SECTION 1 – INTRODUCTION

EQUALITY & DIVERSITY IN THE POLICE FEDERATION

The Police Federation, as a staff association, is fully committed to promoting equality and diversity for all.

Equality and Diversity is about treating everyone, both inside and outside the Service, with dignity and respect. It is about welcoming diversity and recognising that each person has to balance personal and professional needs and that sometimes they will need special arrangements in order to fulfil all their commitments.

"Special arrangements" does not mean that one person should be treated either better or worse than any other – it means recruiting, selecting, resourcing, deploying and treating others with the dignity and respect that we would expect for ourselves.

The Police Service represents thousands of individuals drawn together, each bringing with them different skills, experience and attitudes. It is the way that these differences are drawn together that sets the standards and culture of the Service.

Police officers need to be open minded and supportive of the different needs of different people and different cultures.

We police a society that is diverse. It follows therefore that the Service requires officers with a broad base of skills and experience to deliver the policing service.

Police officers should reflect and represent the society from which they are drawn. They need, want and deserve to be treated fairly, appropriately and without discrimination at work.

The Police Federation has been and will continue to be involved in the development of procedures that challenge unacceptable behaviour and seek to support diversity in the workplace.

EQUALITY AND DIVERSITY POLICY STATEMENT

The Police Federation of England and Wales is fully committed to the elimination of unfair discrimination on the grounds of gender, family status, age, race, ethnic origin, sexual orientation, religion, disabled status, or on any other unjustified condition, and the promotion of equality and diversity for all, in its own practices and arrangements and throughout the Police Service in England and Wales.

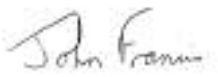
The Police Federation recognises its responsibilities under all domestic and European equality legislation to provide equality of opportunity to all people in its capacity as a staff association, as a service provider to its members and as an employer. In order to achieve this, the Police Federation seeks to:

- negotiate and operate practices which promote equal opportunities in employment, training and service delivery;
- promote the development of a workplace environment for all members and staff to develop their full potential, free of harassment and discrimination;
- ensure that all contractors and visitors are treated fairly, free of harassment and discrimination;
- provide appropriate advice and support for members in pursuit of equality and diversity issues;
- raise awareness of equality and diversity issues and promote best practice throughout the Police Federation and Police Service of England and Wales;
- monitor Police Federation practices and arrangements in order to develop an inclusive Equality and Diversity Strategy.

Responsibility for the Equality and Diversity Policy rests with the Chairman and General Secretary, on behalf of the Police Federation of England and Wales.

Signed by

CHAIRMAN



GENERAL SECRETARY

HARASSMENT & BULLYING POLICY STATEMENT

The Police Federation Joint Central Committee is committed to providing a workplace environment which is free of harassment or bullying for its employees and members and will take positive steps to eliminate it by monitoring the workplace and investigating any allegations of unacceptable behaviour.

Harassment or bullying behaviour will not be tolerated in any Police Federation Joint Central Committee workplace, at training courses, conferences, seminars, other organisation event or at work-related social events.

If harassment or bullying were to result in an actual injury this may be a criminal matter.

ROLE & RESPONSIBILITIES OF THE POLICE FEDERATION

The Police Federation, as a staff association, is fully committed to promoting equality and diversity within the Police Service.

The Police Federation has a legal obligation under the anti-discrimination legislation to act in a non-discriminatory manner in the way it provides and offers services to its members. The legislation states in respect of Trade Unions and Staff Associations, that:

> It is unlawful for an organisation to which this section applies, (an elected representative body) in the case of a person who is a member of the organisation, to discriminate against him (or her)

(a) in the way that it affords them access to any benefits, facilities or services, or by refusing or deliberately omitting to afford them such access; or

(b) by depriving them of membership, or varying the terms on which they are a member; or

(c) by subjecting them to any other detriment

The Police Federation is also an employer and is fully committed to promoting equality and diversity within the Police Federation itself.

The Police Federation has a legal obligation to ensure that applicants, employees and contractors are treated in accordance with the employment provisions of the Equal Pay Act 1970, the Sex Discrimination Act 1975 and the Race Relations Act 1976 (all as amended) and the Disability Discrimination Act 1995.

It is unlawful for an employer to discriminate in the arrangements made for deciding who should be offered employment, on the terms that employment is offered, or by refusing to offer someone employment. It is also unlawful to discriminate in the way access is afforded to promotion, transfer, and training or to any other benefit, facility or service. Victimisation as a consequence of raising a complaint or assisting someone who has made an allegation of discrimination is also proscribed under the legislation.

Contractors and visitors to the Police Federation are also covered by the anti-discrimination legislation.

JOINT CENTRAL COMMITTEE DIVERSITY EQUALITY SCHEME

In September 2005 the Joint Central Committee voluntarily adopted a Diversity Equality Scheme which sets out the Police Federation's commitment to all the areas of diversity as an employer and service provider. The DES scheme includes information on carrying out Diversity Impact Assessments and developing action plans.

Copies of the DES can be found at Appendix 1.

JOINT CENTRAL COMMITTEE GRIEVANCE PROCEDURE

In January 2003, the Joint Central Committee adopted a Grievance Procedure that complies with the minimum statutory requirement of the Employment Act 2002.

This procedure allows the organisation to address issues raised by individuals within 28 days prior to an application being registered at an Employment Tribunal. It mirrors the statutory grievance procedure that, since 1st October 2004, has applied to civilian employees of the police service.

The procedure is for dealing with issues that are raised as part of training courses, seminars, conferences, other events organised by the Joint Central Committee or from contractors and service providers to the Joint Central Committee. SEC circular 17/2003 refers.

The Joint Central Committee has also encouraged Branch Boards to introduce a grievance procedure and has circulated a draft procedure for their consideration. SEC circular 101/2002 refers.

Copies of these procedures can be found at Appendix 1.

THE FEDERATION REPRESENTATIVE

Each Police Federation Representative needs to be able to:

- demonstrate commitment to non-discriminatory practices in the workplace
- define and recognise any discriminatory behaviour that is unfair, unjustified or amounts to bullying
- understand the legal implications for the Police Federation should they not act in a fair and non-discriminatory manner

Representatives who advise and represent in issues of equality also need to be able to:

- describe and advise on the various stages of the grievance procedures
- define and recognise discrimination and harassment on the grounds of sex, race, disability, sexuality and faith
- define and recognise victimisation on those grounds
- understand which issues can be progressed through to an Employment Tribunal

THE EQUALITY ADVISOR

The Equality Advisor in addition to the role and responsibilities of a Federation Representative has responsibilities to:

- advise on the completion of Employment Tribunal claim and/or response forms.
- progress applications for legal advice and representation using the Resolution Information Sheet (RIS)
- ensure the proper flow of information to the respective Central Committee, external solicitor and/or Employment Tribunal
- identify aspects of any grievance that overlap with issues such as Discipline or Health and Safety liaising where appropriate with other Leaders.
- provide information to the Equality Liaison Officer for monitoring purposes

THE EQUALITY LIAISON OFFICER

Joint Branch Boards have appointed an Equality Liaison Officer who in addition to the role and responsibilities of a Federation Representative has responsibilities to:

- Manage and co-ordinate equality and diversity issues on behalf of the Joint Branch Board.
- Liaise on equality and diversity issues on behalf of the Joint Branch Board with the Force, Regional colleagues and the Equality Sub Committee.
- Establish and monitor a grievance procedure for the Joint Branch Board.
- Establish and monitor a procedure to prevent conflicts of interest and breaches of confidentiality within the Joint Branch Board in the representation of members in equality and diversity issues.
- Have a comprehensive, working knowledge of Equality legislation.
- Disseminate information and give presentations on the issues
- Review the equality and diversity policies of both the Joint Branch Board and the Force.
- Mentoring and training of equality advisors and the wider Joint Branch Board members.
- Establish and monitor a system to manage the workloads of Joint Branch Board members who are involved in the representation in equality and diversity issues.
- Monitor equality complaints

The following were identified as the qualities, skills and competence that Equality Liaison Officers should possess and develop in carrying out their role:

- Trustworthiness - being able to demonstrate honesty, integrity and confidentiality in their dealings with anyone involved in equality or diversity issues.
- Credibility - having the experience, knowledge and confidence that demonstrates a professional understanding of equality and diversity issues.
- Negotiating skills – being able to bargain or confer with others in order to influence and achieve a mutual agreement.

- Administrative skills - being able to organise, analyse and delegate the work involved within the Joint Branch Board concerning equality and diversity.
- Patience - to be able to demonstrate patience, empathy and an understanding of the frustrations of those involved in a complaint concerning equality and diversity.
- Non-judgmental – to act even handidly, with tact and diplomacy and without imposing a moral judgement on those involved in a complaint concerning equality and diversity issues.
- Articulate - to be able to demonstrate diplomacy and literacy when involved at hearings and conferences involving equality and diversity issues.
- Mentoring skills - being able to support other representatives involved in equality and diversity issues and to be able to identify future training needs of new and existing Equality Advisors.

SECTION 2 - ROLE OF THE REPRESENTATIVE

INTRODUCTION

This section explains your role assisting and/or representing members involved in equality or diversity issues.

Remember that complaints of discrimination are often difficult to determine. Officers may feel that they have suffered unfair treatment for long periods of time, and sometimes their sense of grievance may extend over several years.

However, unfair treatment may not always be unlawful discrimination under the discrimination legislation and you should always act within the spirit as well as the letter of the legislation to provide a quality service to any member seeking advice on any issue of equality or diversity.

The following sections of this handbook deal with the representation of respondent or witnesses, all of whom a claimant may require the support of the Police Federation.

It is important to remember that supervisors and line managers who have a responsibility to deal with issues raised within the work place, may also be members of the Police Federation and are entitled to the same level of support from representatives as that given to all the parties involved in the process.

The Police Federation publishes a leaflet "Equality and Diversity – Representation Advice" which provides the member with information about the extent and type of advice available from the Federation on matters of discrimination. You should ensure that the member receives a copy of the leaflet.

You should remember that you are there to represent the best interests of the member and should act in accordance with their informed decisions.

You should always:

- Listen carefully to what is being said, be sympathetic and supportive but test what information is being given to you.
- Consider the information/evidence objectively and avoid taking sides or pronouncing judgement on any of the parties involved. Remember that support and advice is required not personal opinion.
- Explain what options are available, it is important at this stage to ascertain the needs and expectations of the individual.
- Explain clearly what support/guidance you are able to provide. Do not take on more than you have the skills or time to deliver. If you are unable to help, provide other options or suggest other representatives.
- In the interests of all concerned, attempt to seek an early resolution. It is important to remember that the longer the situation exists, the more likely that individual views will become polarised and a resolution more difficult to achieve.

- Give consideration to what action you would take if a serious criminal or discipline offence is reported to you and the individual does not wish to make a formal complaint. The interests and wishes of the aggrieved should always be foremost, however you should always make it quite clear that you may not be able to conform to these wishes if the allegations are of a serious nature.
- Ascertain whether the member has sought advice from anyone else and what that advice was. Be aware that some members seek advice from a number of sources until they receive the advice they want to hear.
- Take care not to advise or represent more than one of the parties involved, thereby creating a conflict of interest, which may result in you having to withdraw from acting for either party.
- Remember to keep your member informed and updated with any new developments as and when they occur. Advise the member of these developments and what steps may need to be taken and by when.
- Ensure you have the member's consent to take steps on their behalf such as putting forward proposals for resolving their grievance. Do not forget to keep a written record of all actions and developments.
- Liaise with the Equality Liaison Officer regarding the types of complaints with which you are dealing so that your Joint Branch Board and the Federation nationally are aware of the nature of complaints coming forward and can develop strategy accordingly.
- Be honest with the individual you are representing. There may be occasions when you cannot resolve a complaint or satisfy the members concerns. In these circumstances, you should make the member aware that you are unable to help them any further and, if possible, assist them to obtain emotional support from a help-group, which may be inside or outside the Force.

Further information for the Representative and the member seeking advice can be found in the Police Federation leaflet “Equality & Diversity – Representative Advice”. You should ensure that every member seeking advice is provided with a copy of the leaflet.

REPRESENTATION

All parties to a grievance have the right at any stage to consult with or be accompanied by a representative of a Staff Association, Trade Union, colleague or friend. There is no statutory right for Federation representatives to be afforded duty time facilities for their involvement with and attendance at Employment Tribunal proceedings.

The Learning the Lessons from Employment Tribunals strategy was developed by all the Police Service Stakeholders including ACPO, the Police Superintendents Association and the Police Federation. The strategy can be found on the Home Office website at http://police.homeoffice.gov.uk/news-and-publications/publication/human-resources/Learning_the_Lessons.pdf. The strategy recommends that duty time for staff association representatives should be made available to representatives involved in discrimination issues in the same way that it is currently available to officers acting as a friend under the Police Misconduct Regulations 1999 and in respect of the Health and Safety (Police) Regulations. Fairness and equality issues frequently span misconduct and Forces must create an open opportunity to address all matters.

The Home Office Circular 28/04 concerning the Fairness at Work procedure recommends that Chief Constables or the Commissioner of Police should consider sympathetically allowing reasonable duty time to staff association (PFEW, PSAEW and CPOSA) or trade union representatives assisting with Fairness at Work complaints and Employment Tribunal proceedings. In circumstances where a claimant requests assistance in presenting their case, or is unable to present their case, or if for example they are on sick leave, it may be possible, with their agreement, for their representative to present their case on their behalf.

Should your Force refuse to allow you duty time facilities to represent a claimant or respondent involved in a complaint of unlawful discrimination, you should draw the Force's attention to the guidance in HOC 28/04 and, if necessary inform the Tribunal in writing giving the reason why the claimant or respondent will no longer be represented. The Tribunal may contact the Force indicating their disapproval of the decision not to allow you duty time and of their consideration to draw an inference during the proceedings.

VICTIMISATION

The claimant, the Representative and any witnesses or friends involved in a particular complaint of unlawful discrimination within internal or Employment Tribunal proceedings are, as long as they acted in good faith, protected from victimisation by legislation.

This involvement in a complaint of unlawful discrimination is known as a "Protected Act". The anti-discrimination legislation identifies that it is unlawful to treat less favourably a person who has:

(a) brought proceedings against the discriminator or any other person under the Sex Discrimination Act, Race Relations Act, Equal Pay Act, Disability Discrimination Act (from Oct. 04), Employment Equality (Sexual Orientation) Regulations 2003, Employment Equality (Religion or Belief) Regulations 2003, or Pensions Act 1995; or

(b) gave evidence or information in connection with proceedings brought by any person against the discriminator or any other person under the Acts; or

(c) does anything else under or by reference to the Acts in relation to the discriminator or any other person; or

(d) makes allegations against the discriminator that he or she has acted unlawfully under the Acts; or by reason that the discriminator knows the person victimised intends to do any of those things, or suspects the person victimised has done or intends to do any of those things.

Victimisation can only be shown in circumstances where someone has been treated less favourably as a result of actions they took in a case or complaint of unlawful discrimination.

CONFIDENTIALITY

There will be times when you will be required to give advice to your member. This advice may be given orally or in writing. You should always regard the advice, and indeed any discussions you may have with your member, as confidential.

That is, you should not disclose the contents of these discussions or the advice to third parties without the consent of the member concerned.

It is important that the representative also retains confidentiality in the preparation and record keeping of any correspondence or documentation and they should ensure that copies are supplied to the member.

LIABILITY OF FEDERATION REPRESENTATIVE

The Police Federation and its officers and Representatives owe a duty to members to take reasonable care in dealing with their cases. Failure to provide a reasonable standard of care could for example include missing a time limit deadline or allowing a case to be struck out because of failure to comply with a Tribunal order. There is a 6 year time limit for making claims.

The Police Federation is liable for negligence by Representatives in the course of Federation work. Representatives also have a responsibility under the discrimination legislation to provide a service to members that is not unlawfully discriminatory, not to victimise a member and not to harass a member.

The Police Federation is liable for the unlawful discriminatory acts of its Representatives unless it took reasonable steps to prevent the discrimination from occuring.

LEGAL PRIVILEGE

You should always be aware of the possibility that such advice, discussions or documentation may, in certain circumstances, become relevant insofar as the Tribunal proceedings are concerned. Should this result in your being required to give evidence at the Tribunal in relation to your involvement in the case as a Staff Association Representative; you should immediately seek legal advice with regard to your position.

Note: You should seek legal advice if a request is made for disclosure of conversation details or documentation relating to your member's case.

DATA PROTECTION

The Data Protection Act states that any personal data that you keep about individuals should be accurate, relevant and kept no longer than is necessary.

The member you are advising has a right to see any notes you make and you may find it useful to give them a copy, so that you have an agreed record of your advice and any

decisions that you reach with them about what course of action you are to follow.

The Federation has provided Resolution Information Sheets (RIS) for use by Representatives and diaries for use by all parties involved in the process. You should keep an objective record of everything that happens. The diary and RIS, as with all other written records and notes, could be subject to disclosure to the member under the provisions of the Data Protection Act, and may be called as evidence in any future action the member may take against the Federation.

You should keep the notes after the conclusion of the case/complaint, in case the member seeks them in furtherance of another action.

Additional information on the Data Protection Act can be found at Appendix 2.

Information regarding the Resolution Information Sheet can be found at Appendix 6.

CONFLICT OF INTEREST

The potential for conflicts of interest, real or potential can be created when assistance and/or advice is given by a Federation Representative to claimants and respondents involved in the same case.

The Police Federation has acknowledged such potential and has established procedures at its Central Offices which prevents the same person being involved in decisions in respect of both claimants and respondents, thereby preventing potential "Conflicts of Interest" and "Breaches of Confidentiality".

Advice has also been given to Branch Boards to adopt procedures locally to ensure that if one member of staff processes the Claimant's papers then a different member of staff processes the Respondent's papers and just as different solicitors are appointed to avoid a conflict of interest, so should different Federation Representatives be appointed where assistance is requested by both a Claimant and Respondent. (JBB Circular 37/95)

LEARNING THE LESSONS FROM EMPLOYMENT TRIBUNALS

A working party of all the Police Service stakeholders developed a web-based toolkit to help those involved in workplace disputes to learn lessons from Employment Tribunal cases. This was launched in May 2004. Its recommendations have subsequently been endorsed by the CRE in its final report (published in March 2005) of its formal investigation into the police service.

The working group developed the Learning the Lessons from Employment Tribunals Toolkit for anyone in the Police Service who may be involved in a complaint. It provides information about the complaints process up to and including an Employment Tribunal. It draws on good practice principles and gives guidance on how to deal effectively with workplace grievances, including the advantages of seeking early resolution.

The stakeholders were from the Home Office, the Association of Police Authorities, Her Majesty's Inspectorate of Constabulary, the Association of Chief Police Officers, the

Superintendents' Association of England and Wales, the Police Federation of England and Wales, UNISON, the National Black Police Association, the Gay Police Association, the British Association of Women in Policing and the Police Legal Advisors Association.

All the stakeholder organisations recognised that Employment Tribunal cases are costly in terms of money and bad publicity, time consuming and destructive to all concerned. The litigation process is inevitably confrontational and often results in a complete breakdown in the employment relationship. The emotional and psychological toll can be enormous, and is not just confined to the claimant – everyone involved, including the person expected to resolve the matter, can be affected. In many cases, officers and staff are lost to the Service.

There are no winners at Employment Tribunals. The single lesson to be learnt from Tribunal cases is that complaints are better resolved early, without going to the law.

The Learning the Lessons from Employment Tribunals Toolkit can be found at http://police.homeoffice.gov.uk/news-and-publications/publication/human-resources/Learning_the_Lessons.pdf.

SECTION 3 - REPRESENTATION OF A CLAIMANT

INTRODUCTION

The most important person is always the member you are representing, which in this section will be the claimant. You should always start by establishing exactly what they want to achieve as a resolution to their complaint.

Remember that complaints of discrimination are often difficult to determine. Officers may feel that they have suffered unfair treatment for long periods of time, and sometimes their sense of grievance may extend over several years.

However, unfair treatment may not be unlawful treatment under the discrimination legislation.

You will need to listen sympathetically to officers, correctly identifying their complaints and advising them of their options.

You should not form moral judgments about their complaints, but provide comprehensive advice on all the alternatives available and the potential consequences of those alternatives.

You are there to represent the best interests of the officer, and should act in accordance with their informed decisions.

It is important to remember, that it is in the interests of all concerned to seek an early resolution to any complaint. Experience has shown that the longer the situation exists, the more likely that people's views will become polarised and a resolution more difficult to achieve.

CLAIM TO EMPLOYMENT TRIBUNAL

The most important issue, when approached by a member who has been treated less favourably on the grounds of their gender, race, sexuality, religion or belief, or disability, is the time limit.

The time limit for lodging a claim of discrimination at an Employment Tribunal is three calendar months less one-day from the date of the last act of discrimination. Failure to do so could mean that the Tribunal would not have jurisdiction to hear the claim. The Tribunal has discretion to extend these time limits in limited circumstances.

The time limit runs from the date of the act of discrimination itself. It is not extended by taking part in an internal Fairness At Work grievance process. You should claim within the time limit even if the member is pursuing an internal grievance. If necessary, the parties can ask the Tribunal to "stay" the legal proceedings until the grievance process has concluded.

Since October 2004, the Employment Act 2002 (Dispute Resolution) Regulations 2004 have required employees (including civilian employees of the police force) to raise their grievance or complaint with their employer, in writing, 28 days before they register their claim at an Employment Tribunal. This will automatically extend their time limit for registering at an Employment Tribunal by a further 3 months.

THE DISPUTE RESOLUTION REGULATIONS DO NOT APPLY TO POLICE OFFICERS, although they do apply to Support Staff. While the PAB has agreed that the Regulations, in so far as they apply to grievances, should be extended to include police officers, no date has been set for this change to the law. In any event, at the time of publication, the DTI is reviewing the scope and content of these Regulations.

Further information on time limits can be found in Section 6.

The date is sometimes not always clear and if you are in any doubt, you should err on the side of caution and advise the member to register their claim with the Employment Tribunal.

Remember that whilst you should provide every assistance to the member in completing their claim to the Employment Tribunal, it is the responsibility of the individual making the complaint of unlawful discrimination to complete the ET1 claim form and register it with the Employment Tribunal.

Should it be necessary for the representative to complete the ET1 claim form on behalf of the member then it is important that you have clear and signed instructions from them. All relevant parts of the form must be completed and you will need to include details of the claim being made.

The member should be advised that they could obtain the ET1 claim form and literature providing additional procedural information from the:

- Employment Tribunals
- Commission for Racial Equality
- Equal Opportunities Commission
- Disability Rights Commission
- Job Centres
- Citizen Advice Bureau

Since **1 October 2005**, it has been compulsory to use the prescribed ET1 claim form. **Do note use the old-style IT1**.

Presently, there are three options for completing the ET1 claim form.

The first option is the simplest. The correct form can be collected from the Employment Tribunal office or other locations mentioned above, completed in hand and then submitted in the normal way. It is acceptable to submit photocopies of these forms and to submit continuation sheets. These forms can be hand-delivered, posted or faxed to the Tribunal. In the case of post, you must allow at least two posting days for the form to arrive (ignoring Sundays and Bank Holidays). In the case of fax, the transmission of the entire document must be completed (not begun) by the expiry of the relevant time period (which is

midnight on the last day). It is always good practice to telephone the Tribunal within the relevant time period to check that the form has arrived and to make a note of this on your file.

The second option is to complete the form online. This can be done at this website address: http://www.employmenttribunals.gov.uk/login_et1.asp

An on-line claim does not look like the hard copy of the form but instead involves providing a series of answers to various prompts and questions. There is a session time of 60 minutes available to complete the form and, if not completed during this time, data entered may be lost. However, it is possible to save an unfinished form and then return to finish it within 30 days; if you do not return within 30 days, the ETS will delete the saved form from its database.

When the claim is submitted online, it is anticipated that it will usually arrive within an hour. If you have received no appropriate message of receipt within an hour, you should telephone the Tribunal to check that the form has arrived. ETS software will convert the emailed form into something that looks like the hard copy of the form. This is the version of the form that is kept on the Tribunal's file and sent to the other party.

The third option is to download the correct form from the ETS website (there is a link on the main landing page at www.employmenttribunals.gov.uk). At the time of publication, the software for doing so is “Version 3.4” but it is regularly updated. You will need Adobe Reader version 6 or better to do this (this can be downloaded from the same website). The first time you do this, you will be guided through a series of prompts to install the relevant software on your computer, which will then appear as an icon on your desktop. The ET1 icon appears as "Employment Tribunal Service Claim Forms". You will need to double-click on these icons to enter the programme.

Once in the programme, you have two further options:

(a) You can complete the form on-screen by typing in the relevant information. The software by which this is achieved is experiencing some teething problems. For example, you may receive a prompt telling you that an unfinished version of the form cannot be saved, when in fact it can. The software may also fail to let you enter data in certain required boxes.

(b) You can simply print off a blank version of the form and complete it by hand.

The new forms include a series of ethnic monitoring questions but it is not compulsory to complete these.

Those making complaints of discrimination will need to complete sections 1, 2, 3, 4 and 6 of the ET1 claim form, and also section 11 if they have a representative. Please note the following:

- In section 2.1, give the name of the chief officer, for example "the Chief Constable of South Wales Police" or "the Commissioner of Police for the Metropolis".

- Give the address of the location where the claimant worked in section 2.3. This may be different to Force HQ and may affect where the claimant should lodge the ET1 claim form.

- Additional respondents are named at section 2.4 on the ET1 form. See page 6 for guidance on naming individual respondents.

- Tick the "yes" box in answer to question 3.1 as, for these purposes, a police officer is treated as an employee. Unless an officer has resigned or been dismissed, it will be usual to tick the "no" box in answer to section 3.3.

- Questions 3.5 to 3.7 relate to the Dispute Resolution Regulations 2004. As stated above, these do not apply to police officers. You should draw a line through questions 3.5 and 3.6 and insert the following words in box 3.7:

"The Claimant is not an employee but a police officer holding the common law office of constable. As a result, the provisions of the Employment Act 2002 and the Employment Act 2002 (Dispute Resolution) Procedures 2004 do not apply. There is therefore no requirement for the parties to have followed the statutory grievance procedure prior to lodging this claim."

This is because it is the responsibility of the clerical staff at the Tribunal to carry out a preliminary check that a claimant has complied with the Employment Act 2002 and presented a statutory grievance before claiming. They cannot be expected to know that these Regulations do not apply to police officers. If you do not put these words in, the Tribunal may (wrongly) reject the claim.

- The details of a discrimination claim are inserted in box 6.2. The EAT has confirmed that only the barest details are required to start the process, but it is advisable to include sufficient particulars of the claim so that all parties and the Tribunal understand the scope of the claim being made at the soonest opportunity. Although the details provided in box 6.2 do not need to be as detailed as a witness statement, if the facts and law are not sufficiently stated the respondent may make a request for additional information about the claim. It is also important not to leave out of the form any ground upon which the claim is being brought. If a party wishes to add a new legal argument or new facts once the original form is submitted, it will need the leave of the Tribunal to do so. This will not be automatically granted.

It is possible to amend an ET1 claim form after it has been submitted, but only with the leave of the Tribunal. This usually happens when a claimant wants to complain about something else that happened before the ET1 was lodged, but was overlooked at the time the claim was made. It will obviously be much harder to obtain the Tribunal's leave if more than three months have passed since the new matter about wish the claimant now wishes to complain. The Tribunal will also look at the claimant's explanation for the delay and the balance of prejudice likely to be caused by allowing or refusing the extension.

The ET1 claim form only covers matters up to the date on which it is lodged. As a result, any further events that occur subsequent to the ET1 being lodged at Tribunal, such as victimisation, will not be part of the claim. A claimant in this situation will need to lodge a fresh claim with the Tribunal and ask for the new claim to be combined with the previous claim and heard at the same time. This request should be on the basis that the two claims stem from the same factual basis and so it would be consistent with the "overriding objective" (particularly the part about saving expense!) for the Tribunal to consider them together.

When the ET1 claim form is completed, you should post, fax or email it to the Tribunal (to arrive within the time limit of 3 months less one day) that is local to the place where the claimant worked. If in doubt, go to this web address (www.employmenttribunals.gov.uk/venues/venues.htm) and insert the claimant's postcode. The address of the appropriate Tribunal will then appear.

Sometimes claim forms go missing. Always telephone the Tribunal within the time limit to check that the claim form has arrived safely. Make a note on your file of the Tribunal clerk who gives you this confirmation and the date and time of your conversation with them. Also keep a copy of any fax transmission record. This information will be essential if ever there is a dispute over when and if the claim form was properly lodged.

The decision to make a claim to an Employment Tribunal is one that should not be taken lightly; the proceedings can continue over several months if not years and involve taking on the organisation, often resulting in a breakdown of the employer/employee relationship.

The individual and the people they complain about often take extended periods of sick leave. This does not help enquiries into the complaint to be progressed and sometimes results in the internal processes becoming unnecessarily protracted over several months.

It is difficult to explain the anxiety and stress that the claimant may have to face whilst pursuing their claim through the Employment Tribunal but it is important that they are made aware of these issues.

The member may also require your support during grievance meetings, discipline interviews/hearings as well as the Employment Tribunal proceedings.

It is important that you are familiar with these procedures and of the need to seek advice from the Joint Branch Board Secretary or Equality Liaison Officer if you do not feel qualified to represent the member.

Claimants involved in internal Grievance or Misconduct investigations or who give evidence on behalf of the Force during any Criminal trial or Misconduct hearing are classed as professional witnesses and have an obligation to provide evidence of their involvement.

In these circumstances the claimant would be allowed duty time facilities, however this may not be the case during an Employment Tribunal hearing when the claimant would then be giving evidence against the Force.

Should the Force refuse to allow the claimant duty time facilities to attend the Tribunal hearing you should inform the tribunal in writing. The tribunal may contact the Force indicating their disapproval of the decision not to allow duty time facilities for the claimant’s attendance and of their consideration to draw an inference during the proceedings. Consideration should also be given as to whether there may be a claim for victimisation.

REMEMBER – That whilst it helps all concerned to seek a quick internal resolution to any complaint, an internal resolution being achieved does not remove the statutory right of an individual to pursue a claim of unlawful discrimination at an Employment Tribunal.

THE STATUTORY DEFENCE

This section explains the statutory defence in discrimination claims, which is commonly misunderstood. It also provides guidance on when individuals should be specifically named as additional respondents to a claim of unlawful discrimination, i.e. additional to the chief officer.

Primary liability of chief officer
In an Employment Tribunal complaint of unlawful discrimination, a claimant will normally only name the employer as a respondent. This is because the employer will have "primary liability" for the discrimination. In the case of a police officer, the employer is the chief officer, namely the Chief Constable or the Commissioner.

In many cases of unlawful discrimination, the chief officer will be the only respondent named by the claimant on the ET1 form. This is common in cases of alleged unlawful discrimination that involve managerial decisions taken in the name of the chief officer. These will be the types of cases involving promotions, transfers, requests for part-time working, maternity leave, reasonable adjustments to accommodate a disability, decisions on special priority payments, and so on.

Secondary liability of individual
A claimant can name more than one respondent on the ET1 form, such as the person who actually did the unlawful act of discrimination for which the chief officer has primary liability. This is rarely appropriate in cases where the alleged discrimination relates to managerial decisions taken in the name of the chief officer. The naming of additional respondents tends to occur only in cases of harassment – and even then, only when it is appropriate to do so.

There is no theoretical limit on the number of individuals who can be named as additional respondents in this way. Such additional respondents are said to have "secondary liability" for the discrimination. Other Federation representatives may find themselves defending individual officers who have been named as respondents in this way. However, great care must be taken when considering naming additional respondents over and above the chief officer; further guidance is given below.

Constructive liability
The manner in which the anti-discrimination legislation attaches liability to both the chief officer (as employer) and the additional individual(s) is complex. In essence, the primary liability of the chief officer arises because he/she is "deemed" to have carried out the discriminatory act himself/herself. This is known as "constructive liability". The secondary liability of the additional individual respondent then arises because he/she is "deemed" to have "aided" the chief officer.

The statutory defence
The chief officer may, however, defend the claim on the basis that he/she took "such steps as were reasonably practicable" to prevent the other person officer acting in a discriminatory way. This is known as the "statutory defence". Such steps may include:

- Establishing an equal opportunities policy, and ensuring that it is properly advertised, implemented and monitored

- Proper equal opportunities training to staff (including the individual harasser) and ensuring proper follow-up monitoring and action

- Identifying harassment as a serious disciplinary matter

- Making sure previous allegations of harassment have been properly investigated and dealt with

- Complying with the relevant codes of practice

If the chief officer's legal representatives believe that the allegations of unlawful discrimination are false or unsupported, they may simply defend the claim on this basis. However, if they accept that the bullying or harassment took place as the claimant alleges (or that there is a risk the Tribunal will agree that it took place), they may recommend that the chief officer rely on the statutory defence.

If the chief officer relies successfully on the statutory defence, the Tribunal will not uphold the complaint of unlawful discrimination against the chief officer. However, the Tribunal may still uphold the complaint against the individual respondent. If any such award is made, it is more likely to be in the hundreds (rather than thousands) of pounds.

If the chief officer relies unsuccessfully on the statutory defence, the Tribunal is likely to uphold the complaint against both the chief officer and any additional respondent named by the claimant. The Tribunal will then order that the chief officer pay compensation to the claimant. It may also order that the additional individual respondent pay compensation as well, but this is rare and, when such orders are made, they again tend to be in the hundreds, rather than thousands, of pounds. In certain (fairly rare) circumstances, the Tribunal may order that all respondents are "jointly and severally" liable to pay all the compensation that has been awarded.

Naming individual respondents

The naming of individual respondents has both advantages and disadvantages.

Of the advantages, it offers the claimant some protection against the prospect of the chief officer successfully relying on the statutory defence. This is because, if the chief officer successfully relies on the statutory defence, there would at least remain a respondent against whom a claimant could succeed and be awarded some limited compensation. It can also offer an opportunity to hold an individual officer accountable outside the scope of the police discipline system. Finally, it can "drive a wedge" between the individual officer and the Force, particularly because the Force must decide whether to "back up" the officer or rely on the statutory defence.

Of the disadvantages, it can significantly heighten the tension in a Tribunal dispute. In particular, a "scattergun" approach – the naming of multiple individual respondents – can make the Tribunal proceedings (and any internal Fairness at Work grievance associated with them) cumbersome. The process of "driving a wedge" can itself make it more difficult to achieve a local resolution.

Naming individual respondents can also have a significant bearing on the legal costs incurred by the Police Federation. Where the named individual is a member of a federated

rank, the Federation (through the Joint Central Committee) may end up funding legal representation for him/her. This involves not simply the legal costs associated with funding separate solicitors, but also the additional costs faced by the claimant's solicitors in dealing with an extra set of representatives. If the Federation ends up funding both sides to a dispute between members, it can also be a diversion from its wider aim of putting pressure on the Force to improve its approach to equal opportunities generally.

If you are considering naming one or more individual respondents, you should bring this to the immediate attention of the relevant rank central committee, setting out your reasons for doing so. The Federation will adopt the same analysis of funding a claim against an individual respondent as it does in relation to funding a claim against a chief officer. In particular, it will ask its legal advisers to assess:

- Whether a claim against an individual respondent offers the claimant's only realistic prospect of recovering any compensation at all (which, in turn, depends upon whether the chief officer is likely to rely successfully on the statutory defence); and

- The cost-effectiveness of a claim against an individual respondent, in particular whether the possible compensation that may be awarded against that individual respondent justifies the additional costs borne by the Federation.

Specific legal advice will be necessary where the alleged acts of race discrimination pre-date 2nd April 2001 or the alleged acts of sex discrimination pre-date 19th July 2003; the legal framework that applied was different then. Bear in mind also that police officers did not become protected from discrimination on other grounds until different dates: sexual orientation (1st December 2003), religion/belief (2nd December 2003), disability (1st October 2004) and age (1st October 2006).

APPLICATIONS FOR LEGAL ADVICE/REPRESENTATION

If the matter is one of unlawful discrimination, harassment or victimisation and the individual intends to pursue the complaint at an Employment Tribunal, then it will need to be referred for legal advice and/or representation at the earliest opportunity.
The Police Federation have developed a Resolution Information Sheet (RIS) to assist representatives in the recording of a member's case. The RIS should be completed in all cases of grievance and must be completed when application is being made for legal advice/ representation.

Additional information on the completion of Resolution Information Sheet can be found at Appendix 6.

You will need to liaise closely with the solicitors and the member, ensuring that the member receives copies of any legal advice or correspondence relating to their case.

You have an important role to play, if funding is granted, in assisting the solicitor with the preparation of the case for the hearing, especially in providing advice on internal police procedures and obtaining evidence from witnesses.

For information in dealing with witnesses see Section 5.

The decision to provide legal advice and/or representation to a Claimant is made by the General Secretary of the separate Central Rank Committee using the cost/merit/benefit formula. In order to give each application full consideration it is important that the member and their representative provide the following information and documentation:

- a completed Resolution Information Sheet (RIS), which should include any relevant times, dates, locations, conversations, behaviour and persons present together with the reason(s) why the member feels the treatment they received was discriminatory and the detriment they suffered as a result of the treatment;
- copies of all documentation that are relevant to the application;
- a copy of the completed ET1 claim form (if any) and ET3 response form (if any); and
- a completed form C2 (application for legal advice/representation) signed by the Joint Branch Board Secretary.

The legal representative will not go "on the record" with the Employment Tribunal indicating that they represent the Claimant until the decision to provide funding for Tribunal proceedings is made.

This may result in you continuing to receive correspondence from both the Tribunal and Respondents, but prevents the legal representative requesting the tribunal to be removed from the record later should funding be declined, which could be interpreted by the Respondent that the Claimant's case may be weak.

In these circumstances you should always provide copies of any correspondence to both the Claimant and the legal representative.

The Cost/Merit/Benefit funding criteria can be found at Appendix 7.

PURPOSE OF GRIEVANCE OR FAIRNESS AT WORK PROCEDURE

The main purpose of the grievance or Fairness at Work procedure is to ensure that individual members of staff who feel aggrieved about the way in which they have been treated, either by management or by their colleagues, are given every opportunity to have their grievances resolved in a fair and just manner.

