



LEGAL AID FOR BUSINESS DIVERSITY

New Charity 'Legal Aid for Business Diversity' for UK victims of sexual harassment launches as one of its Founding Trustees takes City Firm to Court

LONDON, JANUARY 14, 2019 – Legal Aid for Business Diversity, the first charity in the UK committed to providing legal aid for victims of sexual harassment and other discrimination bringing legal claims against their employers, launches today.

In 2018, more than a third (35%) of women have experienced sexual harassment at work, with young women reporting the highest incidence at 62%¹. While legal protections for victims exist under the Equality Act, the cost of professional representation is preventatively high – hindering victims from pursuing tribunal litigation. Legal Aid to Business Diversity seeks to give victims access to legal representation through funding their legal fees and connecting them with law firms supporting the charity; both before and during litigation.

Nathalie Abildgaard, Founding Trustee at Legal Aid for Business Diversity said:

“Legal Aid for Business Diversity is devoted to levelling the playing field in workplace sexual harassment disputes. The current imbalance of power and resources between employer and victim is preventing claimants from taking claims to the tribunal, as well preventing them from obtaining fair settlement agreements. It is in the interest of fairness and justice that victims, who are willing to run the reputational risk of reporting sexual harassment and other discrimination at work, receive the support necessary to have their cases tried in court. It is particularly important that cases against large organisation with extensive resources are tried in public as they set the standard for the wider industry and ensure the Equality Act is upheld for everyone, irrespective of financial status.”

The launch of Legal Aid for Business Diversity coincides with the hearing of Ms Abildgaard's case in the London Central Employment Tribunal. Ms N Abildgaard vs IFM Investors (UK) Limited & Another is listed from 15 to 24 January. Ms Abildgaard said: “I hope the tribunal hearing of my case can help raise awareness of the issues facing employees when bringing claims against resource-rich employers and hopefully be an encouragement to others who have experienced discrimination at work.”

¹ <https://www.prospect.org.uk/news/id/2018/June/11/A-third-women-say-they-have-faced-sexual-harassment-at-work>

The charity plans to hold a formal launch event once Ms Abildgaard's case is heard. Organisations interested in getting involved and funding the cause can contact the charity on contact@labd.co.uk.

Jess Phillips, MP and member of the Women and Equalities Committee, said:

"The barriers to justice for ordinary women and men are huge, it is vanishingly rare that a woman sacked because she was pregnant or had been sexually harassed would ever have the resource or the support to take a case to tribunal. If as a society we want to end a culture of discrimination and abuse in our workplaces we must ensure people are supported with proper legal advice. I am thrilled that Legal Aid for Business Diversity are setting up to change this and I will be working with them to right this wrong."

Joanna Chatterton, Partner in Employment Law at Fox Williams LLP said:

"In our experience the cost of bringing a claim for harassment and other discrimination can deter applicants from pursuing legitimate claims. With no Government Legal Aid available for employment tribunal claims the support which Legal Aid for Business Diversity can provide may be the only means of achieving access to justice."

NOTES TO EDITORS

Sexual Harassment and Non-disclosure Agreements

ACAS reported in November 2018 that "the statistics on prevalence [red. of sexual harassment at work] were compelling" referring to the recent survey by Prospect as well as a survey by Slater and Gordon which revealed that 37 per cent of women had been sexually harassed at work in the last twelve months². In October 2018, it emerged that "the Solicitors Regulation Authority has seen a sudden rush in reports of sexual harassment and improper use of non-disclosure agreements"³.

The Women and Equalities Committee stated in their report on 'Sexual harassment in the workplace' from July 2018: "Non-disclosure agreements (NDAs) are used unethically by some employers and also some members of the legal profession to silence victims of sexual harassment, and there is insufficient oversight and regulation of their use. It is unacceptable that victims are scared to speak about their experiences of sexual harassment in the workplace and that those who use NDAs unethically are not held to account."⁴ On the back of the report, the Women and Equalities Committee put forward the 'Five-point plan to tackle sexual harassment in the workplace'⁵.

2 Source: Acas report '[Sexual harassment in the British workplace](#)', November 2018

3 Source: Legalfutures article '[SRA: Sharp rise in reports of harassment and NDAs](#)', 15 October 2018

4 Source: House of Commons' Women and Equalities Committee report '[Sexual harassment in the workplace](#)', 18 July 2018, paragraph 106

5 Source: House of Commons' Women and Equalities Committee '[Five-point plan to tackle sexual harassment in the workplace](#)', 25 July 2018

The Cost of Legal Representation and Tribunal Litigation

The Women and Equalities Commission wrote the following about 'legal cost' in their report⁶:

- “Employment lawyers told us that legal costs are a significant barrier to bringing a case to tribunal. Gareth Brahams, the then Chair of the Employment Lawyers Association, described people having to spend “huge sums of money”, and Joanna Blackburn, Partner at Mischon de Reya, told us that “cost and inequality of arms” was the greatest barrier to bringing forward a case, adding: ‘but that is true of all legal cases involving individual versus corporate, or the vast majority. Normally the employer outguns the employee in terms of resource. That is an inherent issue in the system and one that I am afraid you are not going to be able to solve because we are not going to have legal aid for employment cases again. Even that does not really assist, because the thresholds were so low for legal aid and the reality is that the costs of bringing tribunal claims are significant’.”
- “Suzanne McKie QC, and Francesca West of whistleblower charity Public Concern at Work, described how claimants were sometimes threatened with being pursued for the employer’s legal costs as well as their own in order to encourage settlement. Francesca West stated: I have seen such heavy-handed tactics in relation to a last-ditch effort trying to scare someone off their claim by throwing enormous, not really supportable, cost threats at the door of the tribunal to say, ‘You had better drop that claim or we will be pursuing you for £100,000 worth of costs’.”
- “It is expensive to secure legal representation, but it is very difficult to win a claim without it.”

In response to the Women and Equalities’ report, the Employment Lawyers Association (ELA) issued a report in November 2018 which included the following on ‘tribunals’:

- “Tribunal litigation is expensive and very time consuming for participants and lawyers and, accordingly, pursuing litigation to the Tribunal is not undertaken lightly by those who are advised properly. For example, irrecoverable legal costs associated with a properly run discrimination / harassment claim that is taken through Tribunal without settlement are unlikely to be less than £10,000. The average Tribunal award for sex discrimination, according to Tribunal figures is £19,152. Even following the abolition of Tribunal fees employees are normally at a huge disadvantage, because of their typically more limited financial resources. Employees do not, technically, need to instruct lawyers to go to Tribunal but they are likely to be at a disadvantage if they do not and their employer and/or the perpetrator does.”⁷

⁶ Source: House of Commons’ Women and Equalities Committee report [‘Sexual harassment in the workplace’](#), 18 July 2018, paragraphs 80-82

- “Alternative cost-saving options for employees whose personal resources are limited are rarely satisfactory for those seeking to settle or litigate sensitive harassment or discrimination claims”⁸

About Legal Aid for Business Diversity

Legal Aid for Business Diversity is a newly started charity that provides legal aid to employees bringing discrimination claims against businesses. While the charity is born out of a sexual harassment case, it supports all types of discrimination claims under the Equality Act.

For more information on Legal Aid for Business Diversity, visit <https://labd.co.uk/>

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7 ELA [‘Response to the Women and Equalities Select Committee inquiry into use of non-disclosure agreements in discrimination cases’](#), 28 November 2018, paragraph 2.12

8 ELA [‘Response to the Women and Equalities Select Committee inquiry into use of non-disclosure agreements in discrimination cases’](#), 28 November 2018, paragraph 2.14