

# 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)).

### 2. Contacting the EIS for support

2.1 A member seeking advice, assistance or representation from the EIS should, in the first instance, approach the 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.

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

The EIS will not provide legal 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.

(iii) **Alternative representation**

The EIS will not normally provide legal support to members who have already sought legal advice from an independent adviser without the knowledge and consent of the EIS.

(iv) **Support to management**

The EIS supports headteachers and managers in relation to employment matters. The only exception to this support is in circumstances 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).

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 give consideration to the provision of representation to the member on a case-by-case basis.

(v) **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.

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.

#### 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 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 Solicitors.

**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.
- 5.2 The EIS will not provide advice, support or representation in relation to matters which are unrelated to employment. If a member faces criminal charges which do not relate to an employment-related incident but could impact a member's employment, the EIS may support a member through the GTCS referral process but will not fund any criminal representation.
- 5.3 Legal representation will not be provided for an employer's internal grievance and disciplinary procedures.

- 5.4 Legal advice or representation may be authorised only by the appropriate Official through the Employment Relations Committee.
- 5.5 A member is required to sign a copy of this protocol to confirm acceptance of its terms before legal support will be provided.
- 5.6 Legal expenses incurred by a member prior to securing EIS approval will not be met by the EIS.
- 5.7 If funding is sought to pursue Court and Tribunal proceedings, such proceedings may only be pursued with the approval of the Employment Relations Committee.
- 5.8 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.
- 5.9 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. Disputes 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. The final decision regarding the provision or discontinuation of representation rests with the Employment Relations Committee.

**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 for the purposes of handling your case appropriately and providing an effective and supportive trade union service, please indicate below:

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

**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).

I confirm that I have read and agree to comply with the relevant provisions of the Protocol on Case Handling:

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