The procedure is intended to resolve issues as quickly as possible and not to establish guilt or provide punishment.

The grievance or Fairness at Work procedure is not a method for making an allegation under the Police Code of Conduct.

In reality, most Forces experience serious problems in completing the procedure within the specified time periods.

If the procedure is to be used, every effort should be made on behalf of the claimant to ensure that the Force complies with the relevant time periods.

The fact that a complaint has been registered with the Tribunal does not prevent action being taken under the internal procedure. The Tribunal, if requested may "Stay Proceedings" pending the conclusion of any internal grievance or discipline procedure.

The procedure is designed to be an informal and flexible means of resolving problems at work.

This should be regarded as an advantage but in reality this flexibility can often work against an officer using the grievance procedure.

Flexibility sometimes allows the Force to depart from set guidelines, possibly leading to unfair procedure such as not calling all relevant witnesses, not giving the complainant an opportunity to state in detail his/her case and more commonly, not fully informing the complainant of how the grievance has been resolved at each stage.

The procedure is intended to deal with all types of grievance including claims of unfair interpretation or implementation of personnel policies and conditions of service and in particular, actions that contravene equal opportunity policy including, discrimination on the grounds of race, ethnic origin, colour, nationality, gender, sexual orientation, religion or belief, marital or family status, trade union or staff association or support group activity, disability, age or any other factor which cannot be justified.

Discrimination and/or unfair practices are not always obvious, overt or intentional but however they occur, the grievance procedure is a channel by which an aggrieved person can seek proper redress within the organisation. It does not remove an individual's right to register a claim at an Employment Tribunal if they believe they have a case and they wish to do so. Very rarely is discrimination open or intended, but rather the result of tradition or culture where what is being done is not being questioned objectively.

All Forces should seek to resolve grievances promptly, fairly and sympathetically, and to redress the grievance and/or take remedial action as appropriate.

REGISTERING A GRIEVANCE

The Home Office issued guidance in respect of good practice in Force Grievance or Fairness at Work procedures in HOC 28/04, which can be found at Appendix 1. Whilst the administrative arrangements may be different between Forces, the procedures are similar. A well-operated Grievance Procedure reflects good practice.

Different Forces have different arrangements for registering grievances. Some have adopted special forms to report and monitor the progress of the grievance; others require officers to submit reports.

It is recognised good practice for a Force to have a designated form, which ensures details of all grievances and the action taken to resolve them are properly documented and analysed.

It is also good practice for Joint Branch Boards to keep details of the types of complaints being raised as grievances in which representatives are assisting members.

A good example of a JBB service monitoring form is included at Appendix 6.

REPRESENTATIVE'S ROLE IN GRIEVANCE

Initially, you should consider assisting the member to register their grievance and then supporting them through the stages of the procedure.

Sometimes members take out an internal grievance perhaps prior to, or at the same time as making a claim to the Employment Tribunal.

It is important to adopt a proactive role so far as your member's grievance is concerned. This is important for two reasons. First, it may actually result in your member's grievance being resolved in which case there will no longer be a need to pursue or continue with an Employment Tribunal claim.

Second, it is also likely that the evidence relating to what happened within the context of the grievance procedure will be put before the Employment Tribunal should your member's complaint proceed to a Tribunal hearing.

A failure by the Force to follow its own grievance or fairness at work procedure may, depending upon the circumstances, contribute to the amount of compensation payable by the Force should the complaint proceed to Tribunal and succeed.

If you were able to show to the Tribunal that the Force consistently failed to meet its own deadlines in the internal procedure, or possibly, failed to take reasonable steps in investigating your member's grievance, then it may well be that the Tribunal will draw an inference in relation to this, including an inference of discrimination. In certain circumstances, this may also justify lodging a further claim with the Employment Tribunal, in which the claimant alleges that the grievance procedure itself has discriminated against him/her. For example, a Force's failure to carry out a proper investigation of a claimant's grievance, or to take that grievance sufficiently seriously, can amount to a fresh act of discrimination or even an act of victimisation. Remember that the three-month time limit will still apply to fresh acts of discrimination or victimisation.

Similarly, it is helpful to think about what steps the Force should be taking with a view to resolving your member's grievance. Discuss this with your member. Suggest these steps to the Force and keep a record of the fact that you have done so.

Again, if those steps that you have put forward are reasonable and the Force does not take them, then the Tribunal may be prepared to draw an adverse inference should the matter proceed to a Tribunal hearing. Again, it may justify a fresh claim to the Tribunal.

Discuss with your member the possible ways their grievance could be resolved. For example consider apologies, a financial settlement, further training or career opportunities, the appointment of a mentor or a statement in Force Orders.

Be imaginative. Put your ideas forward to the Force for their consideration.

Do not forget the time limit. The fact that your member has taken out a grievance does not at the moment extend the time limit for registering the application with the Tribunal. The three calendar months less one day time limit still runs from the date of the last act of unlawful discrimination that your member is complaining about. (In exceptional

circumstances it may be possible to extend the time limit.

Finally, remember that Employment Tribunal proceedings are a difficult and traumatic undertaking for all involved. The process is necessarily adversarial and both sides can become entrenched. Sometimes the other side set about defending their position by making personal and professional allegations that are deeply wounding. Although this may not always be the case, only rarely does someone return to work feeling his or her position has been totally vindicated.

Remember, the fact that a complaint has been registered with the Tribunal does not prevent action being taken under the grievance procedure. The Tribunal, if requested will usually "Stay Proceedings" pending the conclusion of any internal grievance or discipline procedure.

There is a Flowchart of the Grievance/Fairness at Work/Employment Tribunal procedure set out at Appendix 6.

RIGHT TO REPRESENTATION

All parties to a grievance have the right at any stage to consult with or be accompanied by a representative of a Staff Association, Trade Union, colleague or friend.

The Learning the Lessons from Employment Tribunals strategy was developed by all the Police Service Stakeholders including ACPO, the Police Superintendents Association and the Police Federation. The strategy can be found on the Home Office website at www.homeoffice.gov.uk/crimpol/police/equality/index.html. The strategy recommends that duty time for staff association representatives should be made available to representatives involved in discrimination issues in the same way that it is currently available to officers acting as a friend under the Police Misconduct Regulations 1999 and in respect of the Health and Safety (Police) Regulations. Fairness and equality issues frequently span misconduct and Forces must create an open opportunity to address all matters.

The Home Office Circular 28/04 concerning the fairness at Work procedure recommends that Chief Constables or the Commissioner of Police should consider sympathetically allowing reasonable duty time to staff association (PFEW, PSAEW and CPOSA) or trade union representatives assisting with Fairness at Work complaints and Employment Tribunal proceedings. In circumstances where a complainant requests assistance in presenting their case, or is unable to present their case, or if for example they are on sick leave, it may be possible, with their agreement, for their representative to present their case on their behalf.

REPRESENTATIVE'S RECORDS

The completion of a Resolution Information Sheet (RIS) is an important way of recording the member's case. Additional information can be found at Appendix 6.

Diaries/Log Books are also ways of recording what has been said to you, what advice you have given and what action you or others have taken. You should keep a detailed note of

all meetings and retain all correspondence.

You should also suggest to the person you are representing, that they should keep similar records of the continuing events of the case. These documents can then be produced at the Tribunal as contemporaneous notes.

STANDARD OF PROOF

It is important to remember that a grievance does not have to be proved to the criminal burden of proof "beyond all reasonable doubt" and that each case should be judged on the "balance of probabilities" which is the standard of proof used in Employment Tribunal proceedings.

STATUTORY QUESTIONNAIRES

Under the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, Employment Equality (Sexual Orientation) and (Religion and Belief) Regulations 2003 and the Equal Pay Act 1970 (as amended), the claimant can ask questions of the respondent in relation to sex, race, disability, sexual orientation, religion or belief discrimination and equal pay claims.

A questionnaire can be used at any time prior to a claim being made to an Employment Tribunal, so long as it is served within three months of the act complained of (or six months where the claimant has lodged a grievance under the Dispute Reduction Regulations 2004). It may be used to support the member's complaint of unlawful discrimination within the internal grievance procedure. Should an application of unlawful discrimination have been made to an Employment Tribunal then the questionnaire must be received by the respondent within 21 days of the date on which the claim was registered with the Employment Tribunal (28 days in the case of disability). A questionnaire can only be served beyond this time limit with the leave of the Tribunal.

The questionnaire gives the claimant the opportunity to find out why the respondent subjected them to less favourable treatment. It also gives the opportunity to establish whether the Force/the Chief Officer can show that they have taken all reasonable and practical steps to ensure a discrimination and/or harassment free working environment. In order to do this there are a number of standard questions that should be included in a Statutory Questionnaire at Appendix 5.

Strictly speaking, there is no legal obligation on a respondent to reply to a statutory questionnaire. A failure to do so can, however, have significant consequences. For example, if a respondent fails to reply within a specified time period, the Tribunal can draw an adverse inference that the respondent has committed an act of unlawful discrimination. This can be crucial in those discrimination cases where there is no obvious evidence of discrimination and the outcome therefore depends on the willingness of a Tribunal to draw such an inference. The specified time limit is:

- For statutory questionnaires on race (where the claim relates to racial, ethnic or national origin and/or harassment), sex, disability, sexual orientation, religion and belief, and equal pay, the period of eight weeks from the date on which the questions

were served on the respondent;

- For statutory questionnaires on race (where the claim relates only to colour and/or nationality), a "reasonable period".

The Tribunal can also draw inferences from an evasive or equivocal reply. However, the Tribunal will be far less likely to draw such an inference where the claimant's questions are onerous or go far beyond the issues that are relevant in the claim.

If the respondent fails to reply and the information requested is crucial to assessing the merits of the case, it may be possible to request the information in a different way if legal proceedings are underway (see Section 6 – Employment Tribunal proceedings). Further guidance on Statutory Questionnaires can be found at Appendix 5.

ADDITIONAL INFORMATION/DOCUMENTS

In many cases, it will be necessary for you to seek additional information or documents about the other side's case. This can include seeking answers to specific questions about the case or seeking copies of particularly relevant documents. These issues are dealt with further in Section 6 – Employment Tribunal proceedings.

NEGOTIATED SETTLEMENTS

There may be prospects of negotiating a settlement of the claim and the member may wish you to conduct such negotiations with the Force. These discussions, if conducted directly with the Force's representative, should always be done on a "without prejudice" basis. (The label of "without prejudice", if applied properly, means that neither party can bring to the Tribunal's attention the matters that the parties have discussed with a view to reaching settlement. For the label to apply properly, there must be a legal dispute between the parties that the discussions are supposed to resolve. There are certain exceptions to the "without prejudice" rule and, in case of doubt, you should seek legal advice.)

Legal advice should also be obtained regarding appropriate terms of settlement at an early stage of negotiations.

ACAS

The Employment Tribunal office will inform ACAS when a complaint is registered, and will contact the applicant (or you, if you have indicated on the form that you are acting for the applicant) and the respondent (the Force) to offer their services in conciliating the complaint.

Both parties need to agree before ACAS can become involved. Many Employment Tribunal complaints have, since October 2004, been subject to "fixed period" conciliation. This does not apply to conciliation of discrimination disputes, so the services of ACAS should be available throughout the entire Tribunal proceedings.

EMPLOYMENT TRIBUNAL PROCEEDINGS PRIOR TO OBTAINING LEGAL REPRESENTATION

If the member, prior to the request being made for legal advice/representation, registers a claim of unlawful discrimination with an Employment Tribunal, they may be requested to attend a Case Management Discussion or a Pre-Hearing Review. Further details on these are on Section 6 – Employment Tribunal Proceedings.

Should this happen to a member you are representing then you should liaise with the Joint Branch Board Secretary or Equality Liaison Officer and attempts should be made to secure legal representation.

If legal representation is not immediately available then you should in the first instance enter into correspondence with the tribunal in an attempt to have the hearing adjourned until legal representation can be obtained.

Should you be unsuccessful in your attempts to have the hearing adjourned then you may consider representing the member at the hearing.
The proceedings are relatively simple and a verbal application for the proceedings to be adjourned for perhaps 6-8 weeks for legal advice and/or representation to be sought is well within the capabilities of any police officer who has given evidence during criminal court proceedings.

Further guidance on representing members at Employment Tribunal proceedings can be found in Section 6.

INTER-RELATIONSHIP OF GRIEVANCE/FAIRNESS AT WORK PROCEDURES, EMPLOYMENT TRIBUNALS, POLICE MISCONDUCT AND OTHER PROCEDURES

Introduction

Most Forces should have introduced grievance or Fairness at Work procedures that generally follow guidance in Home Office Circular 28/04. You will need to be conversant with your own Force procedures and Home Office Circular 28/04. See Appendix 1

In any breach of equal opportunities both the internal grievance and police misconduct procedures, together with Employment Tribunal and criminal proceedings can all be activated.

Formal grievance and police misconduct procedures should not prevent officers seeking to resolve their differences personally and informally if they feel able to. Likewise common sense and the utilisation of supervisory and management skills may be quite sufficient to resolve differences and reach a satisfactory conclusion without the need to invoke the formal procedures.

Consequences of Unlawful Discrimination, Harassment or Unfair Treatment

An act of unlawful discrimination, harassment or unfair treatment may result in any or all of the following consequences: -

- the claimant may raise the matter under the Force Grievance or Fairness at Work Procedure;
- the respondent may be subject to a police conduct enquiry or proceedings;
- the respondent may be charged with an offence of criminal conduct such as intentional harassment or assault;
- the claimant may bring a claim to an Employment Tribunal naming the Chief Constable and (perhaps) the accused colleague as Respondents;
- the claimant themselves may be subjected to a police misconduct enquiry or proceedings;
- the formal involvement of the Independent Police Complaints Commission (IPCC) may be activated.

Employment Tribunals

There are two important distinctions between the grievance or Fairness at Work procedure and Employment Tribunal proceedings.

The procedure can cover all disputes, not being limited, like Employment Tribunal proceedings, to unlawful discrimination under the anti-discrimination legislation.

Secondly, the procedure is designed to resolve disputes with no finding of wrongdoing, unlike the Employment Tribunal where there will be a finding, which clearly identifies “winners” and “losers”.

This may work to the disadvantage of the claimant who may feel it is necessary, having regard to the circumstances of the complaint, to have a clear decision as to who was in the wrong. This will not be possible in the grievance procedure where if a resolution is not reached both parties can end up feeling aggrieved.

The decision of an Employment Tribunal hearing is based on the balance of probabilities and the remedies available are limited to: -

- compensation, based on loss of any earnings, injury to feelings or personal injury and out of pocket losses;
- rarely, aggravated damages plus interest, in cases where the Respondent has behaved unreasonably;
- a declaration, in respect of the rights of the claimant;
- a recommendation that the Respondent takes, within a certain period, action to reduce the act of discrimination covered by the complaint. Note that this is not an order. It may include, for example, a recommendation of training. It is most unlikely that it will extend to a recommendation that the perpetrators of the discrimination be disciplined.

It is not possible for example, for the Employment Tribunal to order that the respondents, the Force, promote the claimant or give them the job they seek. It follows that wider

remedies are only available in grievance proceedings, which may also include financial settlements.

Sometimes Employment Tribunal proceedings may not be possible, even if there is a complaint of unlawful discrimination, because the three months time period for bringing Employment Tribunal proceedings has expired (unless in exceptional circumstances the Tribunal decides it is just and equitable to extend the time limit).

The grievance procedure may then be the only option. However, legal advice should be sought regarding whether or not there are any grounds to request the Tribunal to extend the deadline.

It is important to remember that the claimant to an Employment Tribunal is always in control of the action even when the respondent considers that there is no case to answer.

The Tribunal is always obliged to hear and consider the application unless it is:
- outside the time limit (and there is no reason to justify extension of the time limit);
- outside the jurisdiction of the Tribunal.

There is usually little that the respondent can do to stop the Tribunal proceedings if the applicant is determined to continue with the action (aside from a possible threat of costs – see Section 6) and the respondent must therefore ensure that the action is defended properly.

However, a tribunal does have the power to strike out or amend a claim or response on various grounds, including that it is scandalous, vexatious or has no reasonable prospects of success. Cases may also be struck out for failure to comply with a direction or order or if the case has not been actively pursued.

A number of claims for discrimination settle before the Hearing and of those which proceed to Hearing it is still the case that the majority are unsuccessful.

Respondents usually deny liability and though they are prepared to settle a claim to avoid the litigation, this may leave the claimant with a sense of injustice by not having "their day in court", or being seen to be vindicated.

There are many reasons why respondents and claimants would choose to "settle on the steps", but it is important that any claimant who wishes to bring proceedings in the Employment Tribunal be made aware of the legal difficulties and that the hearing itself can take many days, if not weeks, and is most likely to be a very gruelling and unpleasant experience for all concerned.

Where a reasonable offer has been put forward by the Respondents but the Claimant still wants to proceed to the Hearing, advice should be sought from the General Secretary for the separate Central Rank Committee, regarding whether the Federation will continue to provide representation in these circumstances.

Confidentiality

There is limited confidentiality in Employment Tribunal proceedings. The Employment Tribunal is a public hearing.

In some claims, usually where there are allegations of sexual offences, applications can be made for a restricted reporting order but these restrictions usually only apply until the Tribunal decision is given. See the section on Hearings in Private in Section 6, Representation at Employment Tribunals.

Police Misconduct Proceedings

The claimant does not instigate these. Whilst details of a complaint brought to the attention of a Chief Officer may lead to police misconduct proceedings, the decision to invoke these is outside the control of the aggrieved. In essence therefore police misconduct proceedings are not an "option available" to the claimant although are often treated as such.

As police misconduct proceedings are outside the control of the aggrieved, they should not be used as a reason for delaying other proceedings including in particular Employment Tribunal proceedings.

One common tactic adopted by Forces is that if there are police misconduct proceedings pending, a Force will seek 'a stay' in the Employment Tribunal proceedings.

Such an application for a stay can be resisted on the basis that what happens in police misconduct proceedings (which is at the discretion of the Force, the likely respondent in the Employment proceedings) should not be allowed to delay the claimant's right to pursue proceedings in the Employment Tribunal.

Such an argument may not be successful in the Employment Tribunal initially, but if police misconduct proceedings have been ongoing for a considerable period then the Employment Tribunal will be increasingly willing for the proceedings to be reactivated.

Should the person complained of (who may also be a named respondent) be made the subject of police misconduct proceedings, it would be dependent upon the individual circumstances whether it would be in the claimant's favour for the police misconduct proceedings to take priority and for there to be a police misconduct finding against the individual, prior to the Employment Tribunal taking place.

You should be aware that Employment Tribunal proceedings can make financial awards of potentially unlimited compensation against employers (Chief Constable or Commissioner) in discrimination claims.

If an Officer has been named as a Respondent together with the Force, then the individual officer may face the possibility of being held personally liable for awards of compensation arising from the act for which they were individually responsible. In practice however compensation orders against individual employees have, unlike compensation orders against employers, usually been in the hundreds not thousands of pounds.

Compensation is usually only awarded against individually named respondents if the employer (the Chief Constable) has been successful in relying on the Statutory Defence. The Force would have to show that they have taken reasonable steps to prevent the discrimination from happening.

The Federation will consider the cost, merits and benefits of each part of the members claim when giving consideration to provide legal funding. For further information see Appendix 7.

When acting for a claimant who has been made the subject of police misconduct proceedings, which commenced after the application of unlawful discrimination had been made to the Employment Tribunal, it may be that the claimant has been treated less favourably because of the complaint, and there may be grounds for an additional claim to the Tribunal of victimisation.

When police misconduct proceedings have been instigated, advice should be given to the accused that an inference can be drawn if they fail to answer questions in relation to the allegation.

Similarly in Employment Tribunal proceedings the Claimant will be expected to give evidence of the discriminatory treatment they were subjected to. Silence may therefore not be a sensible option during any Police misconduct interview, but much will depend on the individual circumstances of the case.

Police misconduct hearings and grievance/fairness at Work procedures are not held in public, unlike Employment Tribunal hearings. However, as with a grievance, in reality, participants in police misconduct proceedings should be made aware that the evidence they give, for example, in statements, can be disclosed at a later date in Employment Tribunal proceedings.

Recent cases have confirmed that public interest immunity, which had prevented evidence in police misconduct proceedings from being disclosed in other proceedings, is very limited and is likely only to cover, where appropriate, the Investigating Officer's report. Even that report can on occasions be ordered by an Employment Tribunal to be disclosed to a claimant, or sometimes just the Tribunal itself so that it can consider its relevance to the proceedings.

Criminal Proceedings

The burden of proof in any criminal proceedings is “beyond all reasonable doubt” unlike Employment Tribunal proceedings where it is the “balance of probabilities”. It is, therefore, possible that a complaint will be successful in Employment Tribunal proceedings but that the respondent will be successful during criminal proceedings.

The Employment Tribunal is likely to be very reluctant to hold the substantial hearing of a complaint, which covers the same issues in criminal proceedings, until the criminal trial has been completed.

The right of silence is not the same as police misconduct proceedings; a court can be asked to draw an adverse inference from silence at criminal interviews.

Complaints

There is a possible involvement of the Independent Police Complaints Commission in any

breach of Equal Opportunities policy.

The role of the Force in police misconduct proceedings, following an investigation supervised by the IPCC, may lead to allegations of discrimination brought by the officer against the Force and it is therefore possible to see the interaction of the IPCC, police misconduct proceedings, Employment Tribunal, criminal proceedings and grievance procedure all in the same case.

COMPARISON OF GRIEVANCE, POLICE MISCONDUCT, EMPLOYMENT TRIBUNAL AND CRIMINAL PROCEDURES

	Grievance/F@W Procedures	Misconduct Procedures	Employment Tribunal	Criminal Proceedings
Purpose	Resolve	Apportion blame/punish	Apportion blame/punish	Apportion blame/punish
Scope	Wide range of personnel, management issues	Offences defined within the police/civil misconduct procedures	Unlawful discrimination	Offences against Statute and Common Law
Level of proof	Balance of probabilities	Balance of probabilities	Balance of probabilities	Beyond reasonable doubt
When can it be instigated	Any time	At any time (Includes during grievance procedure)	Within 3 months less 1 day of the incident in relation to discrimination cases and /or within six months of the termination of service in equal pay cases.	At any time (subject to any statutory limitations)
Who can deal	Line Supervisor, referable in accordance with the stages of the procedure	(Police) Complaints Department, or (Civilian) Area/Department and Personnel Department	N/A	Normal procedures may apply or complaints and conduct procedures
Timing	Time limits in accordance with the stages of referral	National Guidelines on Timing	No limit providing case is instigated as above	No statute of limitation for Race Relation or Sex Discrimination Acts
Who instigates	Claimant	Deputy Chief Constable via complaints dept. (Following referral from Supervisor or complainant)	Claimant	Claimant/CPS
Right of silence	Option	Inference drawn	Inference drawn	Inference drawn
Outcome	Resolve or ends at conclusion of procedure	Finding	Finding & compensation	Finding

SECTION 4 - REPRESENTATION OF A RESPONDENT

INTRODUCTION

The most important person is always the member you are representing, which in this section will be the individual who is the subject of an internal grievance or named as a respondent in Employment Tribunal proceedings.

Remember that complaints of discrimination or unfair treatment are often difficult to determine and whilst acknowledging the distress a claimant may have felt it should not be forgotten that the person who is subject of the complaint could also be suffering distress and upset.

You will need to listen sympathetically to officers and not form moral judgments about the complaints made against them and you should provide comprehensive advice on the potential consequences of the allegations.

You are there to represent the best interests of the officer, and should act in accordance with their informed decisions.

It is important to remember, that it is in the interests of all concerned to seek an early resolution to any complaint, experience has shown that the longer the situation exists, the more likely that people's views will become polarised and a resolution more difficult to achieve.

The parties involved often take extended periods of sick leave, which does not help enquiries into the complaint to be progressed and sometimes results in the internal processes becoming unnecessarily protracted over several months.

It is difficult to explain the anxiety and stress that the respondent may have to face whilst defending the allegations made against them at the Employment Tribunal, within a grievance or discipline investigation but it is important that they are made aware of this issue.

The member may require your support and welfare during grievance meetings, discipline interviews/hearings and an Employment Tribunal hearing. It is important that you are familiar with these procedures and of the need to seek advice from the Joint Branch Board Secretary or Equality Liaison Officer if you do not feel qualified to represent the member.

Officers requested to attend any Criminal, internal Grievance/Misconduct investigations or Employment Tribunal hearings to give evidence on behalf of the Force are classed as professional witnesses and have an obligation to provide evidence of their involvement in the matters and should be allowed duty time facilities.

REMEMBER – that whilst it helps all concerned to seek a quick internal resolution to any complaint, an internal resolution does not remove a claimant's statutory right to pursue a claim of unlawful discrimination at an Employment Tribunal.

PURPOSE OF THE GRIEVANCE OR FAIRNESS AT WORK PROCEDURE

If the officer has been named in a grievance raised by the claimant then you should consider assisting them during any meetings or interviews being conducted by the line manager who is dealing with that particular stage of the Grievance Procedure.

It is important to remember that the main purpose of the grievance or Fairness at Work procedure is to ensure that individual members of staff who feel aggrieved about the way in which they have been treated, either by management or by their colleagues, are given every opportunity to have their grievances resolved in a fair and just manner.

The procedure is intended to resolve issues as quickly as possible and not to establish guilt or provide punishment.

The procedure is not a method for making an allegation under the Police Complaint and Misconduct regulations.

In reality, most Forces experience serious problems in completing the internal procedure within the time limits. Whilst there may be specified time periods, only in exceptional cases will those time periods be complied with, which can cause problems if a claim has also been made to an Employment Tribunal.

The procedure is intended to deal with all types of grievance including claims of unfair interpretation or implementation of personnel policies and conditions of service and in particular, actions that contravene equal opportunity policy including, discrimination on the grounds of race, ethnic origin, colour, nationality, gender, sexual orientation, religion or belief, marital or family status, trade union or staff association or support group activity, disability, age or any other unjustifiable requirement.

Discrimination and/or unfair practices are not always obvious, overt or intentional, but rather the result of tradition or culture where what is being done is not being questioned objectively.

All Forces should seek to resolve grievances promptly, fairly and sympathetically, and to redress the grievance and/or take remedial action as appropriate.

Finally remember that an Employment Tribunal is a difficult and traumatic undertaking for all involved.

The process is necessarily adversarial and both sides can become entrenched. Sometimes the other side set about defending their position by making personal and professional allegations that are deeply wounding.

Although this may not always be the case, only rarely does someone return to work feeling his or her position has been totally vindicated.

The fact that a claim has been registered with the Tribunal does not prevent action being taken under the grievance procedure. The Tribunal, if requested may "Stay Proceedings" pending the conclusion of any internal grievance or discipline procedure.

There is a flowchart of the Grievance/Fairness at Work/Employment Tribunal Procedure set out at Appendix 6.

STANDARD OF PROOF

It is important to remember that a grievance does not have to be proved to the criminal burden of proof "beyond all reasonable doubt" and that each case should be judged on the "balance of probabilities" which is the standard of proof used in Employment Tribunal proceedings.

REPRESENTATION

All parties to a grievance have the right at any stage to consult with or be accompanied by a representative of a Staff Association, Trade Union, colleague or friend.

The Learning the Lessons from Employment Tribunals strategy was developed by all the Police Service Stakeholders including ACPO, the Police Superintendents Association and the Police Federation. The strategy can be found on the Home Office website at http://police.homeoffice.gov.uk/news-and-publications/publication/human-resources/Learning_the_Lessons.pdf. The strategy recommends that duty time for staff association representatives should be made available to representatives involved in discrimination issues in the same way that it is currently available to officers acting as a friend under the Police Misconduct Regulations 1999 and in respect of the Health and Safety (Police) Regulations. Fairness and equality issues frequently span misconduct and Forces must create an open opportunity to address all matters.

The Home Office Circular 28/04 concerning the Fairness at Work procedure recommends that Chief Constables or the Commissioner of Police should consider sympathetically allowing reasonable duty time to staff association (PFEW, PSAEW and CPOSA) or trade union representatives assisting with Fairness at Work complaints and Employment Tribunal proceedings. In circumstances where an individually named respondent requests assistance in presenting their case, or is unable to present their case, or if for example they are on sick leave, it may be possible, with their agreement, for their representative to present their case on their behalf.

REPRESENTATIVE'S RECORDS

The completion of a Resolution Information Sheet (RIS) is an important way of recording the member's case. Additional information can be found at Appendix 6.

Diaries/Log Books are also ways of recording what has been said to you, what advice you have given and what action you or others have taken. You should keep a detailed note of all meetings and retain all correspondence. You should also consider suggesting to the person you are representing, that they should keep similar records of the continuing events of the case. It is a possibility that these records may be subject to disclosure if the case progresses to an Employment Tribunal or criminal proceedings.

APPLICATIONS FOR LEGAL ADVICE/REPRESENTATION

If the allegation against the member is one of unlawful discrimination, harassment or victimisation and the claimant intends to pursue the complaint at an Employment Tribunal, then it should be referred for legal advice and/or representation at the earliest opportunity.

The Police Federation have developed a Resolution Information Sheet (RIS) to assist representatives in the recording of a member's case. The RIS should be completed in all cases of grievance and ***must*** be completed when application is being made for legal advice/ representation.

Additional information on the completion of Resolution Information Sheets can be found at Appendix 6.

You will need to liaise closely with the solicitors and the member, ensuring that the member receives copies of any legal advice or correspondence relating to their case.

You have an important role to play, if funding is granted, in assisting the solicitor with the preparation of the case for the Hearing, especially in providing advice on internal police procedures and obtaining evidence from witnesses. For information in dealing with witnesses see Section 5.

The decision to provide legal advice and/or representation to a named Respondent is made by the Deputy General Secretary of the Joint Central Committee using the cost/merit/ benefit formula. In order to give each application full consideration it is important that the member and their representative provide the following information and documentation:

- a completed Resolution Information sheet (RIS) dealing with the allegations within the Application.
- a copy of the ET3 response form
- a copy of the ET1 claim form.
- copies of any documentation that is relevant to the Respondent's case.
- details of any witnesses who may support what the Respondent says.
- a completed form C2 (application for legal advice/representation) signed by the Joint Branch Board Secretary.

The legal representative will not go "on the record" with the Employment Tribunal indicating that they represent the Respondent until the decision to provide funding is made. This may result in you continuing to receive correspondence from both the Claimant and Tribunal, copies of which you should supply to both the Respondent and the legal representative.

The Cost/Merit/Benefit funding criteria can be found at Appendix 7.

RESPONSE FORM (ET3)

The Response Form (ET3) is the respondent's opportunity to identify on what grounds they intend to resist or defend the claim.

The most important issues to be aware of when approached by a member who has been named as a respondent and has been served with an ET3 response form are that:

- contact should be made with the legal representative of the Chief Constable to establish if they will be accepting responsibility for the representation of the officer at the Employment Tribunal or if they will be seeking to reply upon the Statutory Defence;
- you should check whether the claim is out of time (i.e. whether it has been registered with the Employment Tribunal within 3 calendar months less one day from the last act of discrimination of which the claimant is complaining); and
- the Response Form (ET3) must be completed by the respondent and returned to the Employment Tribunal within 28 days of it being received and must provide the required information.

A failure to complete and return the response form within 28 days has grave consequences, because of the sanctions imposed by the new Tribunal rules that came into force on 1st October 2004. First, the respondent will not be permitted to take any further part in the proceedings. This means that a respondent's evidence will count for nothing; although the claimant may still call the respondent as a witness, it is difficult to envisage many cases where he/she would want to do so. Second, the Tribunal may decide to issue a default judgment in favour of the claimant. Although experience to date suggests that will only be done rarely, it is always a risk.

You may apply for an extension of the 28-day time limit for returning a completed ET3 response form. The Tribunal rules state that this application must be made **within the 28-day period**. Any such application must explain why the respondent cannot comply with the 28-day time limit, because the Tribunal will only grant an extension if it considers it "just and equitable" to do so.

In fact, because of the way the Tribunal rules are drafted, it is sensible to apply for an extension of time as soon as possible and ideally about 10 days before the 28-day time limit is up. Where someone other than a legal representative (such as a Federation representative) makes the application for an extension of time, the Tribunal has a duty to write to the Claimant to give him/her 7 days from receiving the letter to object. If either the Claimant objects to the extension and/or Tribunals refuse to grant it, you should still then have time to lodge a response.

Respondents may apply for a "review" of the Tribunal's decision to issue a default judgment and/or the decision to prevent them taking part in the proceedings. A "review" hearing is a separate hearing when the Tribunal considers overturning a previous decision. Review applications rarely succeed. However, the EAT has recently confirmed that a Tribunal has power during a review hearing to accept an ET3 response that has been lodged outside the 28-day time limit. The respondent must still have a good reason for lodging the response late and the Tribunal must still be persuaded that it would be just and equitable to extend time.

It is not enough simply to get the ET3 response form in to the Tribunal on time. Under the Tribunal rules, the response must give all the required information. If it does not do so, the Tribunal will still (subject to any application for a "review") prevent a respondent from taking any further part in the proceedings until a proper response has been completed, and may even issue a default judgment. In some cases, there may still be time to submit a properly completed ET3 form before the 28 days is up, but that will not always be the case.

The Tribunal rules state that the ET3 must contain the "grounds" on which the respondent intends to resist the claim. It is generally believed that this spells the end of the short "holding responses" that respondents could previously lodge at Tribunal while the Joint Central Committee was asked to authorise the involvement of external solicitors.

Recent case law suggests that the obligation on a claimant to provide details of his/her claim is less onerous. If the claimant provides limited details of the nature of his/her claim against an individual respondent, respondents should give whatever information they are able to provide that is necessary to defend the claim. Later in the proceedings, there will be an opportunity to request additional information from the claimant in order to clarify the nature of the claim. It is important not to leave out of the form any ground upon which the claim is being defended. If a party wishes to add a new legal argument or new facts once the original form is submitted, it will need the leave of the Tribunal to do so, which may well not be granted.

Since **1 October 2005**, it has been compulsory to use the prescribed ET3 response form. **Do note use the old-style IT3.**

Presently, there are three options for completing the ET3 response form.

The first option is the simplest. The correct form can be collected from the Employment Tribunal office or other locations mentioned above, completed in hand and then submitted in the normal way. It is acceptable to submit photocopies of these forms and to submit continuation sheets. These forms can be hand-delivered, posted or faxed to the Tribunal. In the case of post, you must allow at least two posting days for the form to arrive (ignoring Sundays and Bank Holidays). In the case of fax, the transmission of the entire document must be completed (not begun) by the expiry of the relevant time period (which is midnight on the last day). It is always good practice to telephone the Tribunal within the relevant time period to check that the form has arrived and to make a note of this on your file.

The second option is to complete the form online. This can be done at this website address: http://www.employmenttribunals.gov.uk/login_et3.asp

An on-line response does not look like the hard copy of the form but instead involves providing a series of answers to various prompts and questions. There is a session time of 60 minutes available to complete the form and, if not completed during this time, data entered may be lost. However, it is possible to save an unfinished form and then return to finish it within 30 days; if you do not return within 30 days, the ETS will delete the saved form from its database.

When the response is submitted online, it is anticipated that it will usually arrive within an hour. If you have received no appropriate message of receipt within an hour, you should telephone the Tribunal to check that the form has arrived. ETS software will convert the

emailed form into something that looks like the hard copy of the form. This is the version of the form that is kept on the Tribunal's file and sent to the other party.

The third option is to download the correct form from the ETS website (there is a link on the main landing page at www.employmenttribunals.gov.uk). At the time of publication, the software for doing so is "Version 3.4" but it is regularly updated. You will need Adobe Reader version 6 or better to do this (this can be downloaded from the same website). The first time you do this, you will be guided through a series of prompts to install the relevant software on your computer, which will then appear as an icon on your desktop. The ET3 icon appears as "Employment Tribunal Service Response Forms". You will need to double-click on these icons to enter the programme.

Once in the programme, you have two further options:

(a) You can complete the form on-screen by typing in the relevant information.

(b) You can simply print off a blank version of the form and complete it by hand.

Individual officers responding to complaints of discrimination will need to complete sections 1 and 5 of the ET3 response form and also section 7 if they have a representative. The actual written response to a discrimination claim is inserted in box 5.2. Only the claimant's actual employer will be in a position to complete sections 2 and 3 and so you can safely strike these through if completing the form on behalf of an individual.

Sometimes response forms go missing. Always telephone the Tribunal within the 28-day time limit to check that the response form has arrived safely. Make a note on your file of the Tribunal clerk who gives you this confirmation. Also keep a copy of any fax transmission record. This information will be essential if ever there is a dispute over when and if the response form was properly lodged.

Should the officer be afforded the legal representation of the Chief Constable and the Force, then whilst the responsibility for the completion of the ET3 response form is still that of the named individual, the officer may be requested to provide a statement responding to the facts of the claim and to forward it together with the ET3 to the Force legal department for a joint response to be prepared on behalf of the Force. You should check that a response has been lodged within the time limit of 28 days.

In these circumstances, whilst you are no longer involved in the officer's representation at the Employment Tribunal, they may still require your advice and support throughout the proceedings and also during any internal Grievance/Fairness at Work or Misconduct investigations.

Don't forget that within the anti-discrimination legislation, the Claimant must have registered a complaint with the Tribunal within the time limit of three calendar months, less one day, from the date of the last alleged act of discrimination. Should the application be outside the time limit then it could mean that the Tribunal will not have jurisdiction to hear the Claimant's claim (although it may be possible to extend the time limit).

Different considerations apply where the claim of unlawful discrimination has been made by a civilian employee of the police service, such as a member of support staff. Under the

Dispute Resolution Regulations 2004 (which do not apply to claims presented by police officers), the claimant must raise his/her complaint with the employer, in writing and in compliance with the statutory grievance process, at least 28 days before making the claim to the Tribunal. This will automatically extend the time limit for making the claim by a further three months, to six months.

Further information on time limits can be found in Section 6.

THE STATUTORY DEFENCE

This section explains the statutory defence in discrimination claims, which is commonly misunderstood. It also provides guidance on when individuals should be specifically named as additional respondents to a claim of unlawful discrimination, i.e. additional to the chief officer.

