Remote Advice receives training on the following matters before delivering Remote Advice via telephone:

- (a) Remote Advice skills (e.g. building rapport and empathy with Clients when communicating remotely, listening and responding, beginning and ending communication and structuring an interview.
- (b) how to deal with difficult calls, including distressed callers, silent calls and abusive callers; and
- (c) understanding the needs of your Clients, particularly those with a Relevant Characteristic, when using your Remote Advice service and how you seek to support them via the available Service Adaptations and Reasonable Adjustments that your service provides.

17.30 Where a third party is calling on behalf of a Client you must assess and satisfy yourself that the third party is authorised to act for the Client and record the steps taken and evidence provided in this regard.

17.31 Where any potential conflict or concerns are identified in relation to any third party you must act in accordance with the Legal Aid Legislation and relevant guidance (including the Lord Chancellor's Guidance), and if necessary either refuse an application or, where the application has been accepted, decline to carry out or continue to carry out work. For the avoidance of doubt, the

provisions of Paragraphs 17.30 and 17.31 apply at all stages during your involvement in the Matter or Case. You must agree a process with the Client for returning Client calls and agree (and maintain a record of) whether the Client authorises you to:

- (a) reveal who you are to anyone who might answer your call; and
- (b) leave a message on the Client's answer phone.

17.32 You must offer to make outgoing calls:

- (a) if requested by a Client, or by a Client who has previously requested that you make outgoing calls to them;
- (b) where a Client expresses concern about the cost of making a call; or
- (c) where a Client is calling from a mobile phone.

17.33 Telephone numbers provided to Clients to access Remote Advice via telephone must not be Premium Rate Numbers.

Declining Controlled Work

17.34 The only circumstances in which you can decline to take on a Matter where the Client is resident in a Procurement Area for which you have Schedule Authorisation are the reasons expressly set out at Paragraphs 3.50 and 3.51 of the Specification.

17.35 Where you do decline to take on a Matter for a Client who resides in a Procurement Area in which you have Schedule Authorisation, you must make and retain a record of the reasons for the decision for audit purposes.

Authorised Litigator

17.36 During the Contract Period, unless your Contract for Signature specifies an employed Authorised Litigator, you must have access to an Authorised Litigator with experience of carrying out cases within the Discrimination Category of Law to enable you to perform your obligations under this Contract.

Payment for Discrimination Controlled Work

17.37 All Discrimination Controlled Work is remunerated according to the Hourly Rates in Table 7(e) of Part 2 of Schedule 1 to the Remuneration Regulations and paid in accordance with the provisions set out in Paragraph 4.21 of the Specification.

Assessment

17.38 In accordance with Paragraph 4.46 of the Specification, and without prejudice to any of the other provisions in section 4, where a Claim exceeds £700 (including Counsel Costs but excluding Disbursements and VAT) you must apply to us for that Claim to be Assessed on a form specified by us. Your

Credit for that Claim will be limited to £700 plus VAT and any Disbursements until the Claim has been Assessed.

Unacceptable Behaviour

- 17.39 You must at all times when undertaking Contract Work have regard to the Unacceptable Behaviour Guidance document published on our website from time to time.