Primary liability of chief officer

In an Employment Tribunal complaint of unlawful discrimination, a claimant will normally only name the employer as a respondent. This is because the employer will have "primary liability" for the discrimination. In the case of a police officer, the employer is the chief officer, namely the Chief Constable or the Commissioner.

In many cases of unlawful discrimination, the chief officer will be the only respondent named by the claimant on the ET1 form. This is common in cases of alleged unlawful discrimination that involve managerial decisions taken in the name of the chief officer. These will be the types of cases involving promotions, transfers, requests for part-time working, maternity leave, reasonable adjustments to accommodate a disability, decisions on special priority payments, and so on.

Secondary liability of individual

A claimant can name more than one respondent on the ET1 form, such as the person who actually did the unlawful act of discrimination for which the chief officer has primary liability. This is rarely appropriate in cases where the alleged discrimination relates to managerial decisions taken in the name of the chief officer. The naming of additional respondents tends to occur only in cases of harassment – and even then, only when it is appropriate to do so.

There is no theoretical limit on the number of individuals who can be named as additional respondents in this way. Such additional respondents are said to have "secondary liability" for the discrimination. Federation representatives may find themselves defending individual officers who have been named as respondents in this way.

However, great care must be taken when considering naming additional respondents over and above the chief officer. Further guidance is given on this below.

Constructive liability

The manner in which the anti-discrimination legislation attaches liability to both the chief officer (as employer) and the additional individual(s) is complex. In essence, the primary

liability of the chief officer arises because he/she is "deemed" to have carried out the discriminatory act himself/herself. This is known as "constructive liability". The secondary liability of the additional individual respondent then arises because he/she is "deemed" to have "aided" the chief officer.

The statutory defence

The chief officer may, however, defend the claim on the basis that he/she took "such steps as were reasonably practicable" to prevent the other person officer acting in a discriminatory way. This is known as the "statutory defence". Such steps may include:

- Establishing an equal opportunities policy, and ensuring that it is properly advertised, implemented and monitored

- proper equal opportunities training to staff (including the individual harasser) and ensuring proper follow-up monitoring and action

- Identifying harassment as a serious disciplinary matter

- Making sure previous allegations of harassment have been properly investigated and dealt with

- Complying with the relevant codes of practice

If the chief officer's legal representatives believe that the allegations of unlawful discrimination are false or unsupported, they may simply defend the claim on this basis. However, if they accept that the bullying or harassment took place as the claimant alleges (or that there is a risk the Tribunal will agree that it took place), they may recommend that the chief officer rely on the statutory defence.

If the chief officer relies successfully on the statutory defence, the Tribunal will not uphold the complaint of unlawful discrimination against the chief officer. However, the Tribunal may still uphold the complaint against the individual respondent. If any such award is made, it is likely to be in the hundreds, rather than thousands, of pounds.

If the chief officer relies unsuccessfully on the statutory defence, the Tribunal is likely to uphold the complaint against both the chief officer and any additional respondent named by the claimant. The Tribunal will then order that the chief officer pay compensation to the claimant. It may also order that the additional individual respondent pay compensation as well, but this is rare and, when such orders are made, they again tend to be in the hundreds, rather than thousands, of pounds. In certain rare circumstances, the Tribunal may order that all respondents are "jointly and severally" liable to pay all the compensation that has been awarded.

Naming individual respondents

The naming of individual respondents has both advantages and disadvantages.

Of the advantages, it offers the claimant some protection against the prospect of the chief officer successfully relying on the statutory defence. This is because, if the chief officer successfully relies on the statutory defence, there would at least remain a respondent

against whom a claimant could succeed and be awarded some limited compensation. It can also offer an opportunity to hold an individual officer accountable outside the scope of the police discipline system. Finally, it can "drive a wedge" between the individual officer and the Force, particularly because the Force must decide whether to "back up" the officer or rely on the statutory defence.

Of the disadvantages, it can significantly heighten the tension in a Tribunal dispute. In particular, a "scattergun" approach – the naming of multiple individual respondents – can make the Tribunal proceedings (and any internal Fairness at Work grievance associated with them) cumbersome. The process of "driving a wedge" can itself make it more difficult to achieve a local resolution.

Naming individual respondents can also have a significant bearing on the legal costs incurred by the Police Federation. Where the named individual is a member of a federated rank, the Federation (through the Joint Central Committee) may end up funding legal representation for him/her. This involves not simply the legal costs associated with funding separate solicitors, but also the additional costs faced by the claimant's solicitors in dealing with an extra set of representatives. If the Federation ends up funding both sides to a dispute between members, it can also be a diversion from its wider aim of putting pressure on the Force to improve its approach to equal opportunities generally.

If you are considering naming one or more individual respondents, you should bring this to the immediate attention of the relevant rank central committee, setting out your reasons for doing so. The Federation will adopt the same analysis of funding a claim against an individual respondent as it does in relation to funding a claim against a chief officer. In particular, it will ask its legal advisers to assess:

- Whether a claim against an individual respondent offers the claimant's only realistic prospect of recovering any compensation at all (which, in turn, depends upon whether the chief officer is likely to rely successfully on the statutory defence); and

- The cost-effectiveness of a claim against an individual respondent, in particular whether the possible compensation that may be awarded against that individual respondent justifies the additional costs borne by the Federation.

Specific legal advice will be necessary where the alleged acts of race discrimination pre-date 2nd April 2001 or the alleged acts of sex discrimination pre-date 19th July 2003; the legal framework that applied was different then. Bear in mind also that police officers did not become protected from discrimination on other grounds until different dates: sexual orientation (1st December 2003), religion/belief (2nd December 2003), disability (1st October 2004) and age (1st October 2006).

COMPLETION OF A HOLDING RESPONSE (ET3)

The ultimate responsibility for completion of the Response Form (ET3) is always that of the named individual respondent. In cases where the Chief Constable agrees to represent the individually names respondent, the Force legal department should complete and lodge the Response Form on his/her behalf. However, completion of the ET3 by the member is particularly important where the Chief Constable has declined to provide the officer with

legal representation. Remember that whilst you should provide every assistance to the member in completing their ET3 response, ideally they should complete and sign the form.

Should it be necessary for the representative to complete the ET3 response form on behalf of the member then it is important that you have clear and signed instructions from them.

The application for legal advice and/or representation should be made at the earliest opportunity but this should in no way delay responding to the claim.

The new Tribunal rules require respondents to indicate whether or not they intend to resist the claim and, if they do, to provide the grounds on which they intend to do so. It is generally believed that this spells the end of so-called "holding responses", whereby the ET3 response form was returned with a short sentence simply denying liability while legal advice was sought.

This does not mean that respondents must now provide detailed and lengthy responses; it simply means that respondents should provide enough information to make clear the grounds on which they intend to resist the claim. Most claims against individual respondents are likely to result from allegations of direct discrimination or harassment and, while no two cases are the same, some useful observations can still be made about what should go in box 5.2 of the ET3.

- A Tribunal may hold an individual respondent liable regardless of whether the chief officer is able successfully to rely on the statutory defence. But it is especially important for an individual respondent to set out full grounds for resisting the claim if the Force has a reasonable prospect of succeeding in the statutory defence.
- Some claims are defended on the basis that the relevant facts are simply not as alleged by the claimant. A response therefore offers an individual respondent the opportunity to identify in brief terms his or her different version of the facts. In that context, the most likely response is that the allegations are fabricated or exaggerated. An individual respondent lodging an ET3 on this basis should respond to each and every allegation made.
- Some claims are also defended on the basis that, even if the relevant facts are admitted, they do not constitute unlawful discrimination. In that context, typical defences may include that the individual respondent was equally offensive to all workers regardless of gender, ethnic minority etc, or that the claimant did not view the conduct as unwelcome.
- A very common defence is that the claimant has lodged the claim outside the three-month time limit and an individual respondent should raise this in box 5.2 if the facts support it. However, even if the respondent believes that the claim has been lodged out of time, it would be prudent to set out the basis for resisting the claim even if were within time. In addition, a member of police support staff complaining about discrimination/harassment by a police officer will have to comply with the Dispute Resolution Regulations 2004 by lodging a grievance and waiting 28 days for it to be resolved before commencing Tribunal proceedings. This will have the effect of doubling the time limit for bringing the Tribunal claim to six months.
- Sometimes it may be appropriate for an individual respondent to request that the Tribunal proceedings be put on hold (or "stayed") pending the outcome of internal proceedings, such as a grievance or disciplinary investigation. If so, that request should

be made in box 6.1 of the ET3 response form.

There may be an opportunity to amend the contents of the ET3 response form later in the proceedings, but Tribunals can reject such applications so it is wise to try to get the response correct from the outset.

Taken together, the tight 28-day limit for lodging the ET3 response form, the consequences of non-compliance and the stricter rules on the details required in box 5.2 all require swift action and legal advice should be sought whenever you are in doubt over what you should do.

EMPLOYMENT TRIBUNAL PROCEEDINGS PRIOR TO OBTAINING LEGAL REPRESENTATION

If the circumstances are such that prior to the request being made for legal advice/representation, the member is named as a Respondent together with the Chief Constable (and the Chief Constable seeks to invoke the Statutory Defence) and is requested to attend an Employment Tribunal Case Management Discussion (CMD) or Pre-Hearing Review (PHD), then you should liaise immediately with the Joint Branch Board Secretary or Equality Liaison Officer and attempts should be made to secure legal representation.

If legal representation is not immediately available then you should in the first instance write to the tribunal requesting an adjournment until legal representation can be obtained.

Should you be unsuccessful in your attempts to have the CMD or PHD adjourned then you may have to consider representing the member at the hearing yourself. the CMD may take place by telephone.

The proceedings are relatively simple and an oral submission asking for the proceedings to be adjourned for perhaps 6-8 weeks for legal advice and/or representation to be sought is well within the capabilities of any police officer who has given evidence during criminal court proceedings.

For further guidance on representing members at Employment Tribunal proceedings see Section 6.

STATUTORY QUESTIONNAIRES

Under the discrimination legislation, the claimant can ask questions of the respondent under a statutory questionnaire procedure.

A questionnaire can be used at any time prior to a claim being made to an Employment Tribunal, so long as it is served within three months of the act complained of (or six months where the claimant has lodged a grievance under the Dispute Resolution Regulations 2004). It may be used to support the claimant's allegation of unlawful discrimination within the internal grievance procedure, but should a claim of unlawful discrimination have been made to an Employment Tribunal then the questionnaire must be received by the respondent no later than 21 days after the claim has been registered with the Employment Tribunal. This is extended to 28 days where the questionnaire relates to disability discrimination.

The questionnaire gives the claimant the opportunity to find out if and why the respondent allegedly subjected them to less favourable treatment, as well as other information about the circumstances. It also gives the Respondent a valuable opportunity to explain, if possible, why the alleged treatment was not unlawful discrimination. Questionnaires must be answered carefully, because the claimant's representatives will exploit any inconsistencies between the answers given and the individual respondent's evidence at the Tribunal Hearing.

Strictly speaking, there is no legal obligation on a respondent to reply to a statutory questionnaire. A failure to do so can, however, have significant consequences for the individual respondent. For example, if a respondent fails to reply within a specified time period, the Tribunal can draw an adverse inference that the respondent has committed an act of unlawful discrimination. This can be crucial in those discrimination cases where there is no obvious evidence of discrimination and the outcome therefore depends on the willingness of a Tribunal to draw such an inference. The specified time limit is:

- For statutory questionnaires on sex, race (where the claim relates to racial, ethnic or national origin and/or harassment), disability, sexual orientation, religion and belief, and equal pay, the period of eight weeks from the date on which the questions were served on the respondent;

- For statutory questionnaires on race (where the claim relates only to colour and/or nationality), a "reasonable period".

The Tribunal can also draw inferences from an evasive or equivocal reply. However, the Tribunal will be far less likely to draw such an inference where the claimant's questions are onerous or go far beyond the issues that are relevant in the claim. For example, an individual respondent may simply not be in a position to answer questions that should properly be directed to the Force. In such a case, individual respondents should not simply refuse to answer such a question; instead, they should state that they are unable to answer and explain why (e.g. "this matter is outside the respondent's personal knowledge").

Additional information and examples of statutory questionnaires can be found in Appendix 5.

ADDITIONAL INFORMATION/DOCUMENTS

In many cases, it will be necessary for you to seek additional information or documents about the other side's case. This can include seeking answers to specific questions about the case or seeking copies of particularly relevant documents. These issues are dealt with further in Section 6 – Employment Tribunal proceedings.

NEGOTIATED SETTLEMENTS

There may be prospects of negotiating a settlement of the claim and the member may wish you to conduct such negotiations involving the claimant or their representative and the Force. These discussions, if conducted directly with the claimant, their representative or the Force's representative, should always be done on a "without prejudice" basis. (The label of "without prejudice", if applied properly, means that neither party can bring to the

Tribunal's attention the matters that the parties have discussed with a view to reaching settlement. For the label to apply properly, there must be a legal dispute between the parties that the discussions are supposed to resolve. There are certain exceptions to the "without prejudice" rule and, in case of doubt, you should seek legal advice.)

In some circumstances, if the member is named Respondent together with the Chief Constable, the Chief Constable may seek to settle the claims against all respondents "over the member's head". If this happens, the member may feel aggrieved that they did not get the opportunity to defend their actions at a Tribunal hearing. But they should reflect that this is always better than going to a Tribunal with an uncertain outcome.

Equally, it is possible that the claimant and the chief constable may settle the claim just between themselves, leaving the claimant free to pursue the claim against the individual respondent alone. The claimant may be separately advised to withdraw the claim against the individual respondent on the basis that it is not cost-effective to run the whole case in an attempt to get an award that, because it is made against an individual, is likely to be low. However, the claimant may prefer to continue with the claim if it is important to him/her to get a finding against the individual respondent personally.

ACAS

The Tribunal office will inform ACAS when a complaint is registered, and they will contact the named respondent(s) (or you, if you have indicated on the form that you are acting for the officer named as an individual respondent) and the applicant to offer their services in conciliating the complaint.

Both parties need to agree before ACAS can become involved. Many Employment Tribunal complaints have, since October 2004, been subject to "fixed period" conciliation. This does not apply to conciliation of discrimination disputes, so the services of ACAS should be available throughout the entire Tribunal proceedings.

INTER-RELATIONSHIP OF GRIEVANCE/FAIRNESS AT WORK PROCEDURES, EMPLOYMENT TRIBUNALS, POLICE CONDUCT AND OTHER PROCEDURES

Introduction
Most Forces should have introduced grievance or Fairness at Work procedures that generally follow guidance in Home Office Circular 28/04. You will need to be conversant with your own Force procedures and Home Office Circular 28/04. See Appendix 1

In any breach of equal opportunities both the internal grievance and police conduct procedures, together with Employment Tribunal and criminal proceedings can all be activated.

Formal grievance/Fairness at Work and police conduct procedures should in no way prevent officers seeking to resolve their differences personally and informally if they feel able to. Likewise common sense and the utilisation of supervisory and management skills may be quite sufficient to resolve differences and reach a satisfactory conclusion without the need to invoke the formal procedures.

Consequences of a Finding of Unlawful Discrimination, Harassment or Unfair Treatment

An act of unlawful discrimination, harassment or unfair treatment may result in any or all of the following consequences: -

- the claimant may raise the matter under the Force Grievance/Fairness at Work Procedure;
- the Respondent may be subject to a police conduct enquiry or proceedings;
- the Respondent may be charged with an offence of criminal conduct such as intentional harassment or assault;
- the claimant may bring a claim to an Employment Tribunal naming the Chief Constable and (perhaps) the accused officer as Respondents;
- the claimant themselves may be subject to a police conduct enquiry or proceedings;
- the formal involvement of the Independent Police Complaints Commission (IPCC) may be activated.

Employment Tribunals

There are two important distinctions between the grievance, or fairness at work procedure and Employment Tribunal proceedings.

The procedure can cover all disputes, not being limited, like Employment Tribunal proceedings, to certain causes of action (see Section 6 for further details of the extent of Tribunal jurisdiction).

Secondly, the procedure is designed to resolve disputes with no finding of wrongdoing, unlike the Employment Tribunal where there will be a finding, which clearly identifies "winners" and "losers".

This may work to the disadvantage of the accused respondent who may feel it is necessary, having regard to the circumstances of the claim of discrimination, to have a clear decision that they had done no wrong.

This will not be possible in the procedure where if a resolution is not reached both parties can end up feeling aggrieved.

The decision of an Employment Tribunal hearing is based on the balance of probabilities and the remedies in discrimination cases available are limited to:

- compensation and interest based on loss of any earnings, injury to feelings or injury and out of pocket losses;
- rarely, aggravated damages plus interest, in cases where the Respondent has behaved unreasonably;
- a declaration, in respect of the rights of the complainant;
- a recommendation that the Respondent take, within a certain period, action to reduce the act of discrimination covered by the complaint. Note that this is not an order. It may include, for example, a recommendation of training. It is most unlikely that it would extend to a recommendation that the perpetrator of the discrimination be disciplined.

You should be aware that Employment Tribunal proceedings can now make financial awards of potentially unlimited compensation against employers (Chief Constable or Commissioner) in discrimination claims.

If an officer has been named as a respondent together with the Force, then the individual officer may face the possibility of being held personally liable for awards of compensation arising from the act for which they were individually responsible.

However, in practice compensation orders against individual employees have, unlike compensation orders against employers, usually been in the hundreds not thousands of pounds.

It follows that wider remedies are only available in grievance or fairness at work proceedings. It is not possible for example, for the Employment Tribunal to order that the respondents, the Force, promote the complainant or give them the job they seek.

There is limited confidentiality in Employment Tribunal proceedings. The Employment Tribunal is a public hearing with only limited restrictions on the press to report the proceedings.

In some claims where there are allegations of sexual offences, applications can be made for a restricted reporting order but these restrictions only usually apply until the Tribunal decision is given. (For more details see Section 6).

It is important to remember that the claimant in Employment Tribunal proceedings is normally in control of the action even when the respondent considers that there is no case to answer.

The Tribunal is always obliged to hear and consider the application unless it is:

- outside the time limit (and there is no reason to justify extension of the time limit);
- outside the jurisdiction of the Tribunal.

There is usually nothing that the respondent can do to stop the Tribunal proceedings if the claimant is determined to continue with the action (aside from a possible threat of costs - see Section 6) and the respondent must therefore ensure that the action is defended properly.

However, a tribunal does have the power to strike out or amend a claim or response on various grounds, including that it is scandalous, vexatious or has no reasonable prospects of success. Cases may also be struck out for failure to comply with a direction or order or if the case has not been actively pursued.

It is a fact that most claims for discrimination, because of the difficulties in proving the allegations, are unsuccessful at the Employment Tribunal Hearing.

That is not to say that many have not been “settled” on the steps of the tribunal before the hearing. Where this happens the (Force) respondent may not accept liability but chooses to settle rather than allow the hearing to proceed. This may leave the individual named officer with a feeling that they were not able to defend themselves against the allegations

or “clear their name”.

There are many reasons why respondents and claimants would choose to “settle on the steps”, but it is important that any officer named as an individual respondent be made aware of the legal difficulties and that the hearing itself can take many days, if not weeks, and is most likely to be a very gruelling and unpleasant experience for all concerned.

Don’t forget that:

- **Claims by police officers under the discrimination legislation MUST be registered with the Tribunal on an ET1 claim form within the time limit of three calendar months less one-day from the date of the last act or omission of discrimination (unless the Tribunal decide that it would be just and equitable to extend the time limit). From October 2004, Police Support Staff have additional time to register complaints, but only if they put their grievance in writing to the Force 28 days before registering their application to the Employment Tribunal. They would then have an additional 3 months in which to register their complaint under the Dispute Resolution Regulations 2004. These do not apply to police officers.**

- **The ET3 response form is the Respondent’s opportunity to identify on what grounds they intend to resist or defend the application.**

- **A failure to complete and return it within 28 days will result in the respondent being denied the right to defend the claim made against them at the Employment Tribunal proceedings and may even result in a default judgement in favour of the claimant.**

Note: Representatives must be acutely aware of these time limits. Failure to advise may make them vulnerable to a negligence claim.

Police Misconduct Proceedings

A common tactic adopted by Forces is that if there are police misconduct proceedings pending against an officer, who may be a named respondent, a Force will seek 'a stay' in the Employment Tribunal proceedings.

Such an application for a stay could be resisted by the claimant on the basis that what happens in police misconduct proceedings (which is at the discretion of the Force, the likely respondent in the Employment proceedings) should not be allowed to delay the claimant's right to pursue proceedings in the Employment Tribunal.

Such an argument may not be successful in the Employment Tribunal initially, but if police misconduct proceedings have been ongoing for a considerable period then the Employment Tribunal will be increasingly willing for the Employment Tribunal proceedings to be reactivated.

It is always preferable for the internal proceedings to be concluded and the Employment Appeal Tribunals have accepted in law that it is usually the proper process to follow, unless to do so would result in unacceptable delay.

The benefits of the internal proceedings taking precedence are:

- all the documents, which come into existence as a result of the internal investigation save for the Investigating Officers Report, are documents that are discloseable and therefore will come into the possession of the respondent. This enables the respondent to have sight of witness statements and gain an insight into the case against them.
- If the Employment Tribunal hearing took place first a respondent could feel restricted in what they say in their defence knowing that the evidence may then be used against them within internal proceedings, given that evidence given at a Tribunal hearing is on oath.

The burden of proof in both internal misconduct proceedings and Employment Tribunal proceedings is the 'balance of probabilities'.
Police misconduct hearings and grievance/Fairness at Work procedures are not held in publice, unlike Employment Tribunal hearings. However, as with grievance, in reality, participants in police conduct proceedings should be made aware that the evidence they give, for example, in statements, can be disclosed at a later date in Employment Tribunal proceedings.

Recent cases have confirmed that public interest immunity, which had protected evidence in police misconduct proceedings from being disclosed in other proceedings, is very limited and is likely only to cover, where appropriate, in respect of the Investigating Officer's report. Even that report can on occasions be ordered by an Employment Tribunal to be disclosed to a complainant.

When police misconduct proceedings have been instigated, advice should be given to the accused that an inference can be drawn if they fail to answer questions in relation to the allegation.

Similarly in Employment Tribunal proceedings the Accused respondent will be expected to give evidence of the discriminatory treatment they allegedly committed. Silence may therefore not be a sensible option during any Police misconduct interview.

Criminal Proceedings

The burden of proof in any criminal proceedings is “beyond all reasonable doubt” unlike Employment Tribunal proceedings where it is the 'balance of probabilities'.

It is therefore possible that a claimant will be successful in the Employment Tribunal proceedings but that the accused respondent will be successful in defending the criminal proceedings. The Employment Tribunal is likely to be very reluctant to hold the substantial hearing of a complaint, which covers the same issues in criminal proceedings, until the criminal trial has been completed.

Complaints

Note the possible involvement of the Independent Police Complaints Commission (IPCC) in any breach of Equal Opportunities policy.

The role of the Force in police misconduct proceedings, following an investigation supervised by the IPCC, may lead to allegations of discrimination brought by the officer against the Force and it is therefore possible to see the interaction of the IPCC, police misconduct proceedings, Employment Tribunal, criminal proceedings and grievance procedure all in the same case.

COMPARISON OF GRIEVANCE, POLICE MISCONDUCT, EMPLOYMENT TRIBUNAL AND CRIMINAL PROCEDURES

	Grievance/F@W Procedures	Misconduct Procedures	Employment Tribunal	Criminal Proceedings
Purpose	Resolve	Apportion blame/punish	Apportion blame/punish	Apportion blame/punish
Scope	Wide range of personnel, management issues	Offences defined within the police/civil misconduct procedures	Unlawful discrimination	Offences against Statute and Common Law
Level of proof	Balance of probabilities	Balance of probabilities	Balance of probabilities	Beyond reasonable doubt
When can it be instigated	Any time	At any time (Includes during grievance procedure)	Within 3 months less 1 day of the incident in relation to discrimination and /or within six months of the termination of service in equal pay cases.	At any time (subject to any statutory limitations)
Who can deal	Line Supervisor, referable in accordance with the stages of the procedure	(Police) Complaints Department, or (Civilian) Area/Department and Personnel Department	N/A	Normal procedures may apply or complaints and conduct procedures
Timing	Time limits in accordance with the stages of referral	National Guidelines on Timing	No limit providing case is recorded as above	No statute of limitation for Race Relation or Sex Discrimination Acts
Who instigates	Claimant	Deputy Chief Constable via complaints dept. (Following referral from Supervisor or complainant)	Claimant	Claimant/CPS
Right of silence	Option	Inference drawn	Inference drawn	Inference drawn
Outcome	Resolve or ends at conclusion of procedure	Finding	Finding - (compensation unlimited)	Finding

SECTION 5 - REPRESENTATION OF WITNESSES

INTRODUCTION

The most important person is always the member you are representing, which in this section will be an officer identified as a witness in any:

- Internal Grievance/Fairness at Work Procedure
- Internal Misconduct investigation or hearing
- Employment Tribunal proceedings
- Criminal investigation or trial

You are there to represent the best interests of the officer, and should act in accordance with their informed decisions.

Listen carefully to what is being said, be sympathetic and supportive whilst considering the information or evidence objectively and avoid taking sides or pronouncing judgment on any of the parties involved.

Remember that support and advice is required not personal opinion.

Explain what options are available, it is important at this stage to ascertain the needs and expectations of the individual.

Explain clearly what support/guidance you are able to provide.

You should consider providing support during any meetings, interviews or hearings of any Grievance/Fairness at Work Procedure, Employment Tribunal or internal Misconduct or Criminal investigation that they are required to attend.

It is difficult to explain the anxiety and stress a witness may face when giving evidence in any proceedings in which a colleague has either raised a complaint or is the subject of such complaint but it is important that they are made aware of this issue.

APPEARING AS A WITNESS

Officers requested to attend any Criminal, internal Grievance/Fairness at Work, Misconduct investigations or Employment Tribunal hearings to give evidence on behalf of the Force are classed as professional witnesses and have an obligation to provide evidence of their involvement in the matters and should be allowed duty time facilities.

If officers are requested to attend to give evidence against the Force at an Employment Tribunal hearing by a colleague, who is the Claimant or a named individual Respondent, this would not be treated in the same way by the Force. The Force would be likely in these circumstances to refuse duty time facilities for attendance. Therefore, to facilitate the officer's attendance, consideration should be given to requesting the Claimant or named Respondent to obtain a Witness Order, thereby ensuring that the officer is compelled to attend.

OBTAINING WITNESSES TO SUPPORT A CLAIMANT'S OR RESPONDENT'S CASE

In the majority of cases in the Employment Tribunal, success or failure often depends upon the Claimant's or Respondent's own oral evidence and the impression that they give at the Tribunal hearing.

However, Tribunal cases are greatly assisted if there are other witnesses who are prepared to give supportive evidence.

It may be that some of your member's colleagues witnessed the incidents in dispute, or alternatively, following the incidents your member may have discussed them with their colleagues.

Corroborative evidence is important whether you are the Claimant or the Respondent.

On the whole, potential witnesses do not volunteer information unless approached.

It is therefore important as a Federation Representative to consider when witnesses should be approached, how they should be approached, what questions should be put to a witness, and what approach should be taken with unwilling witnesses and/or witnesses who give unhelpful evidence.

Remember that witnesses are also protected from victimisation within the legislation. Additional information can be found in Section 2.

When to approach a witness

The exact timing may vary from case to case. However, generally it is more time saving and helpful to discuss potential witnesses with your member at an early stage so that you can find out as soon as possible what evidence may be available.

How to approach a witness

It is often the case that potential witnesses are less intimidated and more forthcoming when approached by Federation Representatives rather than legal advisers. This is because as Federation Representatives you have the advantage in that you can make a more informal approach to clarify whether or not a witness can assist, and if so, what evidence they can give.

The manner in which you will contact a potential witness will depend upon the circumstances and your relationship or your member's relationship with the witness.

Approaches can take the form of a phone call, letter or physical approach. If your member knows the potential witness then they may be able to advise on the most appropriate approach. Alternatively, your member may make the initial approach and with the witnesses' agreement, pass on their contact details to you.

Note: Witnesses also have a right to Federation Representation and you should consider liaising with and perhaps arranging for the representative of the witness to be present when you speak with them.

What questions should be put to a potential witness

Generally, your member should be able to identify evidence which a potential witness may be able to give.

Remember that confidentiality should exist between a Representative and the member they are assisting and it is important to obtain a member's consent as to exactly what information can be released to a potential witness.

In most cases it is advisable only to give as much information as is absolutely necessary, so that you can judge whether the evidence of the potential witness is either helpful to your member and/or supportive of the other party's position. Also there is always a possibility that the witness may be approached by another party and therefore, there is a risk that any information given by you could be conveyed to the other side by the witness.

It is important that a potential witness understands who you are representing and that they may be called to give evidence at a Tribunal on your member's behalf.

Unhelpful evidence

If the evidence of the witness is unhelpful then you should ask your member for their comments. This is because there is no ownership of witnesses and there is always the possibility that the other side could call the witness to give evidence that is detrimental to your member's case.

Unwilling witnesses

Generally, witnesses are not overly enthusiastic to be called to give evidence at a hearing. If witnesses are unwilling to give evidence then there is always the option of obtaining a witness order from the Tribunal.

A witness order may also be helpful in cases where witnesses are prepared to give evidence provided they are ordered so that the Force understands that they had no choice but to attend. This is often the case even in circumstances where the witness is keen to give evidence, but as a serving officer, wishes to be seen being compelled to attend the Tribunal.

However, a witness order should be treated with caution in cases where a potential witness is clearly deeply unhappy at the thought of attending a hearing and if compelled so to do may be a hostile witness. Their evidence would be deemed part of (and thereby undermine) your member's case.

A witness order is also risky in cases where a potential witness tells you "off the record" that they are willing to assist but do not want to give a written statement. In these cases, a witness order is a possibility but there is a danger because you do not know precisely what that witness will say.

Witness statements

They should always be signed and dated by the witness and ideally, they should also be typed and contain a chronological narrative. For further information see Section 6.

Legal Representatives

Should an officer you are representing be approached by a legal representative as a potential witness to provide evidence for a member at any civil or criminal proceedings, then you should be aware of individual Force Orders that may require the officer to inform the legal department of the force and also give consideration to accompanying the officer to any interview or meeting.

FEDERATION REPRESENTATIVES – WITNESS AND DISCLOSURE

It is always possible that as a Federation representative you may be required to give evidence at an Employment Tribunal Hearing.

This may be as a witness for the claimant, respondent or alternatively, as a witness for the Respondent Force (in which case, it is likely that the Force would have applied for a witness order in relation to your attendance).

It may be that your evidence at the Tribunal is relevant because you were present at internal meetings (for example, at meetings which took place within the context of the grievance procedure), and there is a dispute as to what was said at those meetings.

Alternatively, it may be that the basis of your advice to the member is relevant when an application to hear a claim out of time is concerned.

It would be a relevant consideration for the Tribunal in deciding to exercise its discretion to hear the claim out of time, whether or not you advised your member on the time limits and if so, when this took place.

Because there is always a possibility that you may be required to give evidence, it is therefore crucial that you keep a detailed record of your involvement in your member's case.

Similarly if you gave advice to your member in relation to the time limits and/or advised on the options available to your member, then a brief note of this discussion should be recorded (preferably by a letter to your member or alternatively, a note in your own diary). You should not rule out the possibility that any documents that you do possess within the context of preparing your member's claim, may need to be disclosed to the other side. It is likely that the Tribunal would ultimately decide this based on whether or not the documents are relevant and/or necessary to the proceedings if there is a dispute and/or protected by confidentiality.

A cautious approach should be adopted. That is, you should assume that there is always a possibility that any document produced by you may be put before the Tribunal.

Note: You should consider seeking legal advice if a request is made for disclosure of conversation details or documentation relating to your member's case.

SECTION 6 - EMPLOYMENT TRIBUNALS

INTRODUCTION

Employment Tribunals were first set up in 1965 with the intention that they would be informal free "industrial courts" before which parties could obtain a cheap and speedy solution to their workplace disputes without the need for legal or formal representation. Although Tribunals do still operate with less formality than the normal civil and criminal courts, there has been a greatly increased degree of legalism in recent years. The law is now much more complex and case law plays a substantial part in the interpretation of the various statutes applied by the Employment Tribunals, and so increasingly solicitors and barristers are now instructed on behalf of both employers and employees.

In recent years the workload of the Tribunals has increased considerably. This reflects both their increased jurisdiction (which now extends to over 80 statutory provisions) and a greater readiness of employees to use the system.

The procedure can become very confrontational. Both sides defend their position and try to undermine and embarrass the other side. This can have a devastating effect on individuals caught up in the process. The trauma of appearing at a Tribunal cannot be over emphasised. No party ever finds it an easy experience. Inevitably the process can result in the complete breakdown of the employee/employer relationship with people leaving the Service before their time, in circumstances where they are disillusioned and disappointed. It is always preferable to resolve differences before they get to a Tribunal.

Tribunals are subject to a duty to comply with the so-called "overriding objective" to deal with cases "justly". In practice, this means that they must ensure that the parties are on an equal footing, seek to save expense, deal with the case in ways that are proportionate to the complexity or importance of the issues, and handle the case "expeditiously and fairly". However, everyone connected with Employment Tribunals recognise that it is better to resolve a workplace dispute amicably rather than judicially. The government has introduced a range of legislative options that facilitate settlement of a case before a Tribunal hearing. Although not all of these measures apply to police officers, everyone can benefit from the principle of early resolution. At every stage in the procedure there are opportunities to resolve. The importance of early resolution is a key recommendation of the Learning the Lessons toolkit.

It is incumbent on both sides to examine the range of outcomes that may follow Tribunal litigation and to make decisions that recognise the possibility that the Tribunal may not give them exactly what they want.

ADMINISTRATION

There are a number of general points to be noted regarding the administration of Employment Tribunals:

- The Lord Chancellor appoints a President of the Employment Tribunals in England and Wales, who is responsible for the administration of justice by tribunals and chairmen in England and Wales. The term "Chairman" is a statutory label that is applied regardless of whether the postholder is a man or a woman. As part of the reform programme, it seems likely that Tribunal Chairmen will be renamed "Employment Judges".

- The President has the power to issue national "practice directions" concerning how Tribunals should interpret and apply their rules of procedure. As one of these initiatives, he has recently set up a "pilot" for the mediation of certain types of claim (such as public sector discrimination claims where the employment relationship is still continuing). The President also has power to set up specialist panels of Chairmen and lay members to deal with proceedings in which specialist knowledge is beneficial (e.g. equal pay).

- Employment Tribunals in England and Wales are grouped into 11 regions, each directed by a Regional Chairman. This has led in practice to some variations in the way in which different regions interpret and apply the new rules, particularly on issues such as case management.

- Each region has a regional secretary, who is responsible for clerical rather than judicial administration. All correspondence in relation to cases is normally addressed to the Regional Secretary.

- The government has created a unified Tribunal service, covering other Tribunals (such as immigration appeals and social security appeals) as well as the Employment Tribunals. The Employment Tribunal Service transferred to the new service in April 2006. Like all other courts, Employment Tribunals now come under the control and direction of the Department for Constitutional Affairs (previously called the Lord Chancellor's Department).

CONSTITUTION

The Employment Tribunals Act 1996 is the main statutory provision governing the constitution and powers of Employment Tribunals. The Tribunal's rules of procedure are revised from time to time and the current rules are set out in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004. These rules came into force on 1st October 2004 and apply to all hearings.

The Employment Tribunal is sometimes known as the "industrial jury" because most cases are heard by three members rather than a judge sitting alone. Each member is drawn from one of the following panels:

- The panel of salaried and fee paid Chairmen. Chairmen are initially appointed by the Lord Chancellor in open competition and must have at least a seven-year legal qualification as a solicitor or barrister. Most Chairmen sit on a "fee paid" basis, meaning that they continue to practice as solicitors or barristers but sit in a judicial capacity for about six weeks a year. Some Chairmen are salaried (meaning that it is their only job); they are appointed from the ranks of fee-paid Chairmen and will do it on a part time or full time basis. Under current arrangements, Regional Chairmen will

not select fee-paid Chairmen to hear a discrimination case until they have sat on at least 40 cases and undergone specialist training.

- The panels of lay members (sometimes called "wing members") appointed in open competition by the Secretary of State for Trade and Industry (soon to be the Department of Constitutional Affairs) after consultation with organisations representative of the interests of employers and employees respectively.

A full Tribunal consists of these three members, each with an equal vote. The lay members can take an active part in the hearing and to that end may ask questions of the witnesses and even outvote the Chairman. In some circumstances, where both parties have consented, it may be possible to conduct a Tribunal hearing with only one lay member present.

The Chairman may sit alone without lay members to hold case management discussions and pre-hearing reviews (see below).

Article 6 of the European Convention of Human Rights requires civil rights and obligations to be determined by an independent and impartial tribunal. There are two elements to "impartiality". First, Employment Tribunals are required to be free from subjective bias, such as personal prejudice. Secondly, they are required to be free from objective bias; this means that, even if they are not actually prejudiced, they must still not act in such a way to lead external observers to doubt their impartiality.

THE TRIBUNAL OFFICE

At the Tribunal offices, the parties must "sign in" to confirm attendance. Claimants and respondents wait apart from each other in separate waiting rooms. Some Tribunals provide small conference rooms for more private meetings and discussions, either with legal representatives or the other side. Tribunals do not provide refreshments nor do they provide office facilities such as photocopying.

Tribunal hearings usually start at 10am, take an hour for lunch at around 1pm, and rarely go on beyond 4.30pm each day. Usually a number of cases may be listed to start at 10am. Like hospital appointments, unfortunately, parties must be prepared to wait for a few minutes or (sometimes) hours to be called in for hearing. Ultimately, though, the exact timings of hearings are up to the individual Chairman concerned.

Normally a single clerk is allocated to each case and is responsible for checking that everyone is present and that all documents and statements are available in advance to the Tribunal and the other party. The clerk will normally be happy to answer any questions about the format of proceedings.

Tribunal hearings usually take place in rooms about the size of a classroom. The three members of the Tribunal sit on a slightly raised platform with the Chairman in the middle. The claimant and the respondent or their representatives are seated at separate tables facing the Tribunal. It is customary for the respondent's representative to sit on the left-hand table as they face the Tribunal. There is a separate table to one side of the room where witnesses sit to give evidence.

The parties and their representatives, and all the others in the Tribunal, are expected to stand when the Tribunal Chairmen and wing members enter and exit the hearing room. All comments and submissions are addressed to the Chairmen, who should be permitted sufficient time to write down what is being said. Male Chairmen are addressed as "Sir" and female Chairmen are addressed as "Madam"; the wing members are rarely addressed directly.

Witnesses are normally allowed to be present throughout the hearing usually seated behind the representatives, regardless of whether or not they have given their evidence. The public and press sit at the back. Only the parties' representatives (or, if unrepresented, the parties themselves) and the person in the witness stand may address the Chairman and the wing members.

JURISDICTION

Employment Tribunals have a very extensive jurisdiction to hear many types of dispute arising in the workplace. However, unlike police support staff, police officers are not "employees" under the terms of general employment law. This means that many of the usual claims that employees present in Tribunals – unauthorised deductions from wages, unfair dismissals, redundancy payment claims – do not apply to police officers.

Police officers can take action at an Employment Tribunal only under the following statutes:

- Disability Discrimination Act 1995
- Employment Equality (Sexual Orientation) Regulations 2003
- Employment Equality (Religion and Belief) Regulations 2003
- Employment Equality (Age) Regulations 2006
- Employment Rights Act 1996 (insofar as claims relating to health and safety and "whistleblowing" are concerned)
- Equal Pay Act 1970
- Part Time Worker (Prevention of Less Favourable Treatment) Regs 2000
- Race Relations Act 1976
- Sex Discrimination Act 1975
- Working Time Regulations 1998

THE BURDEN OF PROOF IN DISCRIMINATION CASES

The standard of proof in complaints of unlawful discrimination presented to an Employment Tribunal is the same: each case is judged on the "balance of probabilities". But who has to prove what? Parliament recognised that many discrimination claims were unsuccessful and so, in a series of changes between 2001 and 2003, it amended each of the anti-discrimination strands to reflect a new burden of proof that would shift to the employer to demonstrate that it had not discriminated against a claimant.

Some Tribunals struggled to apply the new burden of proof properly, leading to a number of appeals that culminated in the decision of the Court of Appeal in Igen and others v. Wong [2005] IRLR 258. The Court clarified the burden of proof in a series of guidelines for use by Tribunals in direct discrimination cases.

The following guidelines are particularly useful for Representatives involved in discrimination cases, because points 8 and 13 indicate that inferences may be drawn from any failure to comply with a relevant code of practice (i.e. those produced by the CRE, EOC, DRC and ACAS).

1. It is for the claimant who complains of unlawful discrimination to prove on the balance of probabilities facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of unlawful discrimination. These are referred to below as "such facts".

2. If the claimant does not prove such facts he or she will fail.

3. It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases, the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in".

4. In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the Tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the Tribunal.

5. It is important to note the word "could" in paragraph 1. At this stage, the Tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage, a Tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

6. In considering what inferences or conclusion can be drawn from the primary facts, the Tribunal must assume that there is no adequate explanation for those facts.

7. These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw from an evasive or equivocal reply to a statutory questionnaire or similar questions.

8. Likewise, the Tribunal must determine whether any provision of any relevant code of practice is relevant and, if so, take it into account in determining such facts. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.

9. Where the claimant has proved facts from which the conclusions could be drawn that the respondent has treated the claimant less favourably on a ground prohibited by law (sex, race, etc), then the burden of proof moves to the respondent.

10. It is then for the respondent to prove that he did not commit (or, as the case may be, is not to be treated as constructively liable for) that act.

11. To discharge that burden, it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the ground prohibited by law, since "no discrimination whatsoever" is compatible with the Burden of Proof

Directive.

12. That requires a Tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that the prohibited ground was not a ground for the treatment in question.

13. Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a Tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the Tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.

PART 1 – EMPLOYMENT TRIBUNAL PROCEEDINGS

This section explores some key principles of Employment Tribunal proceedings.

TIME LIMITS

Like all legal claims, Employment Tribunal claims must be brought within specified time limits. The length of the time limit depends on the nature of the claim. For example, claims of unlawful discrimination in the workplace must be lodged within three months of the act or omission complained about. In this context, "within three months" actually means three complete calendar months less one day; so, if the act complained of occurred on 12th February 2006, the claim to the Tribunal must be lodged by 11th May 2006. The relevant Acts should be referred to for the time limit in each case.

A failure to lodge the claim in time could mean that the Tribunal would not have jurisdiction to hear the claim. Such cases might require a pre-hearing review to determine the Tribunal's jurisdiction (see below).

In discrimination law, an act extending over a period of time is treated as having been done at the end of that period. For example, a campaign of sexual harassment over two years leading up to 12th February 2006 is treated as having all been carried out on 12th February 2006. In such a case, a claimant would still be "within time" to complain about sexual harassment occurring in 2003 and 2004 when lodging a claim on 11th May 2006. However, this argument only works where the sexual harassment is sufficiently regular and unbroken as to amount to a "continuous" act. If the harassment is intermittent, it may be more difficult to argue that it is a continuous act, with the effect that a claimant becomes "out of time" for complaining about the earlier harassment. In such cases, a claimant is left only being able to argue that a single recent act amounted to harassment. The earlier experiences will have some relevance, but only as background evidence and this may influence how much time the Tribunal is prepared to spend listening to them.

It is usually easier to argue that an act of unlawful discrimination is a continuous act when it results from the consistent application of a policy (for example, relating to part-time or flexible working) over a period of time. However, care must still be taken to apply within three months

A Tribunal has the power to extend the three-month deadline where it considers it "just and equitable" to do so. It is easier to argue for an extension of the deadline where a claimant was too ill to seek advice, but much more difficult where a claimant has sought advice on an earlier occasion and then decided not to claim until a later time. Legal advice should be sought in cases where the claim has been lodged out of time.

As described elsewhere in this handbook, the Dispute Resolution Regulations 2004 require a claimant to make an internal written grievance at least 28 days before starting legal proceedings in an Employment Tribunal. The act of first raising a grievance with the employer (or lodging prematurely with the Tribunal) has the effect of doubling the claimant's time limit to six months. However, this does not apply to police officers, who must still claim within three months. The PAB has agreed that the law should be changed to enable police officers to benefit from a similar extension of the time limit in response to an internal grievance, but no date has yet been set for any such change.

Key Points in Calculating Application Time

There are several key principles to remember when calculating the time for making an application to the Employment Tribunal. These are as follows:

- where time is specified to run from a particular date, "date" means the period of 24 hours from midnight to midnight. Fractions or parts of a day are not relevant.
- when a complaint has to be presented within a particular period beginning with a particular date, that date is to be included in the calculation.
- when a complaint has to be presented "from", "after" or "of" a particular date, that date is to be excluded from the calculation.
- reference to a month is a calendar month.

THE PLEADINGS

The most important documents in any legal claim are the claim itself and the defence to that claim, together called "the pleadings". In the Employment Tribunal, the pleadings comprise the contents of the claim form (ET1) and response form (ET3) and, more accurately, those parts of the forms setting out the basis of the claim and the grounds on which it is resisted.

The ET1 claim form

Proceedings in an Employment Tribunal are instituted by presenting a claim form (known as an ET1) to the appropriate Tribunal office. The official form and the Employment Tribunals website contain details of how to identify the correct office, which depends on the postcode of the claimant's place of work.

Since 1st October 2005, a claimant has been required to use the prescribed version of the form, which is at Appendix 4. Further guidance on completing the form is provided in the section dealing with the representation of claimants.

Once the Tribunal has received the claim form, the regional secretary (or clerical staff on his/her behalf) will consider whether or not it should be accepted. In most cases, the secretary will be checking whether the claimant has complied with the Dispute Resolution Regulations 2004 by raising a prior internal grievance with the employer. If it appears not, the secretary will return the claim form to the claimant. That is why it is important to make clear on the claim form that the Dispute Resolution Regulations 2004 do not apply to police officers. Specimen wording on this is included in the section dealing with the representation of claimants.

If the secretary accepts the claim form as valid, he will send a copy of it to each of the respondents together with a specimen ET3 response form, and tell them the date by which the ET3 response form must be submitted. It is therefore not the claimant's responsibility to send the claim form to the respondent. The secretary will allocate a case number to the claim and this should be quoted in all correspondence with the Tribunal. In due course, the claimant (or his/her legal representatives) will receive correspondence from ACAS informing them that their services of conciliation are available. As stated elsewhere, many ACAS services are now limited to fixed periods of conciliation, but this does not apply to discrimination claims.

One of the specific duties of the secretary is to maintain a register that can be open to inspection by the public. Under the previous Tribunal rules, the register needed to include the names and addresses of claimants and respondents and general information on the type of claim being presented. This led to organisations (sometimes called "claims farmers") writing unsolicited letters to parties offering representation, usually on a "no win no fee" basis. Consequently, from 1st October 2004, the register need now contain only copies of judgments.

Sometimes the Tribunal will list the case for a pre-hearing review if it considers that there is a doubt over its jurisdiction to hear the claim (see below).

The ET3 response form

In order to defend the claim, the respondent must complete and return a response form within 28 days of receiving a copy of the claim form.

From 1st October 2005, a respondent will have to use the prescribed version of the form, which is at Appendix 4. It is advisable to use the form before that date as well, as it has been designed to ensure that all relevant information is given to the Tribunal. Further guidance on completing the form, and requesting an extension of the 28-day period for lodging the ET3 response form, is provided in the section dealing with the representation of respondents. That section also explains the consequences of failing to file a proper response form, or of failing to file a form at all, within the 28-day period.

STATUTORY QUESTIONNAIRES

The discrimination legislation enables a prospective claimant to ask questions about the circumstances of their treatment by the employer on a statutory questionnaire form. This avenue is not available in any other Employment Tribunal litigation.

There are no prescribed questions, but the questions must be reasonable, both in scope and number, and should address the circumstances of the complaint. Statutory questionnaires must be sent within 3 months of the act complained of; however, where an ET1 claim form has been lodged with the Tribunal, the questionnaire must be served within 21 days thereafter (28 days in disability discrimination cases). This date is often overlooked by claimants with the effect that the valuable opportunity to serve a questionnaire has been lost. In such cases, claimants must ask the Tribunal for permission to serve the questionnaire out of time, and such permission is not always granted.

The statutory questionnaire and the reply form are designed to assist both the claimant and the respondent to identify information that is relevant to the complaint. It is not obligatory for a claimant to serve a questionnaire, and there will still be opportunities throughout the case to ask questions of a respondent. Strictly speaking, there is no legal obligation on a respondent to reply to a statutory questionnaire. A failure to do so can, however, have significant consequences. For example, if a respondent fails to reply within a specified time period, the Tribunal can draw an adverse inference that the respondent has committed an act of unlawful discrimination. This can be crucial in those discrimination cases where there is no obvious evidence of discrimination and the outcome therefore depends on the willingness of a Tribunal to draw such an inference. The specified time limit is:

- For statutory questionnaires on sex, race (where the claim relates to racial, ethnic or

national origin and/or harassment), disability, sexual orientation, religion and belief, and equal pay, the period of eight weeks from the date on which the questions were served on the respondent;

- For statutory questionnaires on race (where the claim relates only to colour and/or nationality), a "reasonable period".

THE TRIBUNAL'S CASE MANAGEMENT POWERS

The Tribunal operates under its own detailed Rules of Procedure. This handbook deals elsewhere with the approach of the rules to matters such as starting a claim and responding to a claim. However, the Rules of Procedure have recently been amended to give Tribunals enhanced powers to control and prepare cases during the numerous months between the point at which a claim is started and the point at which it finally reaches a Hearing. This process is known as "case management". These powers may be exercised by a Chairman acting on his/her own initiative or at the request of the parties.

The purpose of these case management powers, broadly speaking, is to allow the Tribunal to direct both parties in their preparation of the case, having regard to the overriding objective mentioned above. In essence, this means identifying and clarifying the issues in dispute and then ensuring that the case remains focused on those issues right through to the Hearing. The idea is that the parties should then be able to approach the hearing on an equal footing, without being faced with "surprise evidence", and with an appropriate length of time allocated for the case to be heard.

Examples or case management powers are as follows.

- A Chairman may direct the manner in which proceedings are to be conducted. This may include requirements to take "statements as read". A witness whose statement is "taken as read" must assume that its contents have been properly digested by the Tribunal and is expected immediately to face cross-examination. It may also include an order to limit the bundle of documents in a hearing to a certain number of pages.

- A Chairman may require that a party provide "additional information" about its claim. In the legalese of the old Tribunal rules, this used to be known as "further particulars". A party should only be directed to provide additional information where it is "necessary for the just disposal of the proceedings". In practice, this means that a party is required to have sufficient information to understand the case it has to meet and prepare. It should not be used as a means of cross-examining the other party before the hearing.

- A Chairman may also require that a party provide written answers to questions. Questions may be asked with a view to narrowing the issues in the dispute between the parties but, again, may not be used as a means of cross-examining the other party before the hearing. Tribunals are increasingly reluctant to allow the use of such questions to grind down the opposition.

- A Chairman may require the attendance of a person to give evidence, known as a "witness order". When deciding whether or not to make a witness order, the Chairman must be satisfied that the witness has relevant evidence and would be unwilling to attend unless compelled to do so. The person attending under a witness order is the witness of

the party who called them and so cannot be cross-examined by them.

• A Chairman may require the disclosure of documents, formerly known as "discovery". This includes "inspection" of the original documents. The important point about documentary disclosure is that each party must put all his/her cards on the table, whether they help or hinder the case. In police cases, this can include police notebooks, tapes and photographs. The key point again is that a party should only be directed to disclose those documents that are "necessary for the just disposal of the proceedings". A Chairman would therefore be more likely to reject an application for an order for the disclosure of a large quantity of documents with only marginal relevance to the claim.

There are certain exceptions to disclosure. First, a party does not have to disclose documents that are "without prejudice" in nature, which means there must be a dispute between the parties and the document must be made for the purpose of genuinely attempting to resolve the dispute. This includes communications through ACAS. Secondly, a party is not obliged to disclose communications with his/her lawyer (although this does not extend to communications between a party and his trade union representative). Thirdly, a Force does not have to disclose documents to which "public interest immunity" (PII) attaches. This might include a PCA/IPCC report. A Chairman may examine the document himself/herself to determine whether the Force's claim that a document has PII is sound. Fourthly, medical records are protected from disclosure, although a claimant is normally expected to give his/her consent to the disclosure of medical records relevant to the issues in the case. Finally, it is sometimes possible to protect documents from disclosure on the basis that they are confidential.

When all the documents have been disclosed, it is usual to create a bundle of them for use at the Tribunal hearing. The Chairman normally requires that the bundle of documents should be paginated, indexed and in chronological order.

• The Chairman has power to add or dismiss respondents where he/she considers that a party has identified the wrong person in the ET1.

• The Chairman has the power to postpone or adjourn hearings. This decision is taken based on all the circumstances of this case. A common reason for seeking a postponement is that a party is unwell; if that is the reason for the application, medical evidence should be supplied.

The power to postpone proceedings includes "staying" them, by which the case is held in abeyance for a specified period. A "stay" may be desirable where the ET1 claim form engages an uncertain area of law that is the subject of separate litigation in an appeal court. Another common reason for a stay is that the subject matter of the claimant's ET1 claim form is also the subject of an internal grievance or disciplinary matter. For example, a Force would hopefully wish to investigate allegation of sexual harassment and its findings could then influence whether it would admit liability or rely on the statutory defence.

• The Chairman can order the preparation and exchange of witness statements. This is now almost standard practice. Witness statements should deal with the issues in the case – preferably in chronological order – and in numbered paragraphs. The rules of evidence are more relaxed in Tribunals and so there is no rule prohibiting a party from referring to hearsay evidence in a witness statement.

A legally represented party who requests orders of this nature from the Tribunal will have to explain the basis for the request and why it is "necessary for the just disposal of the proceedings". At the same time, the legally represented party will have to copy the request to the other side and allow them 7 days to object.

A party who is not legally represented does not face the same requirement, but instead the regional secretary will write to the other side to give them an opportunity to object. However, the Tribunal should not be used as a "post box" and, even when you are representing a party personally, it is good practice to copy correspondence to the other party.

TYPES OF HEARING

There are four types of hearing in the Employment Tribunal: case management discussions, pre-hearing reviews, Hearings and reviews.

Case management discussions (CMDs)

The Tribunal rules envisage that the issues of case management described above will be considered at a special meeting known as a "case management discussion" or "CMD".

These are not compulsory but the new Tribunal rules envisage that they will be held much more regularly and certainly ought to take place in more complex claims. They may be held following the request of a party or upon the initiative of the Tribunal. They are usually listed for about 30 minutes to an hour.

The eagerness of Tribunals to take a pro-active role in case management differs from region to region. Some Tribunal regions regularly hold CMDs and, in complicated discrimination cases there may be three or four CMDs before the case reaches a hearing. There is also some regional variation in whether CMDs are held at the Tribunal itself before a Chairman personally or by telephone. Telephone CMDs are much more cost-effective and generally Tribunals are willing to hold them in this manner if requested by the parties. The Chairman normally makes various orders after the CMD and confirms them in writing to the parties.

Parties who attend a CMD should come prepared to discuss the central issues of the case, the number of witnesses they require, the likely length of the hearing and so on. The most important outcome the Tribunal Chairman will seek from a typical CMD is clarification of the legal and factual issues in dispute. However, no evidence will be considered.

In some regions, the Tribunal even asks the parties to come with a schedule of loss or, at the least, an estimate of the financial value of the case. The complexity and importance of the issues, the number of witnesses required and the financial value of the case are all matters that the Tribunal will be likely to take into account when fixing the length of the hearing.

Pre-hearing reviews (PHRs)

Sometimes the Tribunal will need to hold a separate hearing to consider a particular factual or legal issue that may affect the conduct of the case as a whole. Under the Tribunal's rules,

this is known as a "pre-hearing review" or "PHR". These are generally held at the Tribunal itself but where appropriate can be held by telephone if all the parties and the Tribunal agree to do so. The length of a PHR will depend upon the type of issues to be considered; they may last anything from 30 minutes to several days.

A common issue considered at a PHR is whether the Tribunal has jurisdiction to hear a claim. For example, a Tribunal may have to consider whether a claim has been lodged within the three-month time limit and, if not, whether it would be "just and equitable" to extend the time limit to allow for submission of a late ET1. Similarly, a Tribunal may have to consider whether a claimant genuinely satisfies the test of a "disabled person" under the Disability Discrimination Act 1995. These types of issue would be considered at PHRs.

PHRs can also be used to issue the same sorts of orders that can be given at a CMD but where there is greater dispute between the parties. For example, a PHR may be used to consider in more detail whether public interest immunity attaches to a particular document.

A Chairman can hear a PHR alone. However, a PHR is more likely to come before a full Tribunal where important issues of fact are to be decided, such as whether a claimant is a disabled person within the meaning of the DDA.

PHRs can also be used to strike out claims or responses (or parts of them) that have "no reasonable prospect of success" or are otherwise "scandalous" or "vexatious". Claims and responses can be struck out where the proceedings have been conducted in a way that is scandalous, vexatious or unreasonable. Claims and responses can also be struck out where there has been non-compliance with an order or where the Chairman thinks that it is no longer possible for a party to receive a fair hearing. Lastly, a claim can be struck out if it has not been active pursued.

The rules require that, before striking out a claim or response, the Tribunal should write to the party concerned, and give them an opportunity to object to the strike out.

As indicated above, a Tribunal can strike out claims that have no reasonable prospect of success. This is quite a rigorous test, as it effectively means that only hopeless claims can be struck out. For claims with little reasonable prospect of success the test is slightly less rigorous. The Tribunal can instead hold a PHR at which the claimant is required to pay a deposit not exceeding £500 within 21 days as a condition of being permitted to take part in the proceedings. This is known as a "deposit order". Before making a deposit order and setting its level, the Chairman should take reasonable steps to determine the claimant's ability to pay the deposit.

A claimant who continues with his/her claim and subsequently loses will be at risk of an adverse costs order (see below).

Hearings

Full hearings are considered in more details in Parts 2 and 3 below.

Reviews

Most Tribunal decisions – not just full judgments, but also orders made at a CMD or PHR

– can be the subject of an application for a review. Any application to review a decision must be made within 14 days of the date on which the decision in question was sent to the parties; that time limit can be extended by a Chairman if he/she considers that it is just and equitable to do so. Decisions may only be reviewed on one or more of the following grounds:

- The decision was made as a result of an administrative error;
- A party did not receive notice of the proceedings leading to the decision;
- The decision was made in the absence of a party;
- New evidence has become available since the conclusion of the hearing to which the decision relates (provided its existence could not reasonably have been known or foreseen at the time);
- The interests of justice require such a review.

The Tribunal may confirm, vary or revoke its decision.

COSTS

In the ordinary system of civil justice, the loser pays the costs of the winner. This can means that even claims of fairly low value are played for very high stakes. The threat of an adverse order to pay an opponent's costs has the advantage of reducing the number of weak or speculative claims and encouraging defendants to settle. At the same time, however, those with legitimate grievances can be frightened away from taking on organisations with much deeper pockets.

The costs position in the Employment Tribunal is very different. Generally speaking, each party pays its own costs regardless of the outcome. However, in response to pressure from employers' lobbies, the Government has recently widened the powers of Employment Tribunals to make awards for costs. The current costs regime in Employment Tribunals is summarised below.

A Tribunal may make an award of costs in the following circumstances:

- When it has postponed or adjourned a Hearing or PHR (normally this will be an issue where the application to postpone or adjourn has come late in the day and put the other party to unnecessary expense).

- Against a party which not complied with an order or direction (again, normally to the extent that the other party has been put to expense as a result).

- Against a party or his/her representative where their conduct of the proceedings has been vexatious, abusive, disruptive or otherwise unreasonable (which could include persisting with a claim in the face of a deposit order). A feature of the new Tribunal rules is the ability to award costs purely against a party's representative; this is explained further below.

- Against a party where the claim or response (as the case may be) had no reasonable prospect of success.

As we have seen, the last three can also involve the ultimate sanction of the "strike out"

of all or part of the claim or response.

Costs awards in these circumstances are not compulsory. So, even if a party has acted disruptively, the Tribunal can still decline to make an adverse costs order. Furthermore, even where an order to pay costs is made, it does not follow that all the costs incurred by the other party are payable. It will be only be the costs incurred in consequence of the unreasonable behaviour.

The number of costs threats made by employers has increased. However, one Regional Chairman has written that "Claimants who have not been dishonest, are not lying about important facets of their case, and are not pursuing a vendetta against their employers or some wider campaign against particular employers or employers in general, should have nothing to fear from the costs regime, whatever threats they may face during the proceedings".

A costs issue may arise if a claimant rejects a good settlement offer and then goes on to lose his/her claim, or wins the claim but recovers less. In such circumstances, employers often seek to recover costs from the point at which the offer was made. The EAT has made clear that the failure to "beat" an offer should not by itself lead to an order for costs, because the Tribunal must still be satisfied that the Claimant has acted unreasonably.

Claimants are of course free to withdraw their claims. Sometimes, however, the claimant may withdrawal the claim only a very short time before the hearing. The employer may then apply for costs on the basis that the late withdrawal constituted unreasonable behaviour. The Court of Appeal has made clear that a late withdrawal should not by itself lead to an order for costs, because the Tribunal must still be satisfied that the Claimant has acted unreasonably. By way of example, it would be unreasonable to take a weak claim "to the wire" in the hope of forcing a settlement. However, it might be reasonable to withdraw at a late stage in response to disclosure of witness statements a few days previously, if those statements undermine a key part of the claim. After all, the threat of costs should not be used to discourage sensible litigation decisions.

The Tribunal may take into account a party's ability to pay when deciding whether to make a costs order (and, if so, how much). This includes personal means (such as home ownership and savings) as well as the likelihood that the costs would be met by a trade union.

In terms of the amount of a costs order, the Tribunal has power to order one party to pay to the other any sum up to a maximum of £10,000. It can also order one party to pay more than that but only if the costs are subject to a process of assessment in the County Court. This is a process used in ordinary civil justice, whereby a special judge examines the bill of costs submitted and ensures that the amount is reasonable in all the circumstances.

Previously, costs could only be awarded insofar as they reflected the actual expenses incurred by the receiving party, of which the main amount was legal expenses. Nothing could be awarded in respect of time spent by a party who was not legally represented, such as lost management time (for the employer) or the time engaged by a trade union representative (for the employee).

However, a feature of the new rules is the ability to recover a sum in relation to the unrepresented party's "preparation time". This is known as a "preparation time order" or

"PTO". A PTO can be made only to the benefit of the party that has not been legally represented at the hearing itself, and can cover the unrepresented party's own preparation time, and the time of any lawyers or other advisers they may have engaged. The maximum hourly rate than can be recovered under a PTO is presently £25. This will rise by £1 on 6th April 2006 and by £1 each subsequent year. The Tribunal will need to assess the amount of time spent in preparation before deciding how much to award in a PTO.

Another new feature of the rules is the ability of the Tribunal to make "wasted costs" orders against parties' representatives. They can even be made against a representative in favour of the representative's own client! Such orders can only be made against those representatives who are acting "in pursuit of profit"; this will therefore exclude Police Federation representatives, Force human resource managers and Force in-house lawyers.

Wasted costs orders can of course be made against lawyers, but their real target is unqualified representatives who encourage claimants to make speculative claims on a "no win no fee" basis. They can be made where unnecessary costs are incurred as a result of "improper, unreasonable or negligent" conduct.

MISCELLANEOUS

The general rule is that Tribunal hearings are public affairs. However, hearings may be held in private in limited circumstances. This can include hearings where issues of national security arise.

In addition, the Tribunal has power to make a "restricted reporting order" in cases that involve allegations of sexual misconduct or DDA cases where evidence of a personal nature is involved. The effect of the order is that the media cannot publish anything likely to lead to members of the public identifying any of the persons named in the order.

PART 2 – PREPARATION FOR THE EMPLOYMENT TRIBUNAL HEARING

Representation

It is open to anyone to act as a representative in Tribunal proceedings. Legal aid is not available to pay for representation at the Tribunal although it is available for the provision of advice and assistance prior to the Hearing and to pay for representation before the Employment Appeal Tribunal.

If an employer is not legally represented, a Tribunal may, though it is not obliged to, adopt a more inquisitorial approach to the case and be more tolerant of how the employer seeks to present his or her case and cope with the procedure.

Where an applicant is not represented, the Tribunal will usually guide the applicant regarding the presentation of their case.

Representation may also be provided for both applicants and personally-named respondents by staff association or trade union representatives.

Once a party has made clear that he or she is represented, all further communications should be through their representative who should ensure that they provide copies of all correspondence and documentation to the individual they are representing.

Compiling a Bundle of Documents

A bundle of documents will be necessary for the full Tribunal hearing. The bundle should include all relevant documents and correspondence together with notes or minutes of any relevant meetings.

Usually, both parties are required to agree a bundle of documents during a CMD, rather than have two separate bundles on the day of the hearing. If a bundle is agreed, this does not mean that the relevance or accuracy of any particular document is conceded, but merely that it is agreed that it will be referred to at the hearing.

The bundle should be paginated and indexed (stating the number of the document, a brief description and a page number). The front page should state the names of the parties, the case number and the venue of the Tribunal.

Six copies of the bundle will be necessary for the hearing: three for the Tribunal, one for the use of witnesses and one for each party. Tribunals will generally not accept receipt of bundles posted to them prior to any hearing. It is generally best to bring copies of bundles on the day of the hearing. It is courteous, and sometimes required, to send a copy of your bundle to the other party or their representative at least 7 days before the hearing – assuming that there is no agreed bundle.

"Without prejudice" correspondence should not normally be included in a bundle for the hearing. Such correspondence should not be disclosed as it is entered into with the aim of reaching a settlement to a case. Exceptionally, it may be admissible to prove an agreement reached as a result of the correspondence, or if both parties agree, or if one party's case

would in effect be dishonest without reference to the "without prejudice" correspondence.

It is usual to place the pleadings (i.e. the ET1 claim form and ET3 response form) together at the start of the bundle, together with any relevant Tribunal orders and, if applicable, the answers to them.

The remainder of the bundle should be, as far as possible, in strict chronological order with the most recent documentation at the end.

All documents relevant to the issues to be determined by the Tribunal, and which the parties intend to rely on, should be included in the bundle. Irrelevant documentation should be excluded.

If possible, the originals of documents included in the bundle should be available at the hearing to be referred to if necessary, for example the original notes of interviews or meetings. Illegible handwritten documents should be accompanied by a typed copy and photocopied documents should be readable (or originals available).

Note: The Tribunal panel will be unfamiliar with Police terminology. It may therefore be useful to include within the bundle a list of abbreviations common to your Force.

Drafting Witness Statements

It is increasingly common for the parties to be obliged to exchange witness statements prior to the ultimate merits hearing. Even if the Tribunal does not direct that witness statements be exchanged, it is strongly advised that witness statements be prepared and used for any particular witness in anything other than the most straightforward case.

The statements should identify the person making it, his or her role and any relevant qualifications or experience, deal with the chronology of the matter so far as that witness is able to do so, and statements should be signed and dated by the witness as confirmation of their accuracy. They should end by stating that the contents of the statement are true to the best of the witness's knowledge and belief.

Nearly all Tribunals will expect a witness to read from his/her statement when giving their evidence in chief. Usually, though not always, the representative of the witness is allowed to ask supplementary questions after the statement has been read. In some cases, however, a Tribunal may take the statements "as read". A witness whose statement is taken "as read" must assume that the Tribunal has properly digested its contents and prepare to move straight to cross-examination.

Statements should, so far as possible, be in the witness's own words. Witnesses may refer to copies of their own notes that may be included in the bundle, but not to documentation that is not in the bundle.

If a witness of the other party appears to be reading from prepared notes (other than from his/her statement), an objection should be made to the chairman.

If it is not be possible to call a witness in person (by far the best option) and a postponement of the hearing is not possible, you should consider introducing the evidence by way of affidavit. Ideally such evidence should be sent to the Tribunal and to the other

side at least seven days before the hearing. Even then, it is only a position of last resort. The Tribunal is likely to attach much less weight (if any) to the statement of a witness who is not available on the day for cross-examination.

Making Written Representations – Skeleton Argument

It is open to any party to submit representations in writing to the Tribunal. They should be submitted (and sent to each other party) at least seven days before the Hearing date, unless the Tribunal consents to a shorter period. Written representations may be made by a party attending the Hearing or (as a last resort) in lieu of attendance. The latter course is extremely hazardous, since the absent party cannot deal with questions from the Tribunal, points that arise unexpectedly or assertions made in evidence by the other party. In all but the simplest of cases attendance in person or by a representative should be considered essential.

Listing of Hearing

The parties must be given at least 14 days' notice of any hearing other than a CMD, unless shorter notice is agreed. In practice, longer notice than this is given, but this is a feature of congested listing timetables rather than courtesy. Some, but not all, Tribunals may send out a pre-listing questionnaire asking the parties to indicate unavailable dates.

Applications to postpone hearing dates should be made as soon as possible and in any event within 14 days of the notice of hearing being sent out. Only in exceptional circumstances will postponements be granted. There is no automatic right to a postponement, even if both parties agree to the proposal. When seeking a postponement, full grounds should be set out. In relation to witnesses, witness unavailability is far more likely to produce a postponement than witness inconvenience. Remember that a Tribunal may ask for evidence of unavailability, and it can be helpful to volunteer it, e.g. flight tickets.

Other reasons for seeking postponements include where other civil proceedings are ongoing, where criminal proceedings are pending, where an appeal is pending to the Employment Appeal Tribunal in the same case, and where a higher court is due to decide a relevant question of law in a separate case.

Cases are usually listed for one day unless the parties indicate that a longer period will be required. In reality, the parties should have clarified at an earlier CMD whether a longer hearing is likely to be required.

Location of the Employment Tribunal

Tribunal offices are located in main centres of population across the country. The Tribunal office concerned with the case will be decided primarily by reference to the postcode of the employer. Ordinarily, each Tribunal sends a map and a list of guidance notes to each party at the time that a notice of hearing is sent out.

Documents and Copies Necessary for Hearing

Tribunals will have access to key statutes and the main series of case reports, however it is best to take 6 copies of any materials on which you intend to rely for the hearing.

Relevant sections from any statute or statutory instrument are sufficient, the whole Act itself is normally not necessary. Copies of any case reports should be full and legible, not merely a copy of the "head note" (i.e. that part that simply summarises the facts and decisions.

Last minute discussions

Usually a number of cases may be all listed to start at 10.00am. Representatives should use the time before the hearing to make contact, see which witnesses the other side will be calling, what case law or statutes they will rely on and, if appropriate, whether any last-minute settlement is possible. If settlement seems possible, the Clerk should be asked to request a delay in the hearing from the Chairman if required by the parties to discuss the terms of settlement.

Etiquette

As previously stated, the Chairman of the Tribunal can be referred to as Sir or Madam, as appropriate.

Witnesses are normally allowed to be present throughout the hearing (usually seated behind the representatives), regardless of whether or not they have given their evidence. The public and press sit at the back. Ensure that all mobile 'phones in your party are switched off throughout the proceedings.

PART 3 – REPRESENTING AT AN EMPLOYMENT TRIBUNAL HEARING

It is usually for the party upon whom the burden of proof rests to open the case. In discrimination cases, this means that the claimant usually gives his/her evidence first.

However, the Tribunal has much discretion to decide itself which order of proceedings it finds most appropriate to deal with the case.

Making Opening Statements

Tribunals will vary as to whether or not they want a party to make an opening statement. In general, unless the case is particularly complicated, Tribunals are often eager to start hearing witness evidence straight away. The guidance of the chairman should be sought in each particular case.

If any opening speech is made, it should be kept as short and to the point as possible. It should outline in summary form the key facts agreed and also those in dispute, the legal issues to be decided and the parties' arguments on them. As a general rule of thumb, an opening speech in a standard case is unlikely to require more than five or ten minutes.

Evidence in Chief

Before giving evidence, each witness will be required to swear an oath or make an affirmation that he or she will tell the truth.

Witnesses are required to stand whilst they read from a card and, having taken the oath or affirmation, a witness is open to prosecution for perjury should they lie.

As stated above, it is increasingly the case that Tribunals will expect witnesses to bring written witness statements with them, which are then read out.

It is not allowed for a party to ask leading questions of its own witnesses. These questions are those that, in the form in which they are put, suggest the answer that is sought by the questioner - usually in the form of a yes or no.

Witnesses should address their evidence to the Tribunal panel and not reply in the direction of the advocate. Witnesses should speak slowly and clearly, as the Chairman will be making a handwritten note of the evidence during the case. A good tip for the witness is to speak clearly and pause occasionally, allowing the Chairman to finish writing.

When giving evidence, witnesses should take their time and, if possible, avoid becoming emotional or agitated.

Cross-examination

Once a witness has given evidence in chief, they may be cross-examined by the other side.

Cross-examination involves putting a series of questions to a witness to test the truth or reliability of what they have said and also to put their opponent's case to them – to give

them the opportunity to comment upon it.

Failure to "put" the opponent's case to a witness in cross-examination may prejudice the ability of a party to raise particular points later on.

- When cross-examining, the aim is to put a series of short questions to the opponent's witness one at a time. It is a common mistake to wrap up various questions in one.

- The idea is not to make comments or statements oneself unless they are presented in question form.

- It is very important not to enter into an argument with a witness, however provocative they may become.

- Try to persuade a witness to concede damaging points or to make statements that illustrate inconsistencies in their evidence.

- A Tribunal will not appreciate it if a witness is questioned in a bullying or intimidating manner.

- As far as possible try not to interrupt a witness's answer.

- If an answer is unhelpful, move on to your next question.

It is important to remember that the aim of cross-examination is the persuasion of the Tribunal members and this must always be borne in mind. You should be aiming to draw out evidence to satisfy the legal tests required for your member's claim. For example, in the case of a race discrimination case, you are not seeking to prove that your member was treated unfairly – but that he/she was treated less favourably than someone else in similar circumstances on the grounds of race.

You should break down each legal test to its component parts and identify which witness (or document) can best address this issue and plan a series of questions to draw this evidence out.

A Chairman may indicate where an area has been sufficiently covered already in questioning or where questioning is deemed irrelevant or improper. Unless you disagree strongly and the point is an important one, do not seek to contradict the Chairman's view.

In general, it is unwise to ask a question unless you know or can safely predict the answer that will be forthcoming. "Closed" questions are safer than "open" questions.

In relation to documents, seek the Chairman's views on whether he or she wants a witness, yourself or the Tribunal members themselves to read a document out. Clearly direct the witness and the Tribunal to the page number of the document to which you wish to refer.

Leading questions can be put in cross-examination. Questions need not be limited to matters raised in the witness's evidence in chief.

Never seem surprised or annoyed at an answer that is given; always attempt to act as

though everything is going according to plan.

Make a good note of the replies made by a witness, as they will be needed to help put together a closing submission.

Re-examination

After cross-examination, a representative may be asked whether they wish to re-examine their witness – although there is no obligation to do so. Any re-examination must be strictly limited to matters arising out of cross-examination or questions put by the Tribunal. It is not a second chance to put questions that should have been raised during examination in chief.

Making a Closing Speech

In every case both sides will be allowed to make a closing submission (usually orally but sometimes in writing – and occasionally both), but it is usually the party with the burden of proof that goes last. This should cover the relevant facts that have been brought out through evidence in chief, cross-examination and any re-examination.

It is not appropriate to go through all the evidence again but should deal with the relevant law as it applies to the case. A closing speech should be short, although much longer will be required for complicated cases.

Assessing Statutory and Case Law Authority

When citing cases, it is often sufficient to read the principle as set out in the head note. Representatives should be aware of the full facts and decision of any case cited because the Tribunal could question them about its relevance.

Tribunals are bound by decisions of superior courts and the order of precedence is:

- European Court of Justice,
- House of Lords,
- Court of Appeal,
- Employment Appeal Tribunal.

The decision of any particular Employment Tribunal may have some persuasive value, but it is not binding at all.

Avoid the trap of assuming that the Tribunal already knows the law! However, in well known cases ask the Tribunal if they would like you to address the point of principle established in that case and how it applies to your case or whether they are happy for you to simply give them the reference.

Presentation Considerations

It is important that you recognise that the Chairman is the person in control of the Employment Tribunal in which he or she sits. While subject to the applicable law and rules of procedure, much discretion is given to the Chairman as to how procedure is regulated.

Do remember to:

- pay attention
- stay polite at all times to everyone
- keep your voice up
- arrive on time at the beginning of the case and after any adjournment
- stay alert
- know how to take a hint
- make a note of any question put by the Chairman or any wing member and any decision made on any point.

Don't:

- get into an argument
- interrupt the Chairman
- be late
- patronise the Chairman's view of the law
- assume that the Chairman knows the law
- try to score points off the Chairman, Respondent's representative or witnesses
- get angry
- betray emotion in any way
- make noise or cause a distraction whilst the Chairman is speaking or any witness is giving evidence
- appear discourteous to your opponent
- bore the Chairman or make the Tribunal's life difficult.

JUDGMENTS

Under the old regime, Tribunals could give "summary" or "extended" reasons for their decisions. Under the new rules, a Tribunal must give reasons for its judgment, either orally or in writing, and no distinction is drawn between "summary" and "extended" for this purpose.

Many judgments, particularly in straightforward cases, will be given orally on the day. In more complex cases, reasons may follow in writing. Written reasons for the decision will only be given if one of the parties so requests within 14 days of the date on which the judgment was sent to the parties.

Sometimes a Tribunal may reserve the judgment itself and not simply the reasons for it. In that case, the rules require that the judgment be issued "as soon as practicable". The current President of Employment Tribunals has stated that no more than three months should pass and Chairmen are expected, as "best practice", to draft judgments so that the parties can receive them within 28 days of the hearing or decision meeting.

The new rules also impose a mandatory template for the structuring of Tribunal decisions. They must now include the following information:

- The issues which the Tribunal or Chairman has identified as being relevant to the claim;

- If some issues were not determined, what those issues were and why they were not

determined;

- Findings of fact relevant to the issues that have been determined;

- A concise statement of the applicable law;

- How the relevant findings of fact and applicable law have been applied in order to determine the issues; and

- Where the judgment includes an award of compensation or a determination that one party make a payment to the other, a table showing how the amount or sum has been calculated.

Appeal Against a Tribunal Decision

An appeal may be brought only if there has been an error of law or the Tribunal's decision is perverse. In essence, this means that no reasonable Tribunal, properly directed on the law, could have reached the decision that was reached in the case.

Appeals on the grounds of perversity are rarely successful. It is not sufficient for an appellant to allege that the Tribunal simply got the facts wrong or that the decision was against the weight of the evidence.

Timescales for Appeal

Appeals are presented to the Employment Appeals Tribunal. A party has 42 days from the date on which the extended reasons were sent to that party within which to appeal. The time limit for an appeal applies even though a party may have already applied for a review of a Tribunal decision that is yet to be decided upon.

SECTION 7 - REPRESENTATION SKILLS

MANAGING THE FIRST MEETING

Many clients will only seek legal advice from a solicitor on an employment law problem when they feel that there is no alternative option for resolving their concerns. Usually because of the expense involved, it is rare for clients to consult a solicitor from the very first appearance of a problem. By the time clients do speak to a solicitor, therefore, there may be concerns about the imminent expiry of a time limit. Clients may also have unrealistic ambitions about what the legal process can achieve.

Many police officers with employment law concerns may be a little quicker to approach their Federation representative for advice for the simple reason that they will not be charged for it. Even so, many of the same points about managing that first meeting will still apply. Some of the key considerations for that initial meeting are set out below.

1. ***Ask the golden question.*** When an officer comes to see you, the golden question you should always ask him/her is this: what do you want to achieve?

   It is surprising how late in the day this question is asked, when really it should be the very first consideration. On a few occasions, the officer will have given no thought to this issue at all. Ask yourself whether what the officer wants is *achievable*. If not, you will need to consider how best to manage the officer's expectations (see below). The officer will be looking to you to explain what *is* achievable.

2. ***Seize the agenda***. That first meeting will set the tone for the relationship between you and the member, just as it does the same for the relationship between solicitor and client. Remember, *you* are the advisor; the officer comes to *you* for advice. So, although you must be a good listener, *you* should dictate the agenda for the meeting. A good way of doing this from the outset is to ask the officer to come to the meeting with a prepared chronology of the relevant events and copies of the relevant documents; this is also a good exercise for focusing the officer's mind. That will make your job much easier, and saves you from having to write down all the details yourself.

   Sometimes, a client or officer will tell you what he/she expects *you* to achieve. Do not let the relationship start off on this footing. Your role is to help *the officer* achieve what *you* advise to be realistic and achievable. There may be times when you need to give advice that the officer does not want to hear, but this will be easier if the officer respects your opinion from the outset.

3. ***Be consistent***. Sometimes a client has a low opinion of solicitors based on stereotypes or a previous bad experience. Equally, an officer may feel negative about the Federation or expect to "get their money's worth" having paid subscriptions for many years. While it is important for the officer to know that you will act in his/her best interests, you must resist the temptation of sounding unjustifiably optimistic simply to put his/her mind at rest! As stated above, there may be future occasions when the officer will simply have to accept advice that he/she does not like, and it will be easier for you to

recommend that advice if you have remained consistent throughout.

4. ***Look for early "windows of opportunity" to resolve or settle.*** Many cases that proceed to Tribunal do not start as "being about the money", but they may end up "being about the money". It is quite common at the start of a case for an officer simply to feel aggrieved about a matter of principle, or simply to want either an apology or an acknowledgement that his/her sense of grievance is legitimate. It may be easier to seek this at the outset of a case than many months later when a Tribunal hearing is looming.

   It is therefore sensible to look for early opportunities to achieve a resolution of a case, particularly if the officer's expectations are more manageable at that stage. Where cases are resolved quickly, officers will often go away happier than if they had achieved a better result after many months if this only came at the cost of a deterioration in their relationship with the Force.

   Of course, many Forces do not respond well to approaches of this nature and can raise the temperature of a dispute by responding aggressively to a claim. But others do respond well, and Federation representatives working within stubborn Forces may be able to learn lessons from those working within more responsive organisations. Many helpful suggestions are given in the Learning the Lessons toolkit (see elsewhere in this Handbook for further details), but probably the most important tool for resolution is a safe environment within your Force for "without prejudice" discussions. If there is no such safe environment, consider ways in which you could encourage one.

   In all cases, it is important to ensure that those managers with whom you are negotiating have proper "ownership" of the organisational response. This may vary according to the nature of the grievance: some cases are best resolved quickly and locally at a lower level of management.

   Ultimately, those responsible for the "organisational" response will vary from Force to Force. This is partly a feature of a police service split into numerous distinct Forces, each with it own strategies and methodologies for dealing with equality and diversity cases. In any one Force, such "ownership" may be in the hands of its in-house solicitor, its head of human resources or an ACPO-level officer. The "diversity" brief may be given to a bespoke department, the legal department, the HR department or a combination of all of them. The more wide-ranging the issues under negotiation (for example, revision of the Force's policy on part-time working), the more important it is to ensure you are negotiating with someone who has authority to commit the Force to a certain course of action. It is no use negotiating a resolution with a chief inspector only for it to be overruled by an ACC the following day.

   Similarly, it is sensible to have clear "ownership" of equality and diversity matters on the JBB so that, subject to member confidentiality, information can be shared and experience pooled. It will usually be appropriate to keep the JBB's Equality Liaison Officer involved and it may also be advisable to inform or involve the JBB Chairman and/or Secretary.

5. ***Keep a note of the meeting.*** Two individuals can sit through the same meeting and, many weeks later, have different impressions of the matters under discussion. If you have a note to which you can refer, you can feel confident that your recollection is the more accurate! This can make it easier to persuade an officer that you have been

consistent. A good way of recording the issues is for both the representative and the officer to complete the Resolution Information Sheet together.

It may be helpful to end your meeting with the member with a defined list of "action points". This leaves no one in doubt as to how each will proceed.

MANAGING EXPECTATIONS

The ability to manage expectations is one of the most important, yet one of the most underrated, skills of a representative. There are many cases where you will only be able to carry your member with you in settlement discussions if you have managed their expectations from the outset about what you can realistically achieve for them. It is also frustrating for a solicitor to inherit from a representative a client whose expectations have been inflated beyond what is appropriate.

There are three areas where expectations must be managed: merits, remedy and cost-effectiveness. Each shall be covered in turn below. However, this is not to overlook the possible psychological effects of Tribunal litigation. While different people respond in different ways, most people find Tribunal litigation to be a stressful and occasionally traumatic experience. The process of cross-examination will often involve accusations that a person is incompetent, careless or distorting the truth; in simple terms, litigation can encourage parties to throw mud at each other. The unpleasantness of the process is not unique to claimants; it also applies to respondents and to all witnesses, regardless of who has called them to give evidence, whose credibility or authority is challenged.

1. ***Managing expectations on merits***

   The first question individual members will usually want to ask is this: *do I have a winnable case?* Understandably, they will feel disappointed if you provide a negative answer; they may even complain about you. You may therefore feel under some pressure to give a positive answer – although, if you do not feel it is a winnable case, giving a positive answer can make it much harder to manage the member's expectations subsequently.

   The real problem in most cases is that an adviser can only give an ambivalent or non-committal answer. This can be frustrating for a member who does not welcome advice that "sits on the fence".

   Lawyers have developed a shorthand way of predicting the outcome of a case while making clear that no outcome is guaranteed. They talk of whether cases have (or do not have) "reasonable prospects of success". A case with ***"reasonable prospects of success"*** is, on balance, more likely to win than lose.

   Some lawyers do not like giving "percentages" because their use may suggest that predicting the outcome of cases is some sort of scientific exercise. Nevertheless, "reasonable prospects of success" generally means that a case has a greater than 50% prospect of success. Cases with "good prospects of success" (say, 60% +) are less common; cases with "excellent prospects of success" (say, 70% +) are rare.

   Save in exceptional circumstances, very few lawyers will say that any case has a 100%

chance of success, simply because Tribunals do occasionally (but thankfully rarely) make perverse decisions. The euphemism used by lawyers to explain this is that all cases carry a "litigation risk": this refers to that element of uncertainty caused by human fallibility. Witnesses may clam up, fall apart or say something you do not expect; the Tribunal panel may, despite its apparent objectivity and for no reason discernible to the parties, seem to favour the other side's arguments.

This all means that, in reality, there are three types of discrimination case: the obviously bad (quite a lot), the obviously good (rare) and those in the "grey area" (the majority).

Why are there are so many cases in the "grey area"? It is because of the way in which the law operates. Generally, the burden of proof falls on the Force to show that it has not directly discriminated against a police officer, by adducing cogent evidence of an innocent alternative explanation for its treatment of the individual concerned. Similarly, the burden of proof falls on the Force to justify policies or procedures that disproportionately impact upon one particular group. The information the Force will rely on in this regard will rarely be in the possession of either the member or the JBB. The lawyer engaged to provide advice at an early stage therefore lacks the "complete picture". The best the lawyer can generally do with such a case is gather as much information as possible about the facts – in order to build up the "picture" – and try to make a reasonably precise guess at the likely outcome of the claim. As a result, it is quite common for the lawyer to delay giving more definitive advice on the prospects of success until the ET3 response form has been served and a response has been received to a statutory questionnaire.

Even then, the case will still be full of variables. As stated above, there is always the "litigation risk" caused by the performance on the day of the witnesses under cross-examination and the character of the Tribunal panel hearing the claim.

2. ***Managing expectations on remedy***

It was acknowledged above that the first question individual clients or members usually want to ask is this: do I have a winnable case? However, the most important piece of advice is often this: *assuming you do win, what can you realistically hope to achieve?*

In some legal cases, this question may simply mean *how much is the claim worth?* In discrimination cases, it also involves considering the likelihood that the Tribunal will make certain "recommendations" (see below). In either case, the answer is rarely in line with a claimant's own answer to the question you first posed: *what do you **want** to achieve?* It is important to appreciate that, in many discrimination cases, the Tribunal simply will not have the power to produce the type of solution that a member most wants.

This may sound unsympathetic, but it must be remembered that the administration of justice in Employment Tribunals (like all courts) is primarily about converting grievances into compensation, or complaints into cash. Lawyers can spend hours investigating whether such cases are likely to win; as indicated above, discrimination claims are highly "fact-sensitive" and lawyers need to engage in detailed fact-finding exercises to get as complete a "picture" as possible, and then apply those facts to a very

complex legal framework. The private client paying the lawyer thousands of pounds to conduct all this research and analysis will not be thankful to discover too late in the day that the case is in fact only worth £2,500 at best. Would it not have been better to tell that person at the beginning?

It is, therefore, generally much better to make clear from the outset the range of remedies available from the Tribunal if the case succeeds. For many clients and members, this will require expectations to be managed downwards. The Tribunal can provide three remedies if it upholds a complaint of unlawful discrimination:

2.1 ***A declaration of unlawful discrimination***. This simply means that the Tribunal upholds the claim. The value of the vindication offered to a claimant by a declaration of unlawful discrimination (or the value to the respondent of a dismissal of the claim) should not be underestimated. However, judgments are often multi-faceted and a party may even face criticism from the Tribunal despite winning.

2.2 ***Compensation***. A Tribunal can grant compensation in respect of (a) financial loss and (b) "injured feelings". Dealing with each in turn:

(a) ***Compensation*** for financial loss is primarily based on the net earnings the individual has lost in direct consequence of the discrimination. In most cases, this will only be a significant amount of money if the individual has lost his/her job and not yet found another on a comparable salary. In Federation cases, a major source of future loss in such cases relates to the loss of the police pension. However, in many complaints of discrimination brought by police officers, the claimant remains a police officer throughout. In such cases, compensation will usually be limited to "injured feelings" only – see (b) below.

Occasionally, there may be financial loss from periods of sickness absence spent on half or nil pay or where certain allowances have been lost. In rare cases, it may be possible to seek additional compensation for personal injury caused by the unlawful discrimination.

It is incumbent upon a lawyer to draw up an early schedule of a client's estimated or predicted losses in order to make an assessment of cost-effectiveness as soon as possible. It is entirely legitimate to inflate this schedule for the purposes of negotiation (e.g. to set out loss in a realistic "worst case scenario", but not by so much as to undermine credibility in negotiations).

(b) ***Compensation for injured feelings*** is less easy to determine. The Court of Appeal (in a case called *Vento*) set out the "bands" in which awards for injured feelings should be assessed. These are as follows:

- The lower band: £500 to £5,000
- The middle band: £5,000 to £15,000
- The upper band: £15,000 to £25,000

Nationally, the average award for injured feelings tends to be around the £2,000 to £3,000 mark. The level of the award may be influenced by factors such as: the nature of the discrimination suffered; the disparity of rank between harasser and harassed; whether an apology has been given; what efforts were made by the Force

to prevent it; the length of period over which discrimination occurred (in comparison to one-off acts); and so on.

The average awards for discrimination (including injured feelings) in 2004/2005 are set out below. These figures are generally in line with previous years. The most important figure is the median award (which, unlike the mean award, is not distorted by the few high profile cases that result in large pay-outs):

- Race: median **£6,699;** mean £19,114; highest £170,953
- Sex: median **£6,235**, mean £14,158; highest £179,026
- Disability: median **£7,500**; mean £17,736; highest £148,681

2.3 ***A recommendation***. Finally, a Tribunal can issue a recommendation designed to reduce the impact of the discrimination upon the claimant. Note that a recommendation is not the same as an *order*. It may be in the form of a recommendation to apologise, to revise part-time working policies, to remove a warning from a personnel file, to put in place an equal opportunities policy or, in a disability claim, to make a "reasonable adjustment". If the Force unreasonably refused to implement a Tribunal's recommendation, the member would be entitled to return to the Tribunal to seek additional compensation.

It is extremely unlikely that a Tribunal will issue a recommendation that usurps the statutory operational power of a Chief Constable. It is extremely unlikely, for example, that a properly directed Tribunal will be prepared to recommend that an officer be substantively promoted or that the perpetrators of unlawful harassment be disciplined. Neither should a properly directed Tribunal recommend a "reasonable adjustment" that usurps the Force's obligations to others under the legislation governing health and safety at work (although Forces sometimes rely on this defence in inappropriate cases).

The key message is as follows. Apart from the possible vindication of success (which may itself be part of a mixed message in the judgment), Tribunals usually award only modest compensation to successful claimants. If they do issue a recommendation, it will rarely provide the members with what they really want and the Force is not compelled to implement it in any event. This rather limited range of outcomes should be compared with the more imaginative range that it may be possible to achieve through negotiation and resolution (see below).

This is not designed to make police officers so pessimistic that they do not bother to bring any claims at all. The targeted support of litigation is a very important weapon in the Federation's armoury when negotiations do not succeed. However, it should enable members to be rightly wary about treating Tribunals as a panacea; they are not. As the Learning the Lessons toolkit makes clear, there are never any real winners at Tribunal.

3. *Managing expectations on cost-effectiveness*

The concept of cost-effectiveness is central to Tribunal litigation, particularly because each side generally pays its own costs regardless of the outcome.

What is cost-effectiveness? For a claimant, it is the relationship between (on the one hand) the likely prospects of a successful claim and the likely level of compensation

and (on the other hand) the likely level of legal fees. For a respondent employer, it is the relationship between (on the one hand) the likely prospects of a successful defence and the likely level of compensation and (on the other hand) the likely level of legal fees. For both parties, there may also be wider "test case" issues in play.

When the likely cost of proceeding with a case is justified neither by the chances of success nor by the compensation payable, it lacks cost-effectiveness. The cost-effectiveness of a case may also vary during the proceedings, particularly if a claimant mitigates his/her loss by taking another job.

We have already examined assessing merits and remedy. To conclude our assessment of cost-effectiveness, we must ask this question: *how much will the case cost?* This is just as relevant to the Federation as it is to a privately paying client. The following factors will have a bearing on cost, not all of which are in the lawyer's control:

(a) ***The factual complexity of the case.*** Discrimination cases are notoriously "fact-sensitive" but that does not necessarily mean that the parties must abandon all sense of proportion in conducting them. The parties should take a rigorous approach to clarifying the key factual issues that are relevant to the outcome and which are in dispute. Witnesses should then be chosen for the likely quality and credibility of their evidence on those key factual issues. Generally, multiple witnesses on the same point or on a tangential point are unlikely to assist the Tribunal.

The same points apply to the analysis of relevant documents and the preparation of a bundle for the hearing. Inevitably, the Tribunal will prefer a limited number of documents and, where a large number seems unavoidable, it is often a good idea to create a "core" bundle of those most closely linked to the key factual issues. The Tribunal will usually appreciate a chronology of the key events and a list of the main people involved. Through the process of case management, the Tribunal will hopefully encourage the parties to focus on these key issues, although (as stated above) its willingness to do so varies from region to region.

(b) ***The likely length of the hearing.*** If witnesses are carefully chosen, it may be possible to avoid the type of multi-day discrimination cases that have become rather typical of this area of practice. Where both parties are legally represented and much evidence is agreed, it may even be sensible to take the witness statements "as read", although some regions do not like doing this. The robustness of the Tribunal in conducting the proceedings carefully – particularly limiting the parties' opportunities to stray from the key issues – will also vary from region to region but may help limit the duration of the case. Rather than putting off claimants, sensible case management can in fact can make the hearing shorter in duration and therefore cheaper for both parties.

(c) ***The continued involvement of the representative.*** As explained below, a Federation representative has an important and valuable role to play long after a case has been referred to external solicitors. An active representative can help to keep the member in check and help identify the scope for a local resolution. A representative who understands the job "inside out" and knows the characters involved will be far more effective in putting a local resolution together than a lawyer who has rarely seen the inside of a police station!

(d) ***The dependency of the member***. Inevitably, some members are more demanding than others and will require rapid response rates from their Federation representative and appointed lawyer. Similarly, some members are more emotionally vulnerable than others and may look to their representative or lawyer for support that is of a more counselling nature. Finally, some members are less self-confident than others and may require a very significant amount of "hand-holding" and guidance when making decisions. All of this can have an inflationary impact upon cost.

(e) ***The manner of advocacy at the hearing.*** A barrister who is engaged to provide the advocacy at the hearing will generally charge two types of fee. A "brief fee" is the charge for simply reading the papers and preparing for the case. This sum is not refundable if the case settles before the hearing starts. A "refresher" is the further daily charge levied by a barrister for turning up at the second day of the hearing and is charged on a repeat basis for subsequent days.

The level of both types of fee is influenced by the seniority, experience and reputation of the barrister and, in particularly specialist cases, the possession of expert technical knowledge. It is unusual to involve a barrister in the early stages of case preparation. It is generally a good idea for the barrister to have met the client well in advance of the hearing, and discussed the case with him/her at a conference – which, ideally, the Federation representative attends as well.

(f) ***The nature and location of the Tribunal.*** As mentioned elsewhere, the Employment Tribunal system is divided into 11 regions, each under the direction of a Regional Chairman. The Regional Chairman may have preferences for the manner in which cases are conducted and this could include factors that reduce or lengthen the Hearing.

For example, some Tribunals are prepared, in complex discrimination cases, to take witness statements "as read"; that is, the Tribunal panel reads them privately and then witnesses go straight into cross-examination. This practice greatly reduces the length – and therefore the cost – of the Hearing. If a Tribunal prefers to hear live evidence, with the witness statements being read out before the Tribunal panel, the Hearing will take longer.

There are other matters where the approach of the Tribunal will vary from region to region and may also affect the length and cost of a Hearing. This includes the willingness of the Tribunal:

- To engage in robust case management, particularly with a view to clarifying the issues in dispute;
- To identify preliminary issues for separate determination;
- To deal with liability and remedy at the same time;
- To scale down the size of an unwieldy bundle of documents;
- To limit time for cross-examination; and
- To limit time for opening or closing submissions.

Legal costs tend to be incurred in a case according to a "U" pattern. At the beginning, there is a necessary element of "front loaded" costs while a case is

reviewed. There follows a middle stage of the case where costs dip to a lower level (as much less happens while awaiting a Hearing). Finally, there is a significant increase as the Hearing approaches, particularly when a brief fee is incurred.

It follows that the best time to settle a case is at the early stage. At an early stage, a member's expectations are often easier to manage; the Force may be more willing to accommodate the member because, at this stage, there may be less antipathy between the parties; and significant costs have been avoided.

Merit, remedy and cost-effectiveness are not the sole criteria for funding decisions. An additional consideration is this: ***does the case raise issues of importance for the wider membership?*** For a representative body like the Police Federation, this will be a major consideration.

If you consider that any "test case" issues arise in a case you are handling, bring this to the attention of the relevant rank central committee (and solicitors if instructed).

Appendix 1

HOME OFFICE CIRCULAR 28/2004
CHANGE TO FAIRNESS AT WORK PROCEDURES

CONTENTS

Section		Page
Part 1 – General Operating Principles		2
Purpose of the Fairness at Work Procedure		2
Employment Tribunal Time Limits		3
Relationship between Fairness at Work and Discipline Procedure		4
Confidentiality		5
Representation		5
Victimisation		5
Stage Managers and Facilitators		6
Stage Time Limits		6
Part 2 – The Stages of the Procedure		7
Stage One		7
Stage Two		7
Appeal Stage		8
Part 3 – Audit, Monitoring and Training		9
Independent Monitoring		9
Retention of Papers		9
Annex A	Statement of Commitment to Fair Treatment	11
Annex B	Police Support Groups	11
Annex C	Access Employment Tribunals for Police Officers and Support Staff	12
	Codes of Practice	12
Annex D	Discrimination Terms and Definitions	13

GUIDANCE ON THE OPERATION OF GRIEVANCE PROCEDURE

PART 1 – GENERAL OPERATING PRINCIPLES

1. This document has been developed through the ACPO Equality sub committee in partnership between the Home Office, ACPO, the APA, representatives from force HR departments and the staff associations. The principles set out in the document provide guidance to forces on how to deal with workplace grievances. It draws on good practice principles and incorporates new legislative provisions. Forces should ensure that the principles are incorporated into their grievance handling procedures.

Purpose of the Fairness at Work Procedure

2. This document provides the basis for a procedure applying in all forces for the resolution of conflict within the workplace. The overriding aim is to produce a speedy and effective resolution to a workplace dispute at the lowest possible management level and not to establish blame or provide punishment. An Employment Tribunal is a damaging and costly experience for all parties and the aim of all involved in a workplace grievance must be to resolve complaints at the earliest opportunity.

3. The procedure is designed to be simple. It sets out a basic 2-stage process with an additional preliminary informal resolution stage and an optional final appeal stage. The recommendations in this document allow for forces to operate either a 2 or 3 stage procedure depending upon their particular requirements.

4. It is recognised that in many cases staff may wish a line manager to resolve a situation as part of their management role, outside of any formal procedure. It is recommended that line managers should seek wherever possible to resolve a workplace dispute at its inception. If this is not done, a complainant may raise a formal complaint under the Fairness at Work Procedure by setting out their complaint in writing.

5. The complainant should be free to approach any suitable person who they feel may be capable of achieving an informal resolution prior to proceeding to the formal Fairness at WorkProcedure. A suitable person could be, for example, their line manager (where an issue involves a senior officer, then it is advisable that an officer of equivalent rank or above be approached by that person to assist in resolution), a relevant staff association or trade union representative, or a member of a support network (see Annex B). The Force may also have identified specialist First Contact Officers, Welfare Officers or Fairness at Work Advisors.

6. It is recognised that informal resolution may not always be possible so an effective Fairness at Work Procedure must be available and accessible to all police service staff, including police officers, police staff and the Special Constabulary. An effective procedure to address conflict between colleagues is essential for good management in the workplace and is aimed at delivering integrity and good standards of management conduct. It is not intended to provide a substitute for disciplinary proceedings, or to override existing or possible future legislation on discriminatory issues or the implications of the Human

Rights Act 1998. Should an individual wish to pursue an issue formally through the Fairness at Work procedure then they must submit a written request to their line manager or other nominated person. (It is recommended that forms be provided for this purpose to save time and provide consistency).

7. The Fairness at Work Procedure is designed to enable members of staff who are aggrieved about the way they have been treated at work to raise issues without fear of recrimination and to explore ways of finding a solution to the problem. A "grievance" is so defined by the complainant, and forces should not refuse to deal with the matter. All forces should have separate, transparent appeals procedures in place to deal with issues concerning promotion and selection or force policy and procedures. If these appeal procedures reveal issues that should be addressed through the Fairness at Work procedure, the matter should be referred to stage 2 of this procedure.

8. If a member of staff chooses to use the Fairness at Work procedure it does not preclude them from making an allegation under the Police Staff Discipline Procedures or the Police/Specials Discipline Procedures (which will operate from 1st April 2004 in light of the Police Reform Act 2002 and new Police (Conduct) Regulations) or from lodging a claim at an Employment Tribunal. Although an allegation may be raised under these Discipline Procedures this does not mean that it will be progressed under those procedures. Managers must decide at an early stage which procedure should be used in the particular circumstances of the complaint, after taking into account the wishes of the complainant. Managers should also consider whether an allegation meets the criteria of the Police Reform Act to be recorded as a Recordable Conduct Matter (Schedule 3 paragraph 11) and whether or not it should be referred to the Independent Police Complaints Commission (Schedule 3 paragraph 13). Consideration might also be given to whether any guidance from the IPCC on dealing with such matters is usefully applicable to the matters covered in these procedures.

9. If the complainant considers that they were treated unlawfully they may, in certain circumstances, lodge a claim at an Employment Tribunal. Although someone may have been treated unfairly, the treatment is potentially unlawful only if it is on one or more of the grounds proscribed by the employment or discrimination legislation. Police staff are "employees" and can take claims to an Employment Tribunal under all the relevant employment and discrimination legislation; Police officers, as "Officers of the Crown" are not employees, and can only take claims under certain legislation, (see Annex C for details).

Employment Tribunal Time Limits

10. Currently cases of discrimination must be registered with an Employment Tribunal **within 3 calendar months less one day of the last alleged discriminatory act**. The Employment Act 2002 will introduce minimum statutory standards for internal disciplinary and grievance procedures. The standards will require complainants to use an internal grievance procedure at least 28 days before they lodge their case at an Employment Tribunal; when they do so, the time limit for lodging their case will be extended by a further 3 months to allow their employer to resolve the matter. Where they do not use the grievance procedure, or where the employer does not allow the grievance procedure to operate, any compensation awarded subsequently by the Tribunal will be adversely affected. The Government intends to implement these provisions through the

Dispute Resolution Regulations, probably in the autumn of 2004. Because the Employment Act 2002 does not apply to police officers these proposed Regulations will apply only to Police Staff. However, the Police Advisory Board has agreed that police officers should be given equivalent statutory rights to minimum grievance procedures. Further information will be provided about this in due course.

11. Stage 1 Managers should ensure that staff who decide to use the Fairness at Work Procedure are aware of the time limits for taking a case to an Employment Tribunal. An Employment Tribunal may consider further extending the time limit in very exceptional circumstances, but applicants should not expect that this will be allowed and should be advised to preserve their time limit by lodging an unresolved complaint before the due date.

12. The Fairness at Work procedure is not a vehicle for staff to bring malicious complaints. Once an issue is raised under the Fairness at Work procedure, any counter-complaints from the subject of the case should be reviewed by the Manager handling the case. This review will determine whether there is evidence that either the original case or counter claim is of malicious intent or whether there has been a basic misunderstanding or misinterpretation that can be resolved. In cases of malicious intent measures up to and including disciplinary action should be considered. All actions taken by a Stage Manager during a review should be recorded. **A counter claim should extend the Stage by no more than 14 days; the grounds for any further extension must be recorded,** and should be agreed with all the parties involved.

Relationship between Fairness at Work and Discipline Procedure

13. On occasion, a Fairness at Work issue will involve circumstances that could be considered criminal or serious misconduct. Where it appears to a manager at any Stage of the Fairness at Work procedure that the alleged behaviour could be criminal or serious misconduct, they should consider recording under Schedule 3 paragraph 11 of the Police Reform Act 2002 and seeking a formal investigation under that Act or under the Police Staff Discipline procedures or the Police Misconduct Regulations. If there are no separate issues this should not automatically defer resolution action under the Fairness at Work procedure. The complainant's views should be sought as to how the matter could be resolved to their satisfaction. It may be helpful to ask them to provide a "victim's personal statement" of the way in which they have been affected and the way in which they would wish their issue to be resolved, although this will not necessarily be the determining factor in the way the matter is resolved.

14. In some circumstances a Stage Manager may consider that the complaint is so serious that it must be considered under the Police Reform Act (Schedule 3, paragraph 11) or under the Police Staff Discipline or Police Misconduct Procedures. These would include an allegation of serious assault or dishonesty; a situation that has allegedly worsened since it was first reported; or an incident that was known to be one in a series of others. The complainant should be made aware of any decision to instigate a formal investigation. The complainant will not be forced to give evidence against his/her will, and should not be subject to any action if they refuse to do so. However, it must be recognised that a refusal to provide evidence at a hearing may have an impact on a final outcome.

15. Upon conversion of a Fairness at Work complaint to a Police Staff Disciplinary or Police

Misconduct investigation, the status of the Fairness at Work complaint should be formally reviewed and it must not be left in abeyance. In some circumstances, it may still be possible to resolve the Fairness at Work complaint independently of the outcome of the Discipline/Misconduct investigation, or an Employment Tribunal hearing. The complainant must be informed of the options available to them and the necessary time limits for action. Any decisions or resultant action under the Fairness at Work procedure should be recorded.

Confidentiality

16. All cases should be dealt with in confidence, or within agreed boundaries by the parties involved. All parties should be kept informed of the progress and any decisions made in respect of the complaint and advised that any unjustified disclosure in this context would be subject to investigation under the Police Staff Disciplinary Procedures or Police Misconduct Regulations. All parties should be informed at the outset of the procedure that the need may arise to breach confidentiality, and should the need arise for breaking confidence, for example, if an Employment Tribunal subsequently requires documentation to be disclosed, all parties will be made aware of the situation and the reasons for such disclosure.

Representation

17. Every effort should be made to allow the parties to describe their complaint fully. All parties involved in a procedure have the right to be accompanied at any stage by a member of a staff association, trade union, support network, colleague or friend employed by the Force. Chief Constables or the Commissioner of Police should allow reasonable duty time to staff association or trade union representatives assisting with Fairness at Work complaints and Employment Tribunal proceedings. In circumstances where a complainant is unable to present their case, or if they are on sick leave for example, it may be possible, with their agreement, for their representative to present their case on their behalf.

Victimisation

18. Victimisation of individuals involved in cases under the Fairness at Work procedure will not be tolerated. It may also contravene the protected status of individuals under the discrimination legislation. Where a line manager/supervisor becomes aware of any form of victimisation – in circumstances where a complainant, the subject of a complaint, or anyone who has assisted them has suffered less favourable treatment from their involvement in the complaint – it should be acted upon immediately, and referred for disciplinary action where appropriate.

19. It may be necessary to consider separating the complainant from the person who is the subject of the complaint so that they no longer work together. It may be possible to arrange a temporary transfer, or a period of leave for either part y. The compulsory transfer of any of the parties involved could be an act of unlawful victimisation under the discrimination legislation. Such action should only be considered where it is requested, with care taken to ensure the move is what the individual wants.

Stage Managers and Facilitators

20. Forces will be responsible for providing training for managers and/or "in-house" facilitators or mediators and should clearly identify the relevant individuals for a complainant
to contact at all stages of the Fairness at Work Procedure. Some forces may wish to identify specific individuals outside of the line management process to deal with the complaint but it is anticipated that most forces will train line managers in the operation of the procedure.

21. As a matter of good practice, forces should provide facilitators or mediators to resolve complaints at the earliest opportunity. Facilitators should be volunteers, and be encouraged to be representative of the diversity of people in the force as well as all areas of work and ranks/grades. They should be trained in conflict resolution and interpersonal skills. All parties involved in a case should be happy for a nominated facilitator to mediate wherever possible. In order to preserve impartiality further, and to allow a different perspective to be brought to any conflict, facilitators should not be from the same team or place of work as the parties involved except in exceptional circumstances where there are no objections. Facilitators should report any concerns they have about the handling of a case to the Stage Manager or Fairness at Work Co-ordinator in the first instance, and also record any concerns for analysis by an independent Monitor at the end of the procedure.

22. It is recognised that forces will need time to research and implement the best options for training managers and "in-house" facilitators. As such, forces may wish to engage the services of independent mediators from outside the organisation until any shortfall in training has been resolved. Forces should complete appropriate training for managers and "in-house" facilitators within 18 months of adopting this procedure.

Stage Time Limits

23. When an issue is raised through the Fairness at Work procedure it should be dealt with as soon as is reasonably practicable. Stage 1 should be completed within 14 days of receipt of a formal written complaint. If the procedure advances to Stage 2, then this should also be completed within 14 days. It should be recognised that parties in a workplace dispute may come under considerable pressure resulting in periods of sickness. It is therefore important to deal with complaints speedily and confidentially. Some complaints may be actionable at an Employment Tribunal, but this is usually the last resort for complainants who may just want the offending behaviour to stop. Failure on the part of the Stage Manager to complete it within the proscribed number of days, without an agreed extension or other reasonable grounds, could needlessly encourage the originator to progress the case to an Employment Tribunal and may give them stronger grounds for a claim. The time limits for lodging a case at an Employment Tribunal must be explained to the complainant at each stage of the procedure.

24. Where it becomes obvious that a time limit cannot be achieved, all parties should be advised at the earliest possible opportunity by the Stage Manager. Consultation with all parties on revised timescales should then take place, and they should be advised of any change to target dates. Due regard should be given by all parties to the time limit for lodging a case with Employment Tribunal, and extensions should normally only occur with the agreement of the originator, although the final decision to extend should rest with the Stage Manager at each stage. To ensure such decisions are taken only in the best interests of resolving the case, the reason, and objections raised by any of the parties, for any extension should be recorded.

PART 2 – THE STAGES OF THE PROCEDURE

25. The Fairness at Work Procedure should comprise of at least 2 formal stages. Only after all avenues of resolution have been exhausted at the informal stage, should the matter be referred to the formal procedure. Parties involved in a complaint can bring evidence to a Stage Manager's attention at any stage of the procedure. The Stage Manager should record that they have received or heard a piece of evidence, but should not be compelled to believe it any more or less than evidence they themselves had gathered. If the other party refuses to participate in any stage, the complainant has the right to request that the procedure move immediately to the next stage. In such instances all the relevant case papers should be forwarded immediately and directly to the Stage Manager handling the next stage.

26. The complainant should be aware that where a case involves a senior officer as the subject the procedure may need to be adapted accordingly, so that the second stage is not rendered meaningless. So, for example, in cases where an Assistant Chief Constable or a Deputy Chief Constable is involved, the second stage could involve consideration by the Chief Constable.

Stage One

27. On receipt of a written request for the Fairness at Work procedure to be invoked the Stage Manager will arrange to meet both parties (and their representatives) in private to gather basic details. The complainant's views should be sought as to how the matter could be resolved to their satisfaction. It may be helpful to ask them to provide a "victim's personal statement" of the way in which they have been affected and the way in which their issue could be resolved. If the matter is not straightforward and not resolvable by normal line management intervention, the manager might consider arranging a meeting of all parties involved to facilitate an agreed resolution, or they may arrange for a meeting to be conducted by an independent facilitator, provided there is agreement of the parties involved.
N.B. On receipt of a written request for Stage One of the procedure, the Stage Manager should immediately notify the independent Monitor nominated by the Force (and record the fact that they have done so) in order to ensure that the procedure and the complaints made under it are fully monitored.

28. On completion of Stage 1, the Stage Manager should obtain written confirmation from the originator that he/she is either: satisfied that the problem has been resolved; not satisfied and wishes to proceed to the next stage; or not satisfied but wishes to withdraw the complaint (in these circumstances the originator should be asked to record their reasons and afforded a period to fully consider their position and consult with a relevant staff association or trade union representative).

Stage Two

29. Stage 2 should involve consideration of the issue by a nominated Fairness at Work Co-ordinator, the complainant's divisional/area commander, departmental head, senior manager, or appropriate Chief Officer. The objectives of this stage are to enable the originator to see a senior manager and to explore, where appropriate, wider options for

resolution. The Stage 2 Manager should check with the originator that their feelings on the issue and the way forward are still the same, and where appropriate obtain information from third parties which might aid resolution of the situation. It may still be possible for the Stage 2 Manager to facilitate mediation between the parties and the option of mediation by an independent person should also be considered where appropriate, subject to the agreement of the parties involved. Meetings between the parties are not mandatory at this stage, but should be considered where appropriate in achieving a resolution.

Appeal Stage

30. This stage involves consideration of the case by a senior manager or a senior officer. The objective of this stage will be to examine the complaint for any procedural breaches, however, it is recognised that some forces may wish to insert a stage where the complaint is reconsidered by a senior Appeals Manager. The main purpose will be to examine whether the case was handled correctly and honestly within the framework of the procedure, and ensure that decisions have been made on an informed basis and with due regard to all relevant factors. Should any handling errors be discovered, the Appeal Manager should attempt to rectify them through all possible measures, including instigation of Disciplinary proceedings in cases of appropriate extremity. Meetings with the parties are not mandatory at this stage, but should be considered where appropriate in achieving a resolution.

31. On completion of the Appeal Stage the procedure is exhausted.

PART 3 – AUDIT, MONITORING AND TRAINING

32. Effective implementation of this procedure will rely on the knowledge of those involved. Forces should ensure that all staff have ready access to the procedure, and results of individual cases should be monitored and evaluated. It is also recommended that forces adopt a statement of commitment to fair treatment. For a recommended (but not mandatory) form of wording see Annex A.

Independent Monitoring

33. An independent Monitor should be appointed by the force to receive written records and feedback from all stages of an individual case, in order to evaluate how effectively that case has been operated. He/she should evaluate the handling of each case raised under the procedure within a month of its completion and make a report where necessary on any lessons learned or outstanding issues such as training needs or policy development. This would ideally be the responsibility of Equality or Diversity Officer, but in order to perform these tasks successfully, it is important that they are carried out by someone who is independent; someone whose remit is focused on achieving true diversity and equality within their Force, rather than somebody whose duties could be perceived as being prejudicial to confidential storage of papers and independent evaluation (an example would be assisting in the preparation of the Chief Constable/Commissioner's defence during a pending Employment Tribunal).

Retention of Papers

34. Written records of all actions taken should be made by the relevant Manager at each Stage of the Fairness at Work Procedure. Upon conclusion, all records and relevant papers should be forwarded directly to an independent Monitor nominated by the Force for analysis and retention. These papers should be stored separately from any other personnel papers or personal files. Access to the information would only be obtained through a request under the Data Protection Act. Papers pertaining to cases should be retained for a minimum of 6 years, and are not to be referenced as part of any member of staff's misconduct, promotion, selection or grading procedures.

35. The independent Monitor should keep a statistical record of each case raised under this procedure, noting factors such as the gender, ethnic origin, age, rank and (if appropriate) sexual orientation, religion and/or faith of the originator and the person(s) who is the subject of the complaint, the nature of the case, the area of the force in which those involved were serving, and the outcome of the case. **No statistical record of a case should include the names of those involved or dates (other than the relevant year)**. Statistical records should be available for HR purposes and provided to the Police Authority and HMIC upon request.

36. It is extremely important that police authorities engage in effective monitoring and scrutiny of the force's Fairness at Work procedure. Police Authorities will wish to satisfy themselves that the force has adopted and promoted the Procedure within the organisation and that all officers and staff are aware of their rights and responsibilities. (For further information, see "Tackling Discrimination: Police Authority Oversight and Scrutiny of Grievance Procedures and Employment Tribunals" published by the APA).

37. In their continued monitoring of the implementation and operation of Equal Opportunities policies, HMIC will wish to ensure that forces operate an effective Fairness at Work Procedure.

38. The independent monitor should also note any qualitative concerns about the process including any specific concerns reported about the handling of the case, and whether these concerns resulted in disciplinary action. They should review each case after 6 months, and in appropriate cases, they should follow up the case to ensure that the agreed resolution was successfully implemented.

ANNEX A

Statement of Commitment to Fair Treatment
A recommended example of a statement of commitment to fair treatment is as follows:
The force is firmly committed to providing equality of opportunity for all police officers, police staff and special constables. To achieve this, the force will strive to create and maintain an environment in which there is respect for each individual and recognition of their needs, aspirations and feelings, regardless of their race, ethnic origin, colour, nationality, gender, sexual orientation, religion or belief, marital or family status, trade union or staff association or support group activity, disability, age or any other factor which cannot be justified. It is the responsibility of all police officers, police staff and special constables to ensure this happens, irrespective of rank or grade. It has to be recognised that failure to observe the provisions in this policy without justification, could result in disciplinary action being taken.

ANNEX B

Police Support Groups
Forces should maintain links with their local force support groups. The following national groups can give details of local networks:
British Association of Women in Policing www.bawp.org
PO Box 999, Rossendale, Lancs. BB4 8GE
Tel & Fax 01706 216331
National Black Police Association www.nationalbpa.com
Room GO4, Allington Towers, 19 Allington St, London. SW1E 5EB
Tel 020 7035 5153 Fax 020 7035 5155
Gay Police Association www.gay.police.uk
BM GPA, London. WC1N 3XX
Action line (24 hrs) 07092 700 000 Fax 07092 700 100
All police forces are members of the Employers Forum on Disability, which supports a police network run by a seconded police officer.
Employers Forum on Disability www.employers-forum.co.uk
Nutmeg House
60 Gainsford Street
London
SE1 2NY
Tel 020 7403 3020
The Metropolitan Police Service and some other forces also support a range of local force faith groups.

ANNEX C

Access to Employment Tribunals for Police Officers and Support Staff

Police Staff can take action under the following employment statutes:
Employment Rights Act 1996
Employment Relations Act 1999
Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002
National Minimum Wage Act 1998
Paternity and Adoption Leave Regulations 2002
Public Interest Disclosure Act 1998
Trade Union and Labour Relations (Consolidation) Act 1992
Transfer of Undertakings (Protection of Employment) Regulations 1981
Trade Union Reform and Employment Rights Act 1993
In addition Police Officers and Police Staff can take action under the following statutes:
Disability Discrimination Act 1995 (Police Officers from Oct 2004)
Employment Equality (Sexual Orientation) Regulations 2003 (from Dec 2003)
Employment Equality (Religion and Belief) Regulations 2003 (from Dec 2003).
Equal Pay Act 1970
Health and Safety at Work Act 1974
Maternity and Parental Leave Regulations 1999
Part Time Worker (Prevention of Less Favourable Treatment) Regulations 2000
Public Interest Disclosure Act 1998 (from 1st April 2004)
Race Relations Act 1976
Sex Discrimination Act 1975
Sex Discrimination (Gender Reassignment) Regulations 1999
Working Time Regulations 1998

Codes of Practice

The Equal Opportunities Commission (EOC) and Commission for Racial Equality (CRE), the Disability Rights Commission (DRC) and ACAS have produced Codes of Practice, giving guidance on good practice in respect of discrimination in the workplace. Infringements of the Codes are not in themselves unlawful, however they can be given as evidence to support claims of unlawful discrimination.

ANNEX D

Discrimination Terms and Definitions

Direct Discrimination is defined as treating someone less favourably on the ground of their sex or race or disability or sexual orientation or religion or belief. Direct discrimination cannot be justified.

Indirect Discrimination is not included in the DDA, and is currently defined slightly differently between the different pieces of discrimination legislation, but the government has stated that it will amend all the definitions in the various Acts and Regulations to make them consistent with the new definition: ie "Indirect discrimination occurs when the employer imposes an apparently neutral provision, condition or practice as a condition of employment, that would put persons of one group at a particular disadvantage compared to persons of another group (in respect of their sex, race, disabled status, sexual orientation or religion or belief), unless the employer could show that the provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary".

Victimisation is defined as treating a person less favourably because they have brought proceedings against the discriminator or any other person under the law, given evidence or information or anything else in relation to their or another's proceedings, or made an allegation of discrimination in good faith.

Harassment was not defined in the original discrimination legislation, however the Courts decided that it could be unlawful direct sex, race or disability discrimination. In 1986 the EU issued a Code of Practice which defined sexual harassment as: "unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work". In 2000 the EU issued a new Directive requiring member states to define and legislate against harassment at work. This definition is: "A person subjects another to harassment where, on the grounds of another's (sex, race, disability, sexual orientation, religion or belief), he engages in unwanted conduct which has the purpose or effect of (a) violating the other's dignity, or (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for that other. Conduct shall be regarded as having the effect specified in paragraphs (a) and (b) if, and only if, having regard to all the circumstances, including, in particular, the perception of the other, it should be reasonably considered as having that effect". This definition will sit alongside and extend the existing definition of harassment as direct discrimination.

Bullying is harassment and would constitute unlawful discrimination if the person suffered the less favourable treatment on the grounds of sex, race, disability, sexual orientation, religion or belief. If the treatment constitutes harassment on any other grounds then claims cannot be pursued within discrimination law at an Employment Tribunal. Consideration could be given to dealing with the treatment within Health & Safety legislation.

Equal Pay is the concept of paying men and women the same money for

- work that is the same or broadly similar ("like work")
- work rated as equivalent under a job evaluation scheme
- work which is different but which is of equal value in terms of the demands of the job.

Where there is disproportionate pay between a woman and a man, or groups of men and women, the Chief Officer must show that the difference is genuinely due to a material factor unconnected with sex. He or she would need to demonstrate that the practice represents a real need on the part of the Force and is appropriate and necessary for achieving that need.

Disability is defined by the DDA as: "any child or adult with a physical or mental impairment that affects their ability to carr y out normal day to day activities which are substantial, adverse and long term". The DDA requires employers to make reasonable adjustments where working arrangements or physical features place a disabled employee or job applicant at a substantial disadvantage to persons who are not disabled. The Chief Officer must show that any failure to make reasonable adjustments is justifiable.

POLICE FEDERATION OF ENGLAND AND WALES

JOINT CENTRAL COMMITTEE

Equality & Diversity Policy and Harassment & Bullying Policy and associated Grievance Procedures

Date Adopted - January 2003

EXPLANATORY SUMMARY

- This suggested grievance procedure will provide the Joint Central Committee with a procedure that complies with the minimum statutory requirement and should enable grievances to be dealt within the statutory 28 days before a complainant can lodge an application at an Employment Tribunal.

- The procedure is designed to be simple. It sets out a 2 stage process with an additional preliminary informal resolution stage and a final appeal stage.

- Within any organisation the person complained of may well be the person responsible for dealing with the grievance. It is important that the people charged with dealing with a grievance are impartial, and seen to be impartial. For this reason it is recommended that people dealing with each stage of the procedure should be clearly identified.

- It is recommended that to provide impartiality to the procedure a Joint Central Committee member independent of the Police Federation HQ be designated as the "Managing Officer" of the Grievance Procedure.

  It is recommended that the Secretary of the Equality Sub-Committee be designated as the Managing Officer, or in circumstances they are an inappropriate person (either because they are the person complained of, or there is a conflict of interest due to their involvement within the circumstances of the grievance or procedure) the Managing Officer should then be the Chairman of the Equality Sub-Committee.

  Should they both be inappropriate persons to deal with the grievance then it will be the responsibility of the National Chairman or General Secretary to nominate an appropriate person.

  These individuals would be expected to be familiar with the procedure, the likely forms of grievance and possible options for resolution.

- The Managing Officer would also have responsibility for securely retaining confidential records of all grievances, which should form part of the annual Joint Central Committee Equality and Diversity monitoring analysis. Disposal of these records will only take place within Data Protection time limits or with the express agreement of the individual raising the grievance.

- It is envisaged that grievances coming to the attention of the Joint Central Committee could occur as part of training courses, seminars, conferences, other organisation events, or from contractors and service providers to the organisation.

  This procedure has been designed to accommodate complaints in each of these situations.

- The Police Federation Equality and Diversity Policy and Harassment Policy is set out at the front of the procedure, and definitions of the terms used at the back, thus defining the scope of the grievance procedure.

1. EQUALITY AND DIVERSITY POLICY STATEMENT

1.1. The Police Federation of England and Wales is fully committed to the elimination of unfair discrimination on the grounds of gender, family status, age, race, ethnic origin, sexual orientation, religion, disabled status, or any other unjustified condition, and the promotion of equality and diversity for all, in its own practices and arrangements and throughout the Police Service in England and Wales.

1.2. The Police Federation Joint Central Committee recognises its responsibilities under all domestic and European equality legislation to provide equality of opportunity to all people in its capacity as a staff association, as a service provider to its members and as an employer.

1.3. In order to achieve this the Police Federation Joint Central Committee seeks to:

- negotiate and operate practices which promote equal opportunities in employment, training and service delivery;
- promote the development of a workplace environment for all members and staff to develop their full potential, free of harassment and discrimination;
- ensure that all contractors and visitors are treated fairly, free of harassment and discrimination;
- provide appropriate advice and support for members in pursuit of equality and diversity issues;
- raise awareness of equality and diversity issues and promote best practice throughout the Police Federation and the Police Service in England and Wales;
- monitor Police Federation Joint Central Committee practices and arrangements in order to develop an inclusive Equality and Diversity Strategy.

1.4. Responsibility for the Police Federation Equality and Diversity Policy rests jointly with the Chairman and General Secretary of the Police Federation.

2. HARASSMENT & BULLYING POLICY STATEMENT

2.1. The Police Federation Joint Central Committee is committed to providing a workplace environment which is free of harassment or bullying for its employees and members and will take positive steps to eliminate it by monitoring the workplace and investigating any allegations of unacceptable behaviour.

2.2. Harassment or bullying behaviour will not be tolerated in any Police Federation Joint Central Committee workplace, at training courses, conferences, seminars, other organisation event or at work-related social events.

If harassment or bullying were to result in an actual injury this may be a criminal matter.

3. SCOPE OF THE PROCEDURE

3.1. This grievance procedure is a formal two-stage procedure, with an additional preliminary informal resolution stage and a third stage available for appealing against decisions.
It is for dealing with grievances involving the actions of members of the Police Federation, contractors or service providers within the Joint Central Committee building or at events organised by the Joint Central Committee.

3.2. The JCC has appointed the Secretary of the Equality Sub-Committee to act as the Managing Officer of the procedure. In circumstances where it is inappropriate for them to act as the Managing Officer (either because they are the person complained of, or there is a conflict of interest due to their involvement within the circumstances of the grievance or procedure) the Chairman of the Equality Sub-Committee will act as the Managing Officer. Should they both be inappropriate persons to deal with the grievance then it will be the responsibility of the National Chairman or General Secretary to nominate an appropriate person.

3.3. In the absence of any existing formal procedure the grievance procedure can be used to deal with all types of grievances including unfair interpretation of policies, conditions of service and actions that may contravene the Police Federation's Equality and Diversity or Harassment and Bullying Policies.

3.4 Police officers are subject to Police Regulations and, in some circumstances the investigation of a grievance may reveal disciplinary or criminal implications.

This procedure is not intended as a means of undermining fair decisions or the effectiveness and efficiency of the Police Federation Joint Central Committee.

4. CONFIDENTIALITY

4.1. All cases will be dealt with in the strictest confidence.

4.2. All records of grievances will be securely retained by the Managing Officer and will only be disposed of within Data Protection time limits or with the express agreement of the individual raising the grievance.

5. REPRESENTATION

5.1. The aggrieved and all other parties involved have the right at any stage to consult with and be accompanied by a representative of a staff association, trade union, colleague or friend who may speak on their behalf.

6. STANDARD OF PROOF

6.1. The standard of proof in this grievance procedure is as that required by an Employment Tribunal, namely on the balance of probability.

7. VICTIMISATION

7.1. Victimisation of a person who has invoked the grievance procedure or a person, who provides any form of assistance to that person, is unacceptable and in discrimination or harassment cases may constitute unlawful conduct under the Race Relations Act, Sex Discrimination Act or Disability Discrimination Act.

7.2. If a person, having invoked the grievance procedure, feels they are being victimised in any way they should immediately consult with the Managing Officer.

8. TIME LIMITS

8.1. Time limits for the first and second stages of the procedure are both 14 days and every effort will be made to comply with these limits so that grievances can be investigated promptly.

It may be necessary to extend the time limit because of leave, sickness or other reasons but the parties involved must agree to any extension and the Managing Officer must be informed.

8.2. The timescale is crucial in cases alleging breaches of Race Relations, Sex Discrimination or Disability Discrimination Acts.

In these cases time limits should be extended only with the express agreement of all parties. Reasons for the delay must be fully explained and the individual involved should be informed that for their complaint to be registered with an Employment Tribunal there is a time limit of three calendar months less one day from the date of the last act of discrimination

8.3. Under the Employment Act 2002, a person must set out their grievance in writing to the person who has responsibility for their line management at least 28 days before he or she lodges a claim at an Employment Tribunal.

Note: Should the aggrieved raise issues within this grievance procedure that constitute unlawful discrimination or harassment by an individual, it is important to remember that claims of unlawful discrimination can only be made to Employment Tribunals if they have taken place during the course of Employment, Education or in the provision of Goods and Services.

To ensure that the aggrieved does not lose their right to make application to an Employment Tribunal they should also consider invoking their employers Grievance Procedure?

9. INFORMAL STAGE

9.1. A person should start the grievance procedure only after they have raised the issue and given the person identified in the procedure as having such responsibility, the opportunity to informally resolve their grievance.

If they feel that the issue is such that they are unable to raise it with the identified Officer of the Joint Central Committee because they are the person subject of their grievance, or the grievance as not been resolved to their satisfaction, they may wish to consult with a representative of their Staff Association, Trade Union, colleague or friend prior to proceeding to Stage 1 of the formal procedure.

9.2. Any written records should be retained by the Managing Officer and should form part of the JCC Equality and Diversity annual monitoring analysis. No other record of the grievance is to be made or kept on any other file.

It is only after all efforts to resolve the grievance have failed that it should be referred to the next stage. The emphasis should be on seeking a quick resolution, not examining the issue(s) and passing it on to the next stage.

10. STAGE 1

10.1. In the absence of an existing procedure the grievance procedure can be used to deal with all types of grievances including unfair interpretation of policies, conditions of service and actions that may contravene the Police Federation's Equality and Diversity or Harassment and Bullying Policies.

10.2. Any member of the Federation, Contractor or Service Provider may raise a grievance in respect of issues within the Joint Central Committee building, whilst attending training courses, Seminars, Conferences, or any other event organised by the Joint Central Committee.

10.3. Training Courses, Seminars & other Joint Central Committee events.

The Joint Central Committee member having organisational responsibility for arranging the training course, conference, seminar or other organised event will be responsible for identifying and publishing details of the nominated person(s) that an aggrieved person may approach to deal with their grievance.

A person should start the grievance procedure only after they have raised the issue and given this person an opportunity to informally resolve their grievance.

If they feel that the problem is such that they are unable to raise it with this person in the first instance because they are the subject of their grievance, or that the grievance is not resolved to their satisfaction, then they should proceed to Stage 1 of the procedure by submitting a written account of the issues.

In the case of training courses and seminars to the Joint Central Committee Training Coordinator and in the case of other Joint Central Committee organised events to the National Vice Chairman, they will then be responsible for dealing with the grievances.

In circumstances where it is inappropriate for them deal with the Grievance (either because they are the person complained of, or there is a conflict of interest due to their involvement within the circumstances of the grievance or procedure) then the Vice Chairman will assume responsibility for dealing with grievances from training

courses/seminars and the National Chairman will assume responsibility for dealing with grievances from Joint Central Committee organised events.

Should it be inappropriate for the persons identified to deal with the grievance then the grievance should move directly to Stage 2 of the procedure and the Managing Officer will be responsible for dealing with their grievance.

10.4. Joint Central Committee Building

The Deputy General Secretary will have initial responsibility for dealing with grievances within the Joint Central Committee building.

A person should start the grievance procedure only after they have raised the issue and given this person an opportunity to informally resolve their grievance. If the aggrieved feels that the problem is such that they are unable to raise it with the Deputy General Secretary in the first instance because they are the subject of their grievance, then the National Vice Chairman of the Joint Central Committee will be responsible for dealing with their grievance.

If the grievance is not resolved to their satisfaction, then they should proceed to Stage 1 of the procedure by submitting a written account of the issues to the General Secretary of the Joint Central Committee, who will have responsibility for dealing with their grievance.

Should it be inappropriate for the persons identified to deal with the grievance (either because they are the person complained of, or there is a conflict of interest due to their involvement within the circumstances of the grievance or procedure) then the grievance should move directly to Stage 2 of the procedure and the Managing Officer will be responsible for dealing with their grievance.

10.5. A formal grievance should be put in writing to the appropriate Officer of the Joint Central Committee (as identified within Stage 1 of the procedure) and a copy sent to the Managing Officer for their information and recording purposes.

10.6. The Officer of the Joint Central Committee should meet with the aggrieved and attempt to resolve their issue(s) at the earliest opportunity, which should be within the Stage 1 time limit of 14 days.

They should inform all parties of the outcome, their suggested resolution and what action will need to be taken as a result.

Any records of the meeting should be forwarded to the Managing Officer.

10.7. If it is not possible to resolve the grievance at this stage then the complaint should go to Stage 2 of the procedure.

The aggrieved should be advised of their rights to progress to an Employment Tribunal and the relevant time limits concerning the grievance procedure (28 days from commencing Stage 1) and any allegation of discrimination (3 calendar months less 1 day from the date of the last alleged discriminatory act).

11. STAGE 2

11.1. The Managing Officer is responsible for dealing with the grievance within the Stage 2 time limit of 14 days. They should be able to take an independent view of the issues with a view to resolving the grievance.

11.2. The Managing Officer should meet the parties involved to discuss the grievance. They should inform the parties of the outcome, their suggested resolution and what action will need to be taken as a result.

They should make a record of the meeting and keep it for recording purposes.

12. APPEAL STAGE

12.1. If the Managing Officer were unable to resolve the grievance to the satisfaction of the aggrieved, the Executive of the Joint Central Committee would hear any appeal.

The Executive Committee will exclude from its decision making process, the individual raising the grievance and any person named or involved in dealing with the grievance.

The Managing Officer will have responsibility for providing information of the issues to the Executive Committee.

The Managing Officer also has the right to make representations to the Executive Committee regarding any relevant issues from their dealings within the Grievance Procedure.

13. MONITORING

13.1. Any record of a grievance should form part of the Joint Central Committee Equality and Diversity monitoring programme.

14. CRIMINAL AND/OR DISCIPLINARY ACTION

14.1. Criminal and disciplinary procedures are entirely separate from the grievance procedure. However it may be that a grievance will involve allegations of a criminal and/or discipline nature against a serving police officer or member of staff.

14.2. In cases involving a serving police officer, the person handling the grievance should consider referring the matter to the Head of the Complaints and Discipline Department in that officer's Force.

14.3. In cases involving persons other than Police officers, the person handling the grievance should consider in the circumstances if discipline procedures or a criminal investigation are necessary.

14.4. If the aggrieved does not wish to make a criminal or disciplinary allegation against the person(s) concerned, it must be explained to them that the nature of the allegation makes this action necessary.

14.5. Attempts to find a resolution to the original grievance should not be deferred pending the outcome of any criminal or discipline enquiry.

15. DEFINITIONS

15.1. Unlawful discrimination can be direct or indirect. Unlawful direct discrimination consists of treating a person less favourably than others are, or would be treated in similar circumstances, on the grounds of their racial or ethnic group, gender, married or disabled status. Direct discrimination cannot be justified except on the grounds of disability. Harassment on any of these grounds would constitute unlawful direct discrimination.

15.2. Unlawful indirect race discrimination occurs when an organisation imposes a requirement or condition which adversely affects a considerably larger proportion of one racial group than another and which the organisation cannot justify on job related grounds.

15.3. Unlawful indirect sex discrimination occurs when an organisation applies a provision, criterion or practice which adversly affects a considerably larger proportion of one sex than the other and which the organisation cannot justify on job related grounds.

15.4. It is also unlawful to victimise someone for raising a complaint of discrimination in good faith, or for helping or advising someone to raise a complaint in good faith.

15.5. Harassment that is based on a person's sex, race or disabled status can constitute unlawful discrimination. Sexual harassment is defined as unwanted conduct of a sexual nature, or other conduct based on sex which affects the dignity of men and women at work. It can include unwelcome physical, verbal or non-verbal conduct. Racial harassment is defined as violence which may be verbal or physical and which includes attacks on property as well as on the person, suffered by individuals or groups because of their colour, race, nationality and ethnic or national origins, when the victim believes that the perpetrator was acting on racial grounds and/or there is evidence of racism.

Behaviour that could constitute harassment includes:

- Physical or verbal attention of a sexual nature that makes the recipient (either man or woman) uncomfortable.
- Derogatory or degrading remarks of a personal nature.
- Display of posters or other pornographic or racist material, including any on computer screens
- Threats or verbal abuse of a racist or national nature

15.6. Bullying is vindictive, cruel behaviour which humiliates and undermines confidence or is intended to undermine confidence. It is an abuse of power against a person or persons. It can occur from a subordinate, or group of subordinates to a supervisor and between colleagues. The effects of harassment or bullying on the individual can be physical e.g. disturbed sleep, loss of energy, feeling sick or emotional e.g. anxiety, loss of

confidence, reduced self-esteem and depression. Harassment and bullying can also affect the Joint Central Committees ability to deliver its service to members, as it can cause problems of poor work performance, absenteeism, increased sickness and low morale. Bullying could also be unlawful under the Health and Safety at Work Act and Section 154 Criminal Justice Act and Public Order Act 1994 which makes Intentional Harassment a criminal offence.

Behaviour that could constitute bullying includes:

- Imposing impossible objectives and deadlines
- Criticising or humiliating individuals in public
- Over-reacting to minor incidents in an intimidating manner
- Abusive or intimidating written or verbal communication

(NAME OF FORCE)

POLICE FEDERATION

Joint Branch Board

Equality & Diversity Policy
and
Harassment & Bullying Policy
and associated
Grievance Procedure

Date Adopted

EXPLANATORY SUMMARY

- This suggested grievance procedure will provide JBB offices with the minimum statutory requirement for employers to have a grievance procedure and should enable the grievance to be dealt with in the statutory 28 days before a complainant can lodge an application at an Employment Tribunal.

- As most JBB offices are small, the procedure is designed to be simple. It sets out a 2 stage process with an additional preliminary informal resolution stage and a final appeal stage.

- In some JBB offices the person complained of may well be the person responsible for dealing with the grievance. It is important that the people charged with dealing with a grievance are impartial, and seen to be impartial.

- For this reason it is recommended that people dealing with each stage of the procedure should be clearly identified. It is recommended that the person dealing with the grievance at stage 1 should be the line manager of the office staff; this is usually one of the JBB officers.

- For cases where the line manager of the individual is the named person in the grievance, it is recommended that another officer of the JBB becomes responsible for dealing with the grievance.

- Should all officers of the JBB be named within the grievance or in order to prevent a conflict of interest, the grievance should immediately proceed to stage 2 and should be dealt with by the "Managing Officer".

- It is recommended that to provide impartiality to the procedure a Federation Representative from outside the JBB office be designated as the "Managing Officer" of the Grievance Procedure.

- Ideally this person would also be the JBB Equality Liaison Officer who would be expected to be familiar with the procedure, the likely forms of grievance and possible options for resolution.

- They would also have responsibility for retaining confidential records of all grievances, which should form part of the annual JBB Equality and Diversity monitoring analysis. Disposal of these records will only take place with the express agreement of the individual raising the grievance.

- The Police Federation Equality and Diversity Policy and Harassment Policy is set out at the front of the procedure, and definitions of the terms used at the back, thus defining the scope of the grievance procedure.

1. EQUALITY AND DIVERSITY POLICY STATEMENT

1.1. The (Name of Force) Police Federation Joint Branch Board is fully committed to the elimination of unfair discrimination on the grounds of gender, family status, age, race, ethnic origin, sexual orientation, religion, disabled status, or any other unjustified condition, and the promotion of equality and diversity for all, in its own practices and arrangements and throughout the (Name of Force) Police Service.

1.2. The (Name of Force) Police Federation JBB recognises its responsibilities under all domestic and European equality legislation to provide equality of opportunity to all people in its capacity as a staff association, as a service provider to its members and as an employer.

1.3. In order to achieve this, the (Name of Force) Police Federation JBB seeks to:

- negotiate and operate practices which promote equal opportunities in employment, training and service delivery;
- promote the development of a workplace environment for all members and staff to develop their full potential, free of harassment and discrimination;
- ensure that all contractors and visitors are treated fairly, free of harassment and discrimination;
- provide appropriate advice and support for members in pursuit of equality and diversity issues;
- raise awareness of equality and diversity issues and promote best practice throughout the (Name of Force) Police Federation and (Name of Force);
- monitor (Name of Force) Police Federation practices and arrangements in order to develop an inclusive Equality and Diversity Strategy.

1.4. Responsibility for the (Name of Force) Police Federation Equality and Diversity Policy rests jointly with the JBB Chairman and Secretary.

2. HARASSMENT & BULLYING POLICY STATEMENT

2.1. The (Name of Force) Police Federation JBB is committed to providing a workplace environment which is free of harassment or bullying for its employees and members and will take positive steps to eliminate it by monitoring the workplace and investigating any allegations of unacceptable behaviour. Harassment or bullying behaviour will not be tolerated in the (Name of Force) Police Federation JBB workplace, at conferences or seminars, or at work-related social events. If harassment or bullying were to result in an actual assault this may be a criminal matter.

3. SCOPE OF THE PROCEDURE

3.1. This grievance procedure is a formal two-stage procedure, with a third stage available for appealing against the decision. It is for dealing with grievances that are concerned with the actions of the Police Federation JBB. Other grievances should be dealt with under the (Name of Force) grievance procedure.

3.2. The procedure can be used to deal with all types of grievances including unfair interpretation of policies, conditions of service and actions that may contravene the Police Federation's Equality and Diversity or Harassment and Bullying Policies. Civilian employees can raise wider employment issues than police officers, including claims of unfair dismissal. Police officers are subject to Police Regulations and, in some circumstances, the investigation of a grievance may reveal disciplinary or criminal implications. It is not intended as a means of undermining fair decisions or the effectiveness and efficiency of the (Name of Force) Police Federation JBB.

4. CONFIDENTIALITY

4.1. All cases dealt with under this procedure should be dealt with in the strictest of confidence.

4.2. All records of grievances will be retained by the Managing Officer and will only be disposed of within Data Protection time limits or with the express agreement of the individual raising the grievance.

5. REPRESENTATION

5.1. The complainant and all other parties involved have the right at any stage to consult with and be accompanied by a representative of a staff association, trade union, colleague or friend who may speak on their behalf.

6. STANDARD OF PROOF

6.1. The complainant does not have to prove their case beyond all reasonable doubt. The standard of proof used in this grievance procedure is the same as that required by an Employment Tribunal, namely on the balance of probability.

7. VICTIMISATION

7.1. Victimisation of a person who invokes the grievance procedure or who provides any form of assistance to someone who is or has invoked, is unacceptable and in discrimination or harassment cases may constitute unlawful conduct under the Race Relations Act, Sex Discrimination Act or Disability Discrimination Act.

7.2. If a person is being victimised in any way, after invoking the grievance procedure they should immediately consult with the Managing Officer.

8. TIME LIMITS

8.1. Time limits are set at each stage of the procedure and every effort will be made to comply with the limits so that grievances can be investigated promptly. It may be necessary to extend the time limit because of leave, sickness or other reasons. The parties involved must agree to any extension and inform the Managing Officer.

8.2. The timescale is crucial in cases alleging breaches of Race Relations, Sex Discrimination or Disability Discrimination Acts. In these cases time limits should be extended only with the express agreement of all parties after reasons have been explained for the delay and who fully understand that there is a time limit of three calendar months less one day from the date of the last act that is the subject of complaint for registered a case with an Employment Tribunal.

8.3. Under the Employment Act 2002, a person must set out their grievance in writing to the JBB officer who has responsibility for their line management at least 28 days before he or she lodges a claim at an Employment Tribunal.

9. INFORMAL STAGE

9.1. A person should start the grievance procedure only after they have raised the problem with their line manager and no resolution as been achieved. If they feel that the problem is such that they are unable to raise it with their line manager in the first instance, or it is otherwise unresolved by the line manager, they may wish to discuss the matter with their Trade Union or the Managing Officer before proceeding to Stage 1 of the formal grievance procedure.

9.2. The formal grievance procedure involves two separate stages. In most cases it should be possible to resolve the grievance at either stage 1 or 2. It is only after all efforts to resolve the grievance have failed that it should be referred to the next stage. The emphasis should be on seeking a resolution, not examining the issue(s) and passing it on to the next stage.

9.3. Any written records should be retained by the 'Managing Officer' and should form part of the JBB Equality and Diversity annual monitoring analysis. No other record of the grievance is to be made or kept on any other file.

10. STAGE 1

10.1. A formal grievance should be put in writing to the line manager, however for cases where the line manager is the named person in the grievance, it is recommended that another officer of the JBB becomes responsible for dealing with the grievance. A copy should be sent to the Managing Officer for their information and recording purposes.

10.2. The manager should meet with the complainant and attempt to resolve their issue within the Stage 1 time limit of 7 days. He or she should inform all parties of their decision, their reasons and what action will be taken as a result. Any records of the meeting should be forwarded to the Managing Officer.

10.3. If it is not possible to resolve the grievance at this stage, or if it is not practicable to raise the matter with the line manager or other officer of the JBB, the complaint should go immediately to Stage 2. The complainant should be advised of their rights to progress to an Employment Tribunal and the relevant time limits concerning the grievance procedure (28 days from commencing Stage 1) and any allegation of discrimination (3 calendar months less 1 day from the date of the alleged discriminatory act).

11. STAGE 2

11.1. The Managing Officer is responsible for dealing with the grievance within the Stage 2 time limit of 14 days. He or she should be able to take an independent view of the matter with a view to resolving the grievance.

11.2. The Managing Officer should meet with the parties and then inform them of their final decision, their reasons and what action will be taken as a result. He or she should make a record of the meeting and keep it for recording purposes.

12. APPEAL STAGE

12.1. If it were not possible to resolve the grievance to the satisfaction of the complainant or Managing Officer, the JBB Executive Committee would hear any appeal. The Executive Committee will exclude from its decision making process, the individual raising the grievance and any person named or involved in dealing with the grievance. The Managing Officer will have responsibility for providing information of the issues to the Executive Committee.

13. MONITORING

13.1. A record should form part of the JBB equality monitoring programme.

14. CRIMINAL AND/OR DISCIPLINARY ACTION

14.1. Criminal and disciplinary procedures are entirely separate from the grievance procedure. However it may be that a grievance will involve allegations of a criminal and/or discipline nature against a serving police officer or member of staff.

14.2. In cases involving a serving police officer, the person handling the grievance should consider referring the matter to the Force's Head of Complaints and Discipline Department.

14.3. In cases involving members of staff, the person handling the grievance should consider in the circumstances if formal discipline procedures or a criminal investigation are necessary.

14.4. If the complainant does not wish to make a criminal or disciplinary allegation against the person(s) concerned, it must be explained to them should the nature of the allegation make this action necessary.

14.5. Attempts to find a resolution to the original grievance should not be deferred pending the outcome of any criminal or discipline enquiry.

15. DEFINITIONS

15.1. Unlawful discrimination can be direct or indirect. Unlawful direct discrimination consists of treating a person less favourably than others are, or would be treated in similar circumstances, on the grounds of their racial or ethnic group, gender, married or disabled status. Direct discrimination cannot be justified except on the grounds of disability. Harassment on any of these grounds would constitute unlawful direct discrimination.

15.2. Unlawful indirect race discrimination occurs when an organisation imposes a requirement or condition which adversely affects a considerably larger proportion of one racial group than another and which the organisation cannot justify on job related grounds. For example, a requirement for job applicants to live in a particular town, or a particular part of a town, could constitute unlawful indirect race discrimination if it could not be justified on job related grounds

15.3. Unlawful indirect sex discrimination occurs when an organisation applies a provision, criterion or practice which adversly affects a considerably larger proportion of one sex than the other and which the organisation cannot justify on job related grounds. For example, a practice that prevents people in a department from working a fixed shift pattern could adversely affect more women than men, and be unjustifiable on job related grounds.

15.4. It is also unlawful to victimise someone for raising a complaint of discrimination in good faith, or for helping or advising someone to raise a complaint in good faith. For example, refusing to allocate overtime to someone who has raised a complaint of discrimination would be unlawful.

15.5. Harassment that is based on a person's sex, race or disabled status can constitute unlawful discrimination. Sexual harassment is defined as unwanted conduct of a sexual nature, or other conduct based on sex which affects the dignity of men and women at work. It can include unwelcome physical, verbal or non-verbal conduct. Racial harassment is defined as violence which may be verbal or physical and which includes attacks on property as well as on the person, suffered by individuals or groups because of their colour, race, nationality and ethnic or national origins, when the victim believes that the perpetrator was acting on racial grounds and/or there is evidence of racism. Behaviour that could constitute harassment includes:

- Physical or verbal attention of a sexual nature that makes the recipient (either man or woman) uncomfortable.
- Derogatory or degrading remarks e.g. on dress or physical appearance
- Display of posters or other pornographic or racist material, including any on computer screens
- Threats or verbal abuse of a racist or national nature

15.6. Bullying is vindictive, cruel behaviour which humiliates and undermines confidence or is intended to undermine confidence. It is an abuse of power against a person or persons. It can occur from a subordinate, or group of subordinates to a supervisor and between colleagues. The effects of harassment or bullying on the individual can be physical e.g. disturbed sleep, loss of energy, feeling sick or emotional e.g. anxiety, loss of confidence, reduced self-esteem and depression. Harassment and bullying can also affect

the (Name of Force) Police Federation JBB's ability to deliver its service to members, as it can cause problems of poor work performance, absenteeism, increased sickness and low morale.

Bullying could be unlawful under the Health and Safety at Work Act and Section 154 Criminal Justice Act and Public Order Act 1994 which makes Intentional Harassment a criminal offence.

Behaviour that could constitute bullying includes:

- Imposing impossible objectives and deadlines
- Criticising or humiliating individuals in public
- Over-reacting to minor incidents in an intimidating manner
- Abusive or intimidating written communication

POLICE FEDERATION OF ENGLAND AND WALES

Diversity Equality Scheme

FOREWORD

The Police Federation of England and Wales is the representative body for all police officers of Constable, Sergeant and Inspector ranks in the Police Forces of England and Wales. We were established by Act of Parliament in 1919 and continue to operate under statutory regulations.

The Police Federation is fully committed to the elimination of unfair discrimination and the promotion of equality and diversity for all, in its own practices and arrangements and throughout the Police Service in England and Wales.

The Police Service's record in relation to issues of equality and diversity has been under a great deal of scrutiny in recent years and we recognise that there are barriers to recruitment and progression experienced by officers from all sections of the community. We believe that the Police Service must value the differences that each individual brings to the organisation and develop practices that enable all officers to fulfil their potential within the Service.

We also believe that the Police Federation must demonstrate its commitment to improving equality and diversity in its own practices and arrangements.

We have set out our personal commitment to developing equality and diversity within the Police Federation in this Diversity Equality Scheme.

We expect all our Representatives to show a similar commitment to equality and diversity issues and for Joint Branch Boards to develop local strategies and action plans to ensure that equality becomes a reality for all those who come into contact with the Police Federation.

Chairman

General Secretary

September 2005

INTRODUCTION

The Police Federation is not subject to the duty to promote race equality under the Race Relations (Amendment) Act 2000, but has decided to produce this voluntary Diversity Equality Scheme which covers all issues of diversity in order to give effect to its equal opportunity policy statement.

Our Equality and Diversity Policy Statement states that we are fully committed to the elimination of unfair discrimination on the grounds of gender, family status, age, race, ethnic origin, sexual orientation, religion, disabled status, or any other unjustified condition, and the promotion of equality and diversity for all, in its own practices and arrangements and throughout the Police Service in England and Wales. In order to achieve this, we seek to:

- negotiate and operate practices which promote equal opportunities in employment, training and service delivery;
- promote the development of a workplace environment for all members and staff to develop their full potential, free of harassment and discrimination;
- ensure that all contractors and visitors are treated fairly, free of harassment and discrimination;
- provide appropriate advice and support for members in pursuit of equality and diversity issues;
- raise awareness of equality and diversity issues and promote best practice throughout the Police Federation and Police Service of England and Wales;
- monitor Police Federation practices and arrangements in order to develop an inclusive Equality and Diversity Strategy with action plans.

We are a staff association that exists to represent our members in all matters affecting their welfare and efficiency. We are also a small employer employing around 50 staff at our Headquarters offices. We provide training for our Representatives and member services to our subscribing members.

Overall responsibility for the Equality and Diversity Policy rests jointly with the Chairman and the General Secretary, on behalf of the Police Federation of England and Wales.

In respect of employment issues, responsibility for development and delivery of the equality and diversity strategy rests with the General Secretary.

In respect of development of the equality and diversity strategy as it affects our members in the workplace, responsibility rests with the Chairman and Secretary of the Equality Sub Committee reporting to the Joint Central Committee.

In respect of the development and delivery of member services, responsibility rests with the General Secretary of each rank Central Committee and the Deputy General Secretary of the Joint Central Committee.

POSITION STATEMENT

The Police Federation is the single democratic representative staff association for all officers of Constable, Sergeant and Inspector ranks. We have a statutory responsibility for the welfare of officers and the provision of an efficient police service.

- **Election & Policy Making Arrangements**

The Police Federation operates under s44 of the Police Act 1964, s1 of the Police Act 1972, the Police Federation Regulations 1969 and the Police Federation (Amendment) Regulations 1995 and 2004.

Every police officer of Federated rank, including every probationary officer, is automatically a member of the Police Federation. All can access Federation services and are eligible to vote in elections for Representatives. Subscribing members can vote on issues relating to fund rules and have access to services for which funding is required.

Officers in each of the 43 Police Forces in England and Wales elect a Joint Branch Board (JBB.) The JBB is an autonomous organisation in law and is made up of three constituent parts: the Constables', Sergeants' and Inspectors' Branch Boards who are elected every three years. The number of Representative positions on each JBB is dependent on the number of officers within each Force.

The JBB is the negotiating and consultative body in dealings with the Chief Constable, senior officers and the Police Authority. This structure provides an effective link between the officer, their Force and their Representatives, to deal with local issues and to improve the welfare and efficiency of the Force and its members.

Every three years, delegates to the Police Federation's annual conference elect a Central Committee for each rank, consisting of ten members who deal with national matters as they affect the rank they represent. The three separate rank Central Committees together form the Joint Central Committee (JCC), which is the policy-making body of the Police Federation and has responsibility for all business affecting the welfare and efficiency of the Police Service and its members. Officers of the JCC represent the Police Federation on the Police Negotiating Board (PNB) and the Police Advisory Board of England and Wales (PAB).

The PNB is the national body dealing with negotiable terms and conditions of service, including pensions for all police officers in the UK. It was established under the Police Negotiating Board Act 1980, and members represent the interests of Authorities who maintain Police Forces in Great Britain and the Police Service of Northern Ireland and members of those Forces and cadets on questions of hours of duty, leave, pay and allowances and pensions. The PAB deals with non-negotiable conditions of service and operational policing issues, and makes recommendations to Government on these issues.

- **Training & Indemnity Insurance**

The Police Federation is required by statute to represent the needs and interests of all members.

The Police Federation trains its Representatives to fulfil their statutory role in respect of advice and assistance they provide to members and indemnifies its Representatives in respect of that advice.

- **Partnership Working**

We seek to influence the work of all Police Service Stakeholders, including:

- The Home Office
- The Association of Chief Police Officers
- Her Majesty's Inspector of Constabulary
- The Association of Police Authorities
- The Independent Police Complaints Commission
- Centrex

We seek to work in partnership with the other Police Service rank Staff Associations:

- The Police Superintendents Association of England and Wales
- The Chief Police Officers Staff Association
- The Scottish Police Federation
- The Police Federation of Northern Ireland
- The British Transport Police Federation

We seek to work in partnership with the national Support Groups in the Police Service in order to complement and enhance our statutory responsibility for the welfare of officers. These include:

- The British Association of Women in Policing
- The Gay Police Association
- The National Black Police Association
- The Association of Muslim Police
- The National Disabled Police Association

We have regular Liaison meetings at national level to discuss matters of mutual concern and invite members of the national Support Groups to attend our national conference.

We recognise that our members may also be members of one or more of the single issue Support Groups and we encourage JBBs to work in partnership with their local Support Groups in order to provide specialist welfare support for our members.

MONITORING AND SCRUTINY

Quantitative monitoring of our policies and procedures is undertaken in respect of

- race (on the 16 + 1 categories used throughout the police service)
- gender
- sexual orientation
- religion or belief
- disabled status
- age

We monitor

- the profile of our Representatives
- the provision of training for our Representatives
- the election process for Representatives
- the provision of legal services
- the use of our grievance procedures
- the profile of our staff
- the recruitment, retention, training and discipline of staff.

Annual reports (or in the case of elections, triennial reports) will be made to the Joint Central Committee on the outcome of our quantitative monitoring. The results will also be published in our Annual Report and on our website

Qualitative monitoring of our policies and procedures is undertaken by

- consultation with Joint Branch Board Chairman and Secretary's
- consultation with Joint Branch Board Equality Liaison Officers
- consultation with Police Support Groups at regular Liaison meetings
- meetings between the General Secretary of rank Central Committees or the Deputy General Secretary of the Joint Central Committee and Police Support Group representatives in respect of individual issues
- questionnaires to evaluate training courses
- questionnaires to sample service users

Diversity Impact Assessments

The monitoring and scrutiny of all our policies and procedures will form part of our Diversity Impact Assessment process and will be used to develop Action Plans under our Equality and Diversity Policy.

This will enable us to develop our service provision to all members, the training provision to our Representatives and the employment opportunities and arrangements available to our staff.

HOW TO RAISE ISSUES OR MAKE A COMPLAINT

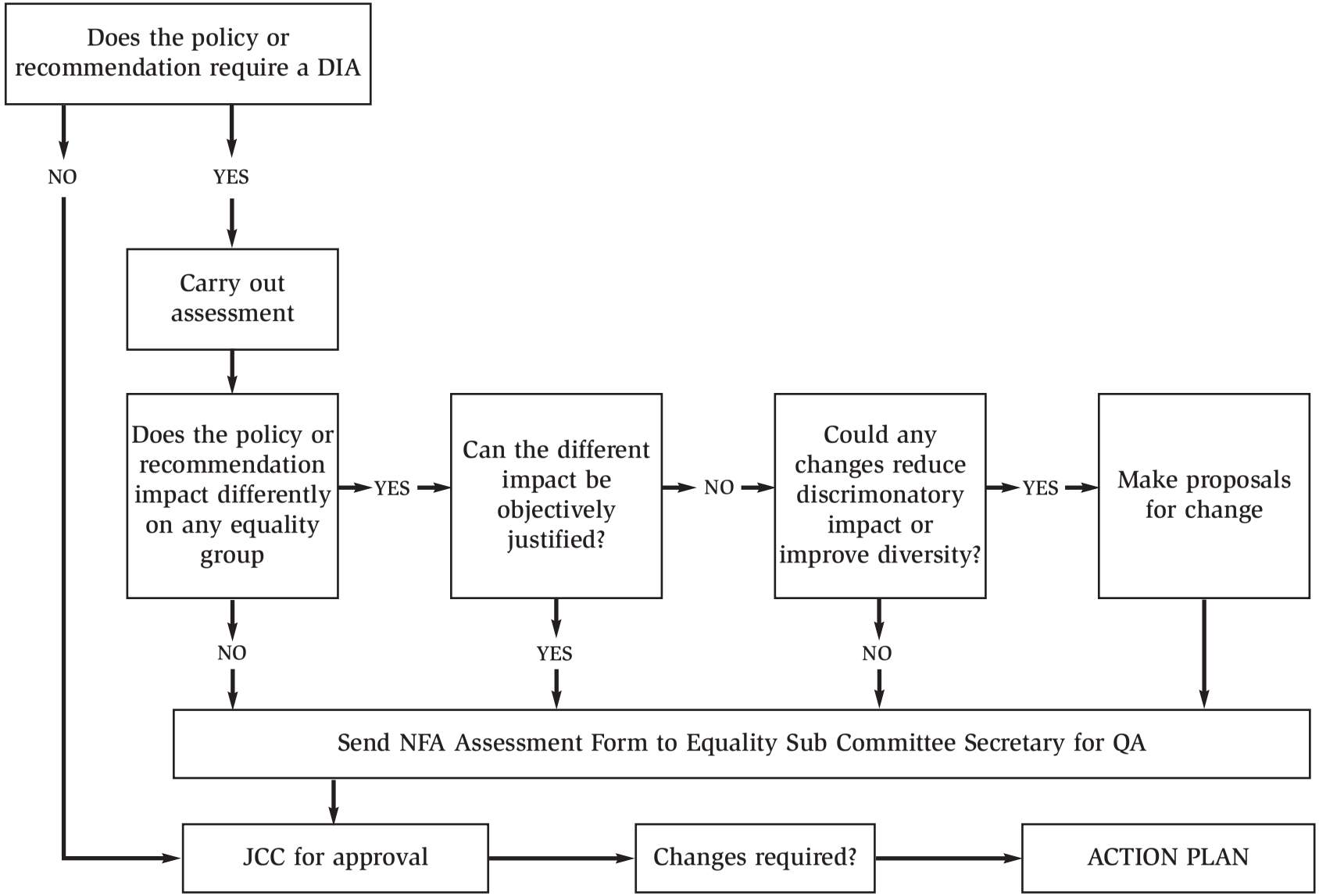
The Police Federation encourages the resolution of complaints or disputes informally whenever possible.

The Joint Central Committee and each rank Central Committee operates a formal grievance procedure for complaints or disputes that cannot be resolved informally. Details of which can be obtained from the General Secretary of the Joint Central Committee or the general Secretary of the appropriate rank Central Committee.

The Joint Central Committee and each rank Central Committee operates an appeals procedure for legal funding decisions. Details of which can be obtained from the Deputy General Secretary of the Joint Central Committee or the General Secretary of the appropriate rank Central Committee.

Any comments about this Diversity Equality Scheme should be directed to the Secretary of the Equality Sub Committee at 15/17 Langley Road, Surbiton. KT6 6LP.

DIVERSITY IMPACT ASSESSMENT FLOWCHART



JCC DIVERSITY IMPACT ASSESSMENT

Central Committee/Sub Committee	Department/Section	Assessor	Telephone No. e-mail

Recommendation/ Policy to be assessed		Is this a new or existing policy?	Date	

1. Describe the recommendation/ policy			
2. What outcomes are expected from this recommendation/policy?			
3. Who is responsible for implementing this recommendation/ policy?			
4. Does the recommendation/policy impact differently on members or employees from the following groups			What information, if any, have you considered when making this assessment? Include details of any consultation with members or staff likely to be affected by the recommendation or policy?
Gender	Y	N	
Family Status	Y	N	
Race	Y	N	
Sexuality	Y	N	
Religion or Belief	Y	N	
Disability	Y	N	

JCC DIVERSITY IMPACT ASSESSMENT (cont)

Age	Y	N	
If you have answered **NO** to all the groups in Q4, you need take No Further Action and should forward this DIA to the Secretary of the Equality Sub Committee for Quality Assurance. If you have answered **YES** to any of the groups in Q4, complete the questions below.			
5. Can any difference in impact be objectively justified as being an appropriate and necessary means of achieving a legitimate aim?	Y	N	If YES, explain reasons; If NO, complete box 6
6. If the answer to 5 is NO: Can any change to the policy/recommendation reduce the discriminatory impact or improve diversity?	Y	N	Explain proposed changes & action
Please forward this DIA to the Secretary of the Equality Sub Committee for Quality Assurance Date			
This policy/ recommendation has been satisfactorily Diversity Impact Assessed	Y	N	If NO, give reasons
Quality Assured By Date			Chairman/General Secretary Date

DRAFT JCC ACTION PLAN

Policy Objective 1: Negotiate and operate practices which promote equal opportunities in employment, training and service delivery

Objective	Action	JCC Responsibility	Evaluation
Provide professional and legal advice to JCC			
To contribute effectively to Home Office or ACPO working groups			

Policy Objective 2: promote the development of a workplace environment for all members and staff to develop their full potential, free of harassment and discrimination

Objective	Action	JCC Responsibility	Evaluation
To ensure office administration systems are DDA compliant			
Monitor complaints under our grievance procedures			

Policy Objective 3: ensure that all contractors and visitors are treated fairly, free of harassment and discrimination

Objective	Action	JCC Responsibility	Evaluation
To ensure office arrangements are DDA compliant			
Monitor complaints under our grievance procedures			

Policy Objective 4: provide appropriate advice and support for members in pursuit of equality and diversity issues;

Objective	Action	JCC Responsibility	Evaluation
Develop ELOs to enhance service to our members			
Communicate best practice and recent case law to ELOs			

Policy Objective 5: raise awareness of equality and diversity issues and promote best practice throughout the Police Federation and Police Service of England and Wales

Objective	Action	JCC Responsibility	Evaluation
Establish links with minority groups members			
Develop links with other Stakeholders to influence policies and practices adopted by the Service			
Publicise the role of the Federation to members			
Develop a sponsorship strategy for JCC involvement in events that promote diversity			

Policy Objective 6: monitor Police Federation practices and arrangements in order to develop an inclusive Equality and Diversity Strategy with action plans.

Objective	Action	JCC Responsibility	Evaluation
Include EIA on relevant Committee agenda papers.			
Establish a database of Representatives			

EMPLOYMENT AND DISCRIMINATION LAW: THE BASICS

Police employment

It is helpful for a representative to understand how police employment differs from ordinary civilian employment. This is because police officers are not "employees" in the usual sense. They are public servants holding a "common law" office, namely that of constable. The range of rights and remedies available to police officers is therefore different to the range of rights and remedies available to civilian employees.

Police Forces are said to be subject to the "direction and control" of the Chief Constable. The Chief Constable has a vast operational discretion to direct and control all matters relating to police officers, include recruitment, promotion, transfers, postings, discipline and dismissal. If we were dealing with a private business, the Chief Constable might be seen as the chairman, chief executive, treasurer, company secretary and the entire board of directors all rolled into one.

Probably the biggest difference between police officers and their civilian counterparts is that police officers do not work under *contracts of employment*. At the risk of stating the obvious, the contractual rights of civilian employees derive from their individual contracts of employment: job title, wages, benefits, pensions, sick pay, holiday, notice provisions, and so on. Some of these terms and conditions may have been collectively negotiated by a trade union. All such employees can, in principle, bring legal proceedings alleging that their contracts of employment have been breached. Furthermore, certain *statutory* rights are available only to employees: these include the right not to suffer an unauthorised deduction from wages, the right to a minimum statement of terms and conditions, the right to a redundancy payment and, perhaps most obviously, the right not to be unfairly dismissed.

By contrast, the terms and conditions of police officers are determined by Parliament, which implements (in the form of a statutory instrument) the outcome of a collective bargaining process involving the Police Negotiating Board (PNB). The regulations contained within this statutory instrument – namely, the Police Regulations 2003 – do, in some ways, resemble a very long and complicated contract of employment. Through a system of parent "regulations" and more detailed subordinate "determinations", they set out those matters that would ordinarily be contained within contracts of employment, such as duties, pay rates, sick pay, overtime, annual leave, allowances/expenses and so on.

Police officers who believe that their employing Force is not honouring their entitlement under these Regulations cannot, however, commence legal proceedings against the Chief Constable for "breach of contract". Police officers will generally face many more obstacles in bringing their grievances to a court or tribunal than their civilian counterparts. However, the traffic is not all one-way: Forces will generally face more obstacles in disciplining police officers than their civilian counterparts, although the situation is now changing. Furthermore, some Chief Constables doubtless lament the fact that they do not have the flexibility to "hire and fire" that is available to their employer counterparts in the private sector.

There are many other differences between police employment and "ordinary" civilian employment. Police Forces have rigid hierarchies where progression through promotion is far more strictly regulated. Forces operate internal grievance and disciplinary procedures (for conduct, attendance and performance problems) that are hugely more cumbersome than in the private sector. Many police officers do not recognise this because they have spent their entire career to date in the police service, unlike modern civilian employees who move from job to job far more frequently.

However, one legal principle applies equally to police officers and ordinary civilian employees: the right not to be discriminated against on a ground prohibited by law. The law usually prohibits four key types of discrimination: direct discrimination, indirect discrimination, harassment and victimisation.

SOURCES OF DISCRIMINATION LAW

There are situations and circumstances that occur in the police service, as in all walks of life, where people are treated unfairly. However, that treatment can only be unlawful if it is on one or more of the grounds identified by the anti-discrimination legislation, which is a complex area of law. The sources of that law are summarised below.

EUROPEAN LAW

European law is made up of Directives and Codes of Practice that generally take precedence over UK laws.

- **Article 119** of the Treaty of Rome 1976 established the principle of equal pay for work of equal value and was extended by the **Equal Pay Directive**.
- The **Equal Treatment Directive** provided for equal treatment between men and women in respect of employment and vocational training. These were revised and extended in 1999 and became **Article 141** of the Treaty of Amsterdam 1999.
- The European Commission recommendation on the **Protection of Dignity of Women and Men at Work** introduced an EU Code of Practice for combating sexual harassment.
- The **Race Directive** required all member states to introduce domestic race discrimination legislation covering less favourable treatment in employment and the provision of goods, facilities and services in July 2003.
- The **Employment Directive** required all member states to introduce domestic legislation to cover discrimination in employment on the grounds of sexual orientation (by December 2003), religion or belief (by December 2003), disability (by December 2006) and age (by December 2006). The UK already had comprehensive disability discrimination legislation, which was extended to cover police officers in October 2004.

DOMESTIC UK LEGISLATION

UK legislation is made up of a series of Acts of Parliament, Statutory Instruments and Codes of Practice.

- The **Equal Pay Act 1970** (as amended) provides for the provision of equal pay between

women and men who are undertaking like work, work of equal value or work rated as equivalent. Equal pay is a notoriously complex area of law. Police officers are all on the same payment structures irrespective of their sex. However, the wide discretion available to Chief Officers to award extra benefits under the Police Regulations 2003 (in relation to special priority payments, bonus payments and competency related threshold payments) makes it possible for there to be disparity in pay received by officers for doing essentially the same work. Where there is a disparity in pay between a woman and a man, or groups of men and women, the Chief Officer is required to show that the practice is genuinely due to a material factor unconnected with sex. The Equal Pay Act does not just cover pay, but includes other benefits such as bonuses, holiday pay and shift allowances. Those complaining of unequal pay should also include a claim of sex discrimination, as the treatment might constitute both forms of discriminatory treatment. Further guidance on the law of equal pay can be found on the website of the Equal Opportunities Commission here:
http://www.eoc.org.uk/Default.aspx?page = 15498

- The **Sex Discrimination Act 1975** (as amended) prohibits discrimination on the grounds of gender, pregnancy/maternity leave, gender reassignment and married/civil partnership status. (It does not make it unlawful to discriminate against single people.) The protection from discrimination on grounds of gender, pregnancy/maternity leave and married/civil partnership status applies both to employment and to the provision of goods, facilities and services. The protection from discrimination on grounds of gender reassignment applies only in the employment field and vocational training. Further guidance on the law of sex discrimination can be found on the website of the Equal Opportunities Commission here:
http://www.eoc.org.uk/Default.aspx?page = 14958

- The **Race Relations Act 1976** (as amended) provides protection from discriminations on racial grounds. Under the RRA, "racial grounds" refers to colour, race, nationality or ethnic or national origins. An ethnic group for these purposes means a group that can show a long shared history, its own cultural tradition, a common language, literature, religion and a common geographical origin. The courts have decided that Jews and Sikhs are racial groups but Rastafarians and Muslims are not. Scottish, Welsh, Irish and English people are viewed as separate racial groups. Further guidance on the law of race discrimination can be found on the website of the Commission for Racial Equality here:
http://www.cre.gov.uk/legal/law.html

- The **Disability Discrimination Act 1995** (as amended) has provided protection from discrimination on the grounds of disability for support staff working for the police service and in the provision of police services to members of the community since 2 December 1996. On 1 October 2004, the employment provisions of the DDA were extended to cover police officers. The DDA defines a disability as: "a physical or mental impairment that has a substantial and long-term affect on the ability to carry out normal day to day activities". Further guidance on what constitutes an "impairment" can be found here:
http://www.drc-gb.org/the_law/legislation__codes__regulation/guidance.aspx

  The DDA contains more complex models of equality, including the very important positive duty to make reasonable adjustments. This is unique to disability discrimination and amounts to a form of positive discrimination. Unlike the other

equality strands, this strand only protects the minority from discrimination and does not protect the (able-bodied) majority. The test of disability is a very specific one; for example, the effects of treatment or medication are usually ignored when assessing whether an individual has a disability. It has raised a number of complex issues concerning health and safety, police pensions, sick pay and the interplay between disability discrimination and the Police (Efficiency) Regulations 1999. These Regulations were amended with effect from 1 April 2003 to apply to poor attendance as well as poor performance. Further guidance on the law of disability discrimination can be found on the website of the Disability Rights Commission here: http://www.drc-gb.org/the_law.aspx

- The **Protection From Harassment Act 1997** introduced four types of criminal offence and a "civil tort" of harassment. Harassment for these purposes must involve a course of conduct but does not need to be on any of the specific grounds covered by the anti-discrimination legislation. There are very specific tests to be met to bring a claim under the PHA and legal advice should be sought before taking proceedings.

- The **Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000** came into force on 1 July 2000. Discrimination against part-time workers can be challenged as indirect sex discrimination, but certain forms can also be challenged under these Regulations without the need to show "disparate impact" upon women. However, the Regulations only apply to existing part-time workers; claimants working full-time must still use the law on indirect sex discrimination to challenge rejected requests for part-time working.

- The **Employment Equality (Sexual Orientation) Regulations 2003** became law on 1 December 2003 and from that date it has been unlawful to discriminate against people because they have a sexual orientation towards persons of the same sex, the opposite sex or both sexes in matters concerning employment or vocational training. The Regulations do not prohibit discrimination in the provision of goods, facilities or services.

- The **Employment Equality (Religion and Belief) Regulations 2003** became law on 2 December 2003 and from that date it has been unlawful to discriminate against someone on the grounds of their belief in employment or vocational training. In this context, "belief" means a religious belief or a similar philosophical belief. The major religions will obviously be covered (e.g. Christianity, Islam, Hinduism, Sikhism, Judaism, Buddhism, Rastafarianism and their various branches). Importantly, it is also unlawful to discriminate against a person for not holding or subscribing to a specific religious or similar belief. This means that the Regulations should, in relevant circumstances, apply to atheism and indeed agnosticism as well. The Regulations specifically exclude political belief and do not prohibit discrimination in the provision of goods, facilities or services.

- The **Employment Equality (Age) Regulations 2006** became law on 1 October 2006 and from that date it is unlawful to discriminate against someone on the grounds of their age. The Regulations do not prohibit discrimination in the provision of goods, facilities or services.

The Home Office website contains some publications offering guidance on equality and diversity matters, which are usually produced with ACPO and APA. They are not intended to be accurate statements of the law and some of their policy statements might be considered controversial. They can be viewed at:

http://police.homeoffice.gov.uk/human-resources/equality-and-diversity

There are numerous other areas of law offering employment protection for police officers, but they are outside the scope of this Handbook.

CODES OF PRACTICE

The Equal Opportunities Commission (EOC), Commission for Racial Equality (CRE) and the Disability Rights Commission (DRC) have all produced Codes of Practice, which provide guidance to employers and trade unions on good practice in equality matters. The content of these Codes is often brought to the attention of Tribunals during hearings and the appeal courts have recently emphasised their importance. ACAS has also produced Codes of Practice in respect of good practice in employment concerning age, sexual orientation and religion and belief.

Infringements of the Codes of Practice are not in themselves unlawful, however evidence of infringements can certainly be given as evidence to support claims of unlawful discrimination.

DIFFERENT TYPES OF UNLAWFUL DISCRIMINATION

Having identified the grounds on which it is unlawful to discriminate, we can now consider the types of discrimination that are unlawful. There are four main types of unlawful discrimination: direct discrimination, indirect discrimination, victimisation and harassment. However, there are other types (for example, disability discrimination and age discrimination operate different models) and some operate different rules. These are summarised below, but these are only brief guides and do not replace the need for detailed legal advice in appropriate cases.

In the following sections, "prohibited ground" is used as shorthand to cover discrimination on all those grounds prohibited by law, e.g. sex, race, disability, sexual orientation etc. The analysis shall be restricted to discrimination in the employment field. References to an "employee" include, for these purposes, police officers; they also include both employees and job applicants.

Direct Discrimination

Direct discrimination happens when an employer treats an employee less favourably on a prohibited ground. Faced with a claim of direct discrimination, the Employment Tribunal asks itself two questions:

- First, has the claimant been subjected to less favourable treatment? This means that the claimant must have suffered a detriment in comparison to another person (the comparator), real or hypothetical, who did not suffer a detriment in sufficiently similar circumstances.
- Secondly, was that less favourable treatment on a prohibited ground? For example, the claimant may have received treatment that was less favourable than his/her comparator, but if the treatment was caused by considerations of (e.g.) merit rather than (e.g.) sex, the claim will fail.

Direct discrimination cannot be justified. "Justification", in this context, basically means the explanation given by the employer to excuse its actions. The main methods by which an employer defends a claim of direct discrimination are by denying that the employee was treated less favourably and/or by denying that any adverse treatment was on the prohibited ground. However, if it cannot successfully defend the claim on either or both of these grounds, it will lose. There is no further avenue available to justify its actions.

There is an exception: the law does permit an employer the opportunity to justify direct discrimination on grounds of age. So, for example, an employer would have the opportunity to explain why a compulsory retirement age of 60, which otherwise discriminates against those aged 60 and over, could be justified.

Indirect Discrimination

Indirect discrimination occurs where an employer imposes an apparently neutral provision, criterion or practice on a group of employees, which has the effect of putting persons within the protected group at a particular disadvantage when compared to others.

Indirect discrimination is not included in the DDA and is currently defined slightly differently between the other pieces of legislation. The government has stated that it will amend all the definitions in the different pieces of legislation to make them consistent with the EU definition; the explanation below uses the definition of indirect discrimination found in all the strands except disability and race.

Faced with a claim of indirect discrimination, the Employment Tribunal asks itself these questions:

- Has a provision, criterion or practice been imposed?
- If so, does it put persons of a particular protected group (e.g. women) at a disadvantage when compared with others outside that group (e.g. men)?
- Does it put the claimant at a particular disadvantage?
- Is the provision, criterion or practice a proportionate means of achieving a legitimate aim?

Cases turn on all of these ingredients of a claim. The last question really addresses whether the discriminatory effect of the provision etc is in proportion to the aim it seeks to address and therefore justified.

Victimisation

Victimisation involves treating an employee less favourably because they have brought or intend to bring proceedings under the law, given evidence or information or anything else in relation to their or another's proceedings, or made an allegation of discrimination in good faith.

Specifically, there is a need to show the claimant was treated "less favourably" and that the reason for such treatment was that the claimant had done one of the following:

- brought proceedings against the discriminator or any other person under the relevant piece of anti-discrimination legislation; or
- given evidence or information in connection with proceedings brought by any person against the discriminator or any other person under that legislation; or

- otherwise done anything else under or by reference to the legislation in relation to the discriminator or any other person; or
- alleged that the discriminator or any other person that he or she has acted unlawfully under the legislation, or by reason that the discriminator knows that the person victimised intends to do any of those things, or suspects that the person has done, or intends to do any of them.

These provisions do not apply if the allegation of discrimination was false and made in good faith.

Harassment
Harassment has only benefited from an actual definition in the last few years. For a long time, it was simply considered an aspect of direct discrimination.

In 1986 the European Commission issued a Code of Practice for member states which defined sexual harassment as: "unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work". The Code did not address harassment on grounds other than sex.

In 2000, the EU issued a new Directive, requiring member states to legislate to outlaw harassment. It provided a new definition, which will eventually be incorporated into all strands of UK anti-discrimination law. It sits alongside and extends the definition of harassment as being unlawful under the direct discrimination provisions of the legislation.

Under the new definition, an employee is harassed when, on a prohibited ground, a person (e.g. employer or work colleague) engages in unwanted conduct which has the purpose or effect of (a) violating his/her dignity, or (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for him/her. Conduct shall be regarded as having these effects if, having regard to all the circumstances (including the victim's perception), it should be reasonably considered as doing so. This means that it is relevant to consider what a "reasonable person" would have found offensive.

Bullying can involve harassment and would constitute unlawful discrimination if the employee were bullied on one of the prohibited grounds. If the bullying is on a ground not protected by law (e.g. the employee's weight), a claim could not be pursued within the anti-discrimination law framework.

Primary/secondary liability
Sections 3 and 4 of this Handbook deal with the concepts of primary and secondary liability – and the statutory defence for Forces. For present purposes, it is sufficient to note that, when considering the liability of Forces for the harassment of a police officer on grounds of sex or race, different considerations will apply if the harassment predates a change in the law. Legal advice will be required if the discrimination complained of took place (in the case of race) before April 2001 and (in the case of sex) July 2003.

Other types of discrimination
The DDA incorporates two additional types of discrimination: disability-related discrimination and a failure to make reasonable adjustments.

An employer's treatment of a disabled person amounts to disability-related discrimination

if:

- It is for a reason related to his disability;
- The treatment is less favourable than the way in which the employer treats (or would treat) others to whom that reason does not (or would not) apply; and
- The employer cannot show that the treatment is justified.

In general, direct disability discrimination occurs when the reason for the less favourable treatment in question is the disability, while disability-related discrimination occurs when the reason "relates to" the disability but is not the disability itself. It is not an easy distinction to draw! Disability-related discrimination is the only form of disability discrimination that can be justified. For disability-related discrimination to be justified, the reason for the adverse treatment must be "both material to the circumstances of the particular case and substantial".

The duty to make adjustments will arise where a provision, criterion or practice applied by or on behalf of the employer, or any physical feature of the employer's premises, placed a disabled employee at a substantial disadvantage in comparison with persons who are not disabled. The duty requires an employer to "take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect". Unlike direct discrimination and disability-related discrimination, the duty does not arise where the employer does not know and could not reasonably be expected to know that the person had a disability within the meaning of the DDA.

A failure to make a reasonable adjustment cannot be justified. However, not all adjustments will be reasonable. The following are examples of the factors that must be taken into account when deciding whether or not an adjustment is reasonable:

- The extent to which it would "make a difference" in alleviating the disadvantage experienced by the disabled person;
- The extent to which the step is "practicable";
- The financial costs of taking the steps and how disruptive it could be;
- The employer's size and financial resources; and
- The nature of the employer's activities.

The DDA and the DRC Code of Practice give examples of what might constitute a reasonable adjustment. These include:

- Making adjustments to premises;
- Allocating some of the disabled person's duties to another person;
- Transferring him to fill an existing vacancy;
- Altering hours of working;
- Assigning to a different place of work;
- Permitting absence for treatment or rehabilitation purposes;
- Acquiring or modifying equipment;

- Modifying instructions or reference manuals;
- Modifying procedures for testing or assessment;
- Providing supervision or other support.

The arrangements that an employer is under a duty to adjust relate to the job; they do not extend, for example, to providing workers to attend to a disabled person's personal needs.

EXCEPTIONS TO THE LAW

Genuine Occupational Qualifications/Requirements
The anti-discrimination legislation recognises that there are certain jobs that must be done by a person of a particular race, sex, sexual orientation, religion or belief, etc. In very specific circumstances, employers are able to claim that a post has a Genuine Occupational Qualification (GOQ) or Genuine Occupational Requirement (GOR) where the essential nature of the job, or of particular duties attached to the job, requires that it is done by a member of a particular group.

The law recognises that there are a number of circumstances where a GOQ could reasonably apply in areas where men and women have close physical proximity, but the same sensibilities do not exist where people of different racial groups, sexual orientations or different religions work together.

There may be cogent reasons that some jobs done by police officers have to be done by a person of the same sex (for example being present when intimate samples are taken or when a prisoner is strip searched by an officer of the same sex). But a GOQ or GOR exemption cannot be claimed in relation to a particular post if the Force already has sufficient people who are capable of carrying out the required duties, and whom it would be reasonable to employ on those duties without undue inconvenience.

A GOQ or GOR cannot be used to establish or maintain a balance or quota. A GOQ or GOR can be challenged by an aggrieved individual who may have been prevented from applying for a particular post.

THE REQUIREMENT TO PROMOTE EQUALITY

Public Sector Duty to Promote Race Equality
The Race Relations (Amendment) Act 2000 introduced a new statutory obligation on Chief Officers to promote race equality in employment. The duty has subsequently been extended to disability equality (in December 2006) and gender (in April 2007). The statutory obligation does not extend to the promotion of equality for members of other minority groups, but that should not stop Forces from developing comprehensive action plans that promote equality and diversity for all.

Since May 2002, Forces have been required to prepare and publish a Race Equality Scheme. This Scheme should set out how the full range of their duties and powers are relevant to the promotion of race equality, how their formal and informal decisions about how they carry out their duties and use their powers will be used to promote race equality. They also need to set out what arrangements they have in place to promote race equality in areas

of policy and service delivery.

The Force is required to monitor by reference to racial groups numbers of :

- staff in post,
- applicants for appointments, training and promotion;
- officers who receive training, benefits or suffer a detriment as a result of their performance assessment procedures;
- officers who are involved in grievance procedures;
- officers who are subject to disciplinary procedures
- officers who leave the Force.

The results of this monitoring must be published annually. The aim of their monitoring is to help measure whether the Force's equality policies are effective. For example, if the monitoring reveals that some racial groups are under represented in the workforce, the Force could consider using "Positive Action" strategies (see below).

The monitoring information will also be of assistance to claimants in race discrimination claims. It may show, for example, that officers from a particular ethnic group are disproportionately likely be subject to disciplinary procedures, and the Tribunal may take this into account when considering whether to draw an inference that there has been unlawful discrimination in a particular case.

Positive Action
Positive discrimination is unlawful, but positive action is permitted under the anti-discrimination laws to encourage people who have been under represented to apply for posts where there have been few or no people from that under represented group in that particular job over the preceding 12 months.

Forces have had some success in using positive action to attract applications from under represented groups. It may involve targeting advertisements at minority groups, showing positive images of people from under represented groups in the Service; by holding open days to show the work of particular units (such as firearms) to people from under represented groups; or by using mentoring to support people from under represented groups to prepare for promotion.

There are slightly different ways of measuring "under representation" in each piece of legislation. The law does not permit people to be SELECTED because they are from an under represented group.

OTHER RELEVANT LAWS

Data Protection Act 1998
Since 23 October 2001 any person has the right to see any information that is held about them either in electronic form or in manual filing systems. Upon payment of an administrative fee of up to £10 (£50 for health records) plus an additional copying and packaging charges officers can make a request to the Force for details of personal information held about them and the Force has to respond within 40 days.

This information will probably include a copy of their personnel file and should also include:

- A description of all personal information held on them and its source
- A copy of all the information which is held on them
- The purpose for which the Force is holding or processing this information
- The identity of persons to whom such data is likely to be disclosed.

This may include copies of their sickness records, disciplinary or training records, appraisal or performance review notes, email logs, audit trails and information held in general personnel files.

This right to obtain records under the Data Protection Act will assist officers who believe they have a claim in that they can obtain disclosure of documentation prior to issuing proceedings. If, for example, an officer applies for a job and is unsuccessful they may request disclosure of all relevant information, including interview notes relating to them. This process can generate valuable evidence in tribunal claims. (Job references are excluded from the provisions of the Data Protection Act and the Force will not have to disclose a copy of a reference it has given about an officer. However there is no express exemption in relation to references received by a Force).

If the Force unreasonably refuses to provide this information or the information provided is not complete an officer may be able to take a civil action against the Force in order to compel compliance within the Act or present a complaint to the Information Commissioner who will initially try to resolve the matter informally.

Failure to comply with the rules relating to the processing of personal data or with an Enforcement Order or to knowingly/recklessly disclose personal data without consent may lead to a criminal conviction. If your member is unhappy about the accuracy of the records they may apply to the High Court or County Court for an order requiring the Force to rectify, erase or destroy incorrect records. Compensation may be payable for any loss arising and, in exceptional circumstances, distress. There is a 6 year time limit for lodging complaints in the High Court or County Court.

WHISTLEBLOWING AND THE POLICE SERVICE

Police officers are now legally protected if they are subjected to a detriment (including victimisation and dismissal) as a result of having "blown the whistle" on wrongdoing at work.

This right has been available to workers generally since 2nd July 1999, but was originally not available to police officers. Now, under the Police Reform Act 2002, the definition of "worker" has (for these purposes) been extended to include police officers. This change took effect on 1st April 2004.

The provisions on whistleblowing can be a very useful tool for equality leaders and Federation representatives generally. However, the provisions are complex and particular care is needed in using them. This is a very brief guide only.

1. What does "blowing the whistle" mean?

In general terms, an individual "blows the whistle" in the workplace if he makes someone else aware of wrongdoing in the workplace. But simply making any allegation of wrongdoing will not be enough to protect a police officer from victimisation or dismissal.

The disclosure must be a "qualifying disclosure". A qualifying disclosure is information which, in the reasonable belief of the disclosing officer, shows one or more of the following categories of wrongdoing:

(a) That a criminal offence has been committed, is being committed or is likely to be committed;

(b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject;

(c) That a miscarriage of justice has occurred, is occurring, or is likely to occur;

(d) That the health and safety of any individual has been, is being or is likely to be endangered;

(e) That the environment has been, is being or is likely to be damaged; or

(f) That information tending to show any of the above matters has been, is being or is likely to be deliberately concealed.

Clearly categories (b) and (d) are most likely to be relevant in the equality field, where an officer (either personally or through his/her representative) makes an allegation that he/she has been discriminated against on any unlawful ground. The "person" in category (b) who has failed, is failing or is likely to fail to comply can include other officers (such as colleagues or line managers), the chief officer or indeed any member of the public. The "legal obligation" to which that "person" is subject does not need to be a matter of public interest; it can be something as simple as failing to provide a safe system of work, such as one free from bullying. Outside of the equality field, it can include a failure to comply with the Police Regulations.

Categories (a) and (c) are perhaps more likely to occur in the general duties of a police officer. Category (a) does not limit "criminal offences" to those committed by the employer, so can in principle extend to wrongdoing by members of the public.

Importantly, the allegation of wrongdoing does not have to be true. The key is the "reasonable belief" of the worker concerned, not whether the worker is actually right.

2. How does an officer actually "blow the whistle"?

An officer will not be protected simply by virtue of making a qualifying disclosure. Importantly, the qualifying disclosure must also be "protected". This relates to the manner of the disclosure; in essence, the worker must "blow the whistle" to the right person.

The right person for these purposes is:

(a) The worker's employer. This is the most important category. The idea is to encourage workers to resolve matters privately with their employer before bringing their concerns to the attention of a wider audience. In the police service, the employer is deemed to be the chief officer (there are separate provisions for those working for NCS, NCIS or police forces not covering a defined area).

It is not clear whether disclosure to one of the chief officer's delegates is sufficient. However, if a Force has a procedure for whistleblowing (and all Forces should have one, or be encouraged to have one), then use of that procedure will be sufficient. Accordingly, if the procedure identifies a person other than the chief officer to whom disclosures can be made, the disclosure to that person will be protected.

Home Office guidance provides that "it is important to provide protection, both to the officer and to the service, which encourage police officers to come forward and report wrongdoing to an appropriate authority". It states that victimisation by one officer of another who has made a disclosure may breach the Code of Conduct.

(b) A legal adviser in the course of taking legal advice. This means that worried officers can safely ask their solicitors what to do! There is nothing to stop a worried officer asking a Federation representative what to do, but it will not in and of itself amount to a protected disclosure.

(c) If the worker reasonably believes that he will be subjected to a detriment for making the disclosure, or reasonably believes that evidence relating to the wrongdoing will be concealed or destroyed if a disclosure is made to the employer, or if the matter has been the subject of a previous disclosure, he can make his disclosure outside the employer's organisation. However, to fit in this special category, the worker must reasonably believe that his allegations are substantially true, should not make the disclosure for personal gain (financial or otherwise) and, in all the circumstances, it must be reasonable for him to make the disclosure in this way. In determining the reasonableness of the disclosure, particular regard is paid to the identity of the person to whom the disclosure is made; clearly, a Tribunal will be more sympathetic where a disclosure is made to HMIC rather than a tabloid newspaper. The worker may also go outside the employer's organisation if similarly stringent conditions are met and the disclosure is of an "exceptionally serious failure".

Officers should take early legal advice in cases of this nature. This is particularly important where an officer anticipates making a category (c) disclosure outside the Force – it will only be in extremely rare cases that such a disclosure is warranted.

It is worth noting that the disclosure itself need not have happened on or after 1st April 2004 (when the whistleblowing provisions were extended to police officers) in order for the disclosing officer to be protected. The officer is protected by disclosures made before that date, so long as the detriment occurs on or after that date.

3. What happens if an officer is victimised for making a disclosure?

This is the meat of the new provisions. So long as the disclosure is qualifying and protected, the officer making the disclosure has the statutory right not to be subjected to any detriment as a result. The detriment can include obvious acts of victimisation as well as a less obvious "deliberate failure to act". If the officer is subjected to such a detriment,

he can seek redress from an Employment Tribunal. The Tribunal can award compensation, but employers are often more concerned by the adverse publicity.

In addition, an officer dismissed for making a qualifying and protected disclosure will be regarded as having been automatically unfairly dismissed. This is one of the rare cases where it is possible for a dismissed police officer to present a complaint of unfair dismissal. Compensation is primarily based on lost earnings and is not subject to the usual unfair dismissal limit on compensation.

The usual time limit of three months applies for Employment Tribunal applications.

4. Practical implications in the equality field

These new provisions will assist in the equality field in a number of ways:

- They extend the basis on which an officer may be unlawfully victimised for complaining about the conduct of a colleague. It is well known that an officer who makes an allegation of unlawful discrimination (i.e. on grounds of sex, race, religion, sexual orientation etc) can carry out a "protected act". If the officer is subjected to a detriment as a result of that protected act, he or she has a complaint of victimisation under the relevant discrimination statute. Previously, it would not be a "protected act" if the allegations related only to ordinary "bullying". However, an allegation of bullying made in the correct way (see above) can amount to a qualifying and protected disclosure, as it can relate to the Force's failure to comply with its legal obligation to provide a safe system of work.
- This protection similarly extends to Federation representatives who make qualifying and protected disclosures in the course of advising and assisting members, negotiating with Force managers and seeking local resolutions.
- Officers who have been forced out of their jobs for making such disclosures may also be able to present a complaint of unfair dismissal.
- Forces will be concerned about the adverse publicity that would usually flow from a successful "whistleblowing" case. Such cases can often be hard fought; this is because the employer wishes to refute the allegations made by the employee and persuade the Tribunal (and the wider audience) that the allegations are false. But, as stated above, the truth of the allegations are not relevant; what matters is the reasonable belief of the worker. Paradoxically, therefore, this may make Forces more willing to seek to resolve cases with a "whistleblowing" angle before damaging publicity emerges.

EMPLOYMENT ACT 2002

The Employment Act 2002 does not apply to police officers although a number of its provisions – notably extended family leave provisions - have been implemented in the Service by means of PNB Circular (see Police Federation Handbook: Family Leave and Flexible Working).

The Employment Act also sets out a range of statutory disciplinary and grievance procedures that apply to Support Staff (but not police officers) from October 2004.

Intentional Harassment

Section 154 Criminal Justice and Public Order Act 1994 states:

An offence is committed if a person 'with intent to cause a person harassment, alarm or distress:

- uses threatening, abusive or insulting language or behaviour or disorderly behaviour, or
- displays any writing, sign or other visible representation which is threatening, abusive or insulting, which therefore causes that or another person harassment, alarm or distress.'

A Constable may arrest without warrant anyone he reasonably suspects of committing an offence under this section.

A person guilty of Intentional Harassment is liable on summary conviction to 6 months imprisonment and/or a fine not exceeding £5,000.

Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000

These Regulations implement the EU Framework Agreement on Part Time Workers Directive 97/81/EC. The application of the provisions to police officers is the subject of PNB negotiations, but officers are able to make claims under the Regulations.

Under the Part Time Workers Regulations a part time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full time worker as regards the terms of his contract or by being subjected to any other detriment by any act, or deliberate failure to act, of his employer. This protection only applies if the treatment is on the grounds that the worker is a part time worker and the treatment is not justified on objective grounds.

If a part time worker believes that he or she has been treated less favourably on the grounds of his/her part time status, he or she may request in writing from his or her employer a written statement giving particulars of the reasons for the treatment. The worker is entitled to receive a reply to this request within 21 days. A written statement under this Regulation is admissible as evidence in any proceedings under the Regulations. If it appears to the Tribunal that the employer deliberately, and without reasonable excuse, omitted to provide a written statement or that the written statement was evasive or equivocal, it may draw an inference that the employer has infringed the rights in question.

CASE LAW

When a case is decided at an Employment Tribunal (ET) it does not set a precedent; in other words, it cannot be quoted as establishing case law for the future. However, it might give an indication of how other cases are likely to be decided.

ET cases heard in England and Wales can be appealed at the Employment Appeal Tribunal (EAT) in London. Both the Claimant and Respondent can appeal a case on a point of law in circumstances where the Tribunal has wrongly interpreted the law, has not properly explained the legal precedents it relied upon when it decided a case, or it had not considered relevant cases in its deliberations.

An EAT case does set a legal precedent. Further appeals are possible to the Court of Appeal (CA), or further to the House of Lords (HL) or, in some case, to the European Court of Justice (ECJ).

SOME CASES RELEVANT TO THE POLICE SERVICE

The following case summaries do not give a detailed resume of the law and are for general guidance and information only.

EXTENT OF DISCRIMINATION LAWS

1 Lowrey-Nesbitt v the Commissioner of the Metropolis EAT 1998

Police officers are Officers of the Crown and cannot claim constructive dismissal or any other disadvantage under provisions covering employees.

Mr Lowrey-Nesbitt's case is one of a considerable number of cases taken by police officers seeking to argue that they can claim for unfair treatment under legal provisions that cover "employees" or those in "Crown employment". None of these cases have been successful because police officers are classed under the law as "Officers of the Crown" not "employees" nor "civil servants employed by the Crown".

The discrimination legislation specifically identifies police officers as being covered by that legislation, but the Employment Rights Act 1996 specifically excludes police service. Section 200(2) of the Employment Rights Act states that
police service means

(a) service as a member of a constabulary maintained by virtue of an enactment, or
(b) service in any other capacity by virtue of which a person has the powers or privileges of a constable.

Mr Lowrey-Nesbitt's claim that the Force had made unlawful deductions from his wages was dismissed. Other recent cases include Sweeney v Ministry of Defence Police (EAT 2001) who was not able to claim that he was unfairly dismissed and Spence v British Railways Board (EAT 2000) whose claim against British Transport Police was also dismissed.

2 Sheikh v Chief Constable of Greater Manchester Police CA 1989

Special Constables can take claims of discrimination to an Employment Tribunal in the same way as other Police Officers.

The applicant was appointed as a special constable in April 1986. In November 1986 he attended an assessment course with a view to joining the regular service but failed to pass. In June 1987 his appointment as a special constable was terminated. He alleged at an IT that the refusal to appoint him to the regular service and the decision to terminate his appointment as a special constable were unlawful discrimination on the ground of his race. The IT rejected his claim on the ground that he was not "employed" under the terms of his contract so they could not hear his case. He appealed this decision. The Court of Appeal decided that he was not employed under a contract to execute work or labour (the definition of employment in the Act) but was a holder of the office of constable, and so came under the same jurisdiction as a regular officer. His case was sent back to the IT to be decided on its merits.

LIABILITY

3 Sheriff v Klyne Tugs (Lowestoft) Ltd CA 1999

The Court of Appeal hold that employment tribunals have jurisdiction to award compensation for personal injury, both physical and psychiatric, caused by unlawful discrimination.

Mr Sheriff, a Muslim of Somali origin, was employed by Klyne Tugs (Lowestoft) Ltd as a second engineer on one of their vessels.

During his employment, he alleged that he suffered racial harassment, abuse and bullying from the master of the vessel. He was made to work longer hours than his white colleagues, was made to eat meat forbidden by his religion, and was refused permission to go ashore to obtain medical treatment. In January 1995 Mr Sheriff had a nervous breakdown. On presenting the medical certificate to his employers, he was dismissed.

Mr Sheriff brought a claim of racial discrimination, which was eventually settled for £4,000. He then brought a personal injury claim in the county court. The county court struck out his claim as an abuse of process on the grounds that his personal injury claim was one which the employment tribunal had jurisdiction and his claim had already been settled. He appealed.

The Court of Appeal held that employment tribunals do have jurisdiction to award damages for personal injury in cases of discrimination and the county court has jurisdiction to award damages for personal injury caused by discrimination. The issue for the court or tribunal was simply one of establishing the necessary causal link between the discrimination and the personal injury.

The Race Relations Act, along with the Sex Discrimination Act and Disability Discrimination Act, all provide that a tribunal may award damages which may include damages for psychiatric injury over and above any damage for injury to feelings.

4 Chief Constable of Lincolnshire Constabulary v Stubbs EAT 1999

Even though an officer is off-duty or off-site, their Chief Constable may still be liable for their discriminatory actions. The circumstances of the unlawful treatment need just to be related to the workplace.

DC Deborah Stubbs was on secondment to the NE branch of the Regional Crime Squad from Lincolnshire Police. She alleged that a male colleague sexually harassed her on two occasions in a public house. The Tribunal found that drinks after work and an organised leaving party were sufficiently work related to be treated as “extensions of work”. Further they found that the Chief Constable remained liable for the actions of his officers even when they were seconded out of his Force.

5 AM v (1) WC and (2) SPV EAT 1999

A police officer can be personally liable for acts of discrimination

A woman police officer AM, working for a Constabulary referred to as WC claimed that a fellow officer, known as SPV, sexually harassed her. Because of the nature of the case the Tribunal allowed it to be heard in private.

Before considering the substantive case, the EAT were asked to rule on a preliminary issue. AM alleged that under s42 of the Sex Discrimination Act, the Chief Constable was responsible for the acts of SPV; but if the Tribunal deemed that the Chief had taken such actions as were reasonably practical to prevent the unlawful acts, then SPV would be personally liable for his actions. SPV contended that as he was not an "employee" in the legal sense, he did not come under the provisions of s42, and so no action could be taken against him. The EAT ruled that s42 should be read in conjunction with s17 of the Sex Discrimination Act, which states that police officers are to be regarded as employees for the purposes of the legislation. This applied to SPV as a Respondent in the same way that it applied to AM as an Applicant. They therefore decided that SPV came under the provisions of s42 and was potentially liable for the acts of discrimination.

The EAT confirmed SPV as a Respondent to the action and remitted the case to an ET for a hearing on the substantive case.

BURDEN OF PROOF

6 Igen v Wong CA 2004

Guidance on "inferences" that can be drawn from an employer's failure to comply with a relevant code of practice (issued by EOC, CRE, DRC or ACAS).

The following guidelines are particularly useful for Representatives involved in discrimination cases, because points 8 and 13 indicate that inferences may be drawn from any failure to comply with a relevant code of practice (i.e. those produced by the CRE, EOC, DRC and ACAS).

1. It is for the claimant who complains of unlawful discrimination to prove on the balance of probabilities facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of unlawful discrimination. These are referred to below as "such facts".
2. If the claimant does not prove such facts he or she will fail.
3. It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases, the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in".
4. In deciding whether the claimant has proved such facts, it is important to remember

that the outcome at this stage of the analysis by the Tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the Tribunal.

5. It is important to note the word “could” in paragraph 1. At this stage, the Tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage, a Tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.
6. In considering what inferences or conclusion can be drawn from the primary facts, the Tribunal must assume that there is no adequate explanation for those facts.
7. These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw from an evasive or equivocal reply to a statutory questionnaire or similar questions.
8. Likewise, the Tribunal must determine whether any provision of any relevant code of practice is relevant and, if so, take it into account in determining such facts. This means that inferences may also be drawn from any failure to comply with any relevant code of practice.
9. Where the claimant has proved facts from which the conclusions could be drawn that the respondent has treated the claimant less favourably on a ground prohibited by law (sex, race, etc), then the burden of proof moves to the respondent.
10. It is then for the respondent to prove that he did not commit (or, as the case may be, is not to be treated as constructively liable for) that act.
11. To discharge that burden, it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the ground prohibited by law, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.
12. That requires a Tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that the prohibited ground was not a ground for the treatment in question.
13. Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a Tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the Tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.

7 **Dattani v Chief Constable of West Mercia Police EAT 2005**

The EAT hold that evasive, incorrect or nil responses to questions asked during a discrimination case can lead to the drawing of an inference of discrimination, even if the questions are not on a statutory questionnaire.

Mr Dattani took a race discrimination case against his employer, West Mercia Police. During the preparation of his case he asked the Force a number of questions in a letter, not on the form provided under s65 of the Race Relations Act. The Tribunal found that the Force had replied in an evasive manner. The EAT confirmed that the Employment Tribunal

were entitled to draw an inference even though the questions had not been asked on a statutory form.

8 **Anya v University of Oxford CA 2001**

The correct interpretation of the "awful to everyone" defence.

Dr Anya, a black man of Nigerian origin, applied unsuccessfully for a post-doctoral research assistant's post. He alleged that his non-selection was direct race discrimination. He alleged that his supervisor was predisposed to reject him and that the interview process did not accord with the University's stated policy. In the absence of a reasonable explanation for the selection of a white male candidate, the Tribunal found race discrimination. The University appealed.

The Court of Appeal decided that where an employer behaves unreasonably towards a black employee, it is an error of law for a tribunal to direct itself that, in the absence of further evidence, an inference of race discrimination is not to be drawn because the employer might well behave equally unreasonably to a white employee. It is for the employer to establish that it behaves unreasonably regardless of race, and not for the applicant to disprove this proposition.

MARRIAGE DISCRIMINATION

9 **Graham v Bedfordshire Constabulary EAT 2002**

It can be unlawful to refuse to select someone because their spouse would be in a supervisory position over them.

Ms Graham was an Inspector with the Bedfordshire Police. In 1988 she married a Chief Superintendent of the same Force. He was the Divisional Commander of D Division and in May 1999 Ms Graham applied for and was appointed to the post of Area Inspector in D Division. However, the Chief Constable rescinded the appointment on the grounds that as a spouse of a serving Officer she should not work in the same Division because she would not be a competent and compellable witness against her spouse in any criminal proceedings. He was also concerned that it would be difficult for Officers under her supervision to make a complaint or take a grievance knowing of her relationship with the Divisional Commander and that it would be more difficult to deal with problems relating to under-performance.

The EAT upheld Ms Graham complaints on indirect sex discrimination and both direct and indirect discrimination on the grounds of married status. The EAT also held that the Chief Constable had not discharged the burden of justifying the policy under the indirect sex discrimination legislation and commented that it regarded his concerns as speculative. They concluded that the discriminatory effect was disproportionate to the reasonable needs of the Service. The EAT found that the major reason for the decision to rescind the Applicant's appointment was based on the fact of marriage and that the Chief Constable treated her less favourably on the grounds of her married status.

SEX DISCRIMINATION

10 Allcock v the Chief Constable of Hampshire Constabulary IT 1997

A lower pass mark for women on a selection test discriminates against men.

Hampshire Constabulary operated a fitness test for applicants to their dog section, which included the completion of a 2-mile multi-terrain course in 16 minutes for men, and 17 minutes for women. The Applicant completed the course in 16 minutes, 46 seconds. If he had been a woman, he would have passed the test. The IT decided that this constituted unlawful direct sex discrimination, which cannot be justified under the terms of the Act.

11 Dougan v the Chief Constable of the RUC NI IT 2002

The same pass mark for both men and women on a selection test can discriminate against women. The employer may be able to justify the test however if the test standards are an essential requirement of the job.

Jo-Anne Dougan became a full time member of the RUC Reserve in 1992. In 1997 and 1998 she applied to become a full time member of the Regular RUC but on both occasions she failed the physical competence assessment. She alleged that her failure to pass the fitness test was unlawful indirect sex discrimination: the RUC had applied a requirement (that applicants must pass a fitness test) with which a considerably smaller proportion of women than men could comply, with which she could not comply, and which the RUC could not show to be objectively justifiable.

During the relevant years that she applied, 100% of the men who took the fitness test passed but just 54% and 68% of the women applicants passed. The case revolved around whether the fitness test was justifiable. Under the terms of the legislation justification requires an objective balance to be struck between the discriminating effect of the requirement or condition and the reasonable need of the person applying it. When looking at the question of justification, the Tribunal looked carefully at the work of the RUC working party that had developed the fitness test, and considered in detail the two parts of the test – the push/pull device and a circuit run - to judge whether the RUC could justify the discriminatory impact of the test on women applicants.

The Tribunal was fully satisfied that the introduction of a job related fitness test was justified and accepted that the push/pull machine replicated that aspect of the beat and patrol officer's work and the relative strengths required. They recognised that officers considered that the circuit run properly reflected the core activities and competencies of beat and patrol work, but they were not convinced that the time set for the circuit run properly reflected the performance of existing women officers who had been part of the initial validation exercise. The setting of the standard at 3.45 minutes was 9 seconds faster than the average time taken by the women RUC officers which was 3.54 minutes. This, they considered, was not properly justifiable and resulted in unlawful indirect sex discrimination against Ms Dougan.

12 Meek v London Borough of Hillingdon ET 2003

A man dismissed for email abuse was sexually discriminated against because a woman guilty of the same offence was given only a final written warning.

Mr Meek and Ms Gordon had been exchanging emails at work almost daily. Some of these were of a hardcore pornographic nature. The employer had an ICT Usage policy incorporated in employees' contracts of employment. The employer found Ms Gordon guilty of gross misconduct and gave her a final written warning. Mr Meek however, was dismissed for gross misconduct.

Mr Meek appealed, but his appeal was dismissed. The appeals officer, Ms Lockley, said that Ms Gordon had shown regret, while Mr Meek's expression of regret was not credible, and that there was a difference in the content of the emails sent. The tribunal concluded that these were invented reasons to justify the serious blunder made at the dismissal stage. They commented that the decision to dismiss Mr Meek was totally justified, but that Ms Gordon should also have been dismissed. Mr Meek was treated less favourably than Ms Gordon and the respondent had failed to establish that the less favourable treatment was not on the grounds of Mr Meek's sex. The tribunal rejected a claim of race discrimination since the dismissing officer was not aware that Ms Gordon was black.

The tribunal awarded Mr Meek £3,000 compensation for injury to feelings, £2,899.50 for loss of earnings, and his legal costs.

13 Shamoon v Chief Constable of the RUC HL 2003

A Chief Inspector relieved of the duty to do appraisals was not discriminated against on the ground of her sex.

Chief Inspector Shamoon worked in the Traffic Department of the Police Service of Northern Ireland (the RUC, as it then was). She was responsible for appraisals on the police constables who worked under her command.

A number of officers made complaints about their appraisal and took their complaints to the Police Federation. Federation representatives met with Chief Superintendent Laing, the Head of the Traffic Division, to discuss the appraisals with the result that Chief Inspector Shamoon was relieved of her responsibility to complete appraisals. She complained of sex discrimination, because other (male) traffic inspectors were allowed to conduct appraisals.

The case revolved around the correct interpretation of whether Chief Inspector Shamoon had suffered a "detriment" under the terms of the NI Sex Discrimination Order, and whether the treatment was "less favourable treatment on the ground of her sex".

The House of Lords decided that the definition of "detriment" was that set down in the case of Jeremiah v MOD in 1980 – "a detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his detriment". They decided that Chief Inspector Shamoon had suffered a detriment.

However, the House of Lords found that the detriment was not on the ground of her sex. A proper comparator was not an actual male Chief Inspector in Traffic, but rather, the Tribunal should consider how a male Chief Inspector in the same circumstances, who had had complaints raised against him, would have been treated (a hypothetical male).

14 Jones v Chief Constable of Northamptonshire Police ET 1999

Reserving career development opportunities in Special Branch to women was unlawful positive discrimination against a male officer.

Northamptonshire Police offered a number of temporary posts in the Special Branch of the Crime Support Department to women only. The Force contended that the positive action provisions of s48 of the Sex Discrimination Act allowed them to offer training opportunities to persons who were under represented in particular area of employment. Throughout 1997 there had been no women employed in Special Branch in Northamptonshire and HMIC had commented on the need to use positive action to address the gender imbalance. The Force wrote to all eligible women Sergeants inviting them to apply for the 6 month temporary posting. Mr Jones was not able to apply.

However, the ET found that the Force had not indicated that the postings were for the purposes of training to fit applicants for work in the Special Branch (as required by the legislation), but that they were advertised as "career development opportunities" and as such constituted positive discrimination against Mr Jones. They awarded him £750 compensation.

MATERNITY

15 Tapp v the Chief Constable of Suffolk Constabulary IT 1998

The Training Centre sent Ms Tapp back to her Force when they learnt that she was (just) pregnant. They should have undertaken a proper risk assessment and discussed any alteration to her work with her.

The Applicant was a probationer constable on module 2 of her initial training course at Shotley Training Centre when she discovered that she was 10 weeks pregnant. She discussed the physical requirements of the course with her GP who decided that at that time in her pregnancy, she could continue with the course. She therefore informed the training centre, but despite her protestations, she was sent back to her Force to undertake routine office duties. She had to restart her probationer training on her return from maternity leave and was consequently delayed being confirmed as a constable and missed out on her pay increment. No risk assessment was undertaken on her work.

Whilst recognising that the Respondent's officers acted for the best possible motives, the IT found that the Applicant had been directly discriminated against on the ground of her sex. They commented that employers following the Health and Safety Regulations are not discriminating on the ground of sex, but that an employer cannot raise a successful defence simply by quoting the relevant codes, they must comply with their terms. Her work should

have been evaluated in conjunction with her stage of pregnancy, she had to be informed of the concerns and given the opportunity to discuss the issues with her doctors. In the absence of a proper risk assessment the IT found that she had been directly discriminated against on the ground of her sex.

16 Moore & Bottrill v British Airways EAT 2000

Any reduction in pay or benefits because a woman is pregnant or on maternity leave or because she has taken maternity leave is unlawful.

The Applicants were flight attendants with British Airways and when they became pregnant they were not able to continue to fly because of considerations for the health and safety of their unborn babies. They were allocated to ground duties at the airport, and lost their flight allowance.
The ET ruled that this loss of remuneration was unlawful direct discrimination on the ground of their sex, because they should not have suffered a detriment as a result of their pregnancies.

17 Hoyland v Asda EAT 2005f

Bonuses paid to women on maternity leave can be reduced pro rata to reflect time off. They must be paid in full for the 2 weeks compulsory maternity leave following the birth.

The Employment Appeal Tribunal has held, (in line with an ECJ case), that employers are entitled to make a pro rata reduction in bonuses paid to staff, to reflect periods when a woman is absent on maternity leave. The reduction is permissible where the bonus is based on attendance (the woman not having attended work). The position may be different where the bonus is based on individual performance.

The exception is that the bonus must be paid in respect of the 2 week period of compulsory maternity leave required under the Pregnant Workers Directive

FLEXIBLE WORKING

18 Chew v Avon & Somerset Constabulary EAT 2001

Ms Chew was discriminated against because the Force would not let her work a part time work pattern that suited her domestic requirements. They wanted her to work a pattern to fit in with the shifts of full timers.

The Applicant joined Avon and Somerset Police in 1989 as a full time police officer and in 1994 the Force adopted a part time policy permitting part time working only in the same cycle of duty as full timers in the same department/district. After she had her child she worked part time, in accordance with the policy, in the child protection team. Her tenure was coming to an end when her partner left her with sole responsibility for her child, and

so she applied for a part time post in 1998, working set day shifts in CID. The Inspector approved her shift pattern, but it was rejected by the Superintendent on the grounds that "the hours selected do not match any approved rest days in my district". He also rejected her application to do the same hours on uniformed patrol for the same reason.

The EAT decided that the requirement to work the fixed work pattern was unjustified, and rejected the Force's contention that having an officer working atypical hours would adversely affect morale in the rest of the Force and would lead to many others wanting the same benefit.

19 Edwards v London Underground Ltd CA 1998

Ms Edwards was prevented from working a fixed (full time) shift pattern rather than 3 rotating shifts. This was sex discrimination because she could not work the shift pattern with her child care responsibilities.

The Applicant was a single parent who managed to combine her work and family commitments by working a fixed 8am to 4pm shift as a London Underground Tube Train Driver.

In 1991 London Underground announced the introduction of a new shift system, which would be more economical, but did not allow for anyone to swap shifts as they had done before. She complained that she would not be able to work these shifts and, when a plan to introduce special arrangements for single parents collapsed, she resigned. She claimed indirect sex discrimination arguing the new shift pattern would have a disparate impact on women and was not justifiable.

The statistics showed that, at that time, 100% of men employed as tube train drivers by London Underground could comply with the new shift patterns and 95.2% of women - only a 4.8% point difference. The employer argued that the difference was not significant and it was not permissible to look at any factors other than the actual workforce. The Court of Appeal said that it was significant that all the men in what was a large group (2023) could comply and only one woman out of a very small group (21) could not, and found that Ms Edwards had been the subject of unlawful indirect discrimination on the ground of her sex.

20 Starmer v British Airways ET 2005

The requirement for a pilot to work more than 50% of full time hours could not be justified and was indirect sex discrimination.

Ms Starmer was one of 152 women pilots working for British Airways. There were 2932 male pilots. She requested half time hours when she returned from maternity leave. BA refused her request on the basis of safety and cost. They did not produce any evidence to back up their claim of increased risks, but produced details of the high cost of training another pilot to make up the shortfall in hours. The Tribunal noted the cost element but said that this did not justify the discriminatory impact on Ms Starmer.

As a case of indirect discrimination this case does not set a case precedent, but shows the level of justification that a Tribunal will consider to be appropriate. Ms Starmer also won her case under the Flexible Working Regulations, although these do not apply to police officers.

21 Sweeney v Sussex Police ET 2005

Sussex Police discriminated against DC Sweeney, a part time officer working 20 hours per week, by insisting she was on call 1 weekend in every 8, notwithstanding her child care commitments.

DC Pauline Sweeney joined Sussex Police in 1989, and was appointed as a DC to the Major Crime Branch (MCB) in 2002. DC Sweeney is married to Gary Pike, a Sergeant in the Tactical Firearms Unit, who was regularly required to work additional hours at short notice. She took maternity leave in April 2003 and applied to come back part time (20 hours) from October 2003. She consulted with her colleagues and managers and proposed a shift pattern of 2x10 hour shifts every Wednesday and Thursday, which was approved by her Sergeant. There was no mention of on call duties.

Shortly before she returned to work, D/Super Gillings, Head of MCB, raised concerns about her agreed shift pattern, specifically the lack of on-call cover. She returned to work with her proposed shift pattern in October 2003 on a 3 month trial basis. She offered to put the dates that she could provide cover on the roster, however they wanted her to work a regular pattern of on call 1 week in every 4 (6am Tues to 6am Thurs) and 1 weekend in every 8 (6am Thurs to 6am Mon). She agreed to provide the on call cover during the week, but her childcare commitments and her husband's shift pattern meant that she could not provide the regular weekend cover.

After protracted negotiations involving her Federation representative, the Force rejected her application to work part time in the MCB in June 2004. She submitted her ET application and the Force offered to waive the requirement that she provide weekend cover until October 2005. She resigned in February 2005 and, with her husband, transferred to Strathclyde Police.

The ET found in her favour. They considered she had suffered indirect sex discrimination that the Force could not justify. In reaching this conclusion the ET took into account that the Force had suggested she formally accept the arrangement, but that it could be effectively managed away by using her annual leave and other arrangements; that the Force were seeking to impose the cover policy rigidly although there was evidence that officers regularly swapped their on call commitments with other team members and across different teams; that other Units (specifically the Brighton Child Protection Team) did not require officers with childcare commitments to provide on call cover; that the provision of cover was not a requirement under Police Regulations and that pregnant officers were not required to provide on call cover in the MCB so there was a question as to why this facility could not be extended to officers with childcare commitments.

As an indirect discrimination case this does not make a precedent, but shows the type and scale of evidence the ET will take into account when deciding whether a requirement to work on call is reasonable in all the circumstances.

VICTIMISATION

22 Butt v The Home Office. ET 2000.

Mr Butt was victimised when threatened with relocation because the requirement for him to move was related to and caused by a previous ET application alleging race discrimination (which he had actually withdrawn).

The applicant, who is of Asian origin, was employed on a fixed-term contract as a senior development officer at the Bradford office of the Home Office's Drug Prevention Initiative (DPI). This was due to run from 1991 until the end of March 1999. Early in 1998 he brought a race discrimination case against the DPI, which was dismissed by the Tribunal at the end of that year. He had been absent on sick leave during the course of the proceedings and did not return to work prior to the expiry of his contract. In January 1999 his solicitor wrote asking as to Mr Butt's future working arrangements and was informed that once Mr Butt was fit there would be a job for him, but at the DPI's Manchester office. Mr Butt contended that this was an act of victimisation consequent on his having instituted race discrimination proceedings in 1998.

The ET upheld his complaint. The applicant was not consulted as to his place of work and the Tribunal concluded that the DPI wished to avoid Mr Butt working with the people in the Bradford office even for the period of 3 or 4 weeks that remained of his contract. They considered that the act of redeployment was directly connected with and caused by the applicant's recent tribunal proceedings and was an act of unlawful discrimination.

TRANSGENDER ISSUES

23 Goodwin v UK. ECHR 2002

Guidance on treating someone in ALL respects as a member of their new sex after they have undergone gender reassignment.

In a case before the European Court of Human Rights in 2002, Goodwin v UK, a post operative transsexual person was ruled to have been denied her rights under the Human Rights Act because her gender reassignment was not recognised by the UK laws. She wanted her marriage to be legally recognised but this was not possible as UK law asserted that she was a man – the sex of her birth – although she had undergone a sex change operation. She won her case, thus ensuring that the UK government had to amend all relevant legislation so that post operative transsexuals can be treated as a member of their "new" sex in all respects, unless there are significant factors of public interest in a particular case to weigh against the interests of the individual.

In A v the Chief Constable of West Yorkshire Police the Force refused to employ A, a male to female transsexual, on the grounds that she could not conduct intimate searches of prisoners. A was still legally a man and therefore a strip-search of a woman would technically be an assault. As A lived and worked as a woman, she was not able to search men either. The Force Constable claimed that this prevented it from employing A as an

operational police officer. The Court of Appeal decided that this was unlawful sex discrimination against A – other means of allocating duties could and should have been employed and it was disproportionate to refuse A a job.

The new Equality Act due to be enacted in October 2006 will clarify the law in this area, making it necessary for employers to justify the proportionality of any adverse treatment against transsexuals in circumstances where intimate searches are conducted.

24 Croft v Consignia plc EAT 2002

Guidance on the provision of toilet facilities for people undergoing gender reassignment.

Ms Croft was a pre-operative male to female transsexual who was refused access to the ladies toilet at her place of work by her employer, Consignia. She wanted to be treated as a member of the female sex during "the life test" period of her gender reassignment – when she was expected to prove that she could live as a member of her "new" sex. However her women work colleagues had indicated that they would not be happy to allow someone whom they had known for many years as a man, and who was an anatomical male to use their toilet. Ms Croft claimed that this was unlawful sex discrimination. The EAT ruled that "ordinary good practice" requires that an employer is to be expected to require those who are, or who are believed to be, at law, males, to use only the male facilities. The situation would be different when and if Ms Croft became a post operative transsexual in the light of Goodwin (above).

PAY

25 Hill & Stapleton v Irish Revenue Commissioners ECJ 1998

Pay increments for part time workers should be made on a calendar year basis not a time served basis.

Ms Hill and Ms Stapleton were recruited to the Irish Civil Service to the Grade of Clerical Assistant and were assigned to the office of the Revenue Commissioners. Ms Hill was recruited in July 1981 and began job-sharing in May 1988. Ms Stapleton was recruited in a job-sharing capacity in April 1986.

Ms Hill and Ms Stapleton were employed in a job-sharing capacity for two years. They worked exactly half the time which a full-time employee would have worked, on a one week on/one week off basis. During their respective job-sharing periods of employment, each moved one point up the incremental scale with each year of service and was paid at the rate of 50% of the salary for clerical assistants, according to the point each had reached on the scale.

Ms Hill returned to full-time employment in June 1990. At that time she had reached the ninth point on the incremental job-sharing scale, however she was subsequently placed on the eighth point, on the ground that two years' job-sharing were equivalent to one year's

full-time service. Ms Stapleton secured a full-time post in April 1988. She had at that time reached the third point on the incremental job-sharing scale. She was informed that her two years' job-sharing service was to be counted as one year's full-time service.

The employer had applied the criterion of service calculated by the actual length of time worked in a post. Evidence before the Court showed that almost all job-sharing workers in the Irish public sector were women. The ECJ decided that the denial of incremental progression inline with their length of service was indirect discrimination against women as a much higher percentage of female workers than male workers were engaged in job-sharing, and the employer could not justify the practice on objective grounds.

26 Hyman v Chief Constable of South Wales Police EAT 2003

Guidance on the position of Police Officers under the Working Time Regulations.

Mr Hyman retired from South Wales Police on the grounds of ill health in 2002 after 16 years service. He sought the proper amount of outstanding holiday pay due to him under Police Regulations which state that an officer's leave year runs from 1 October each year.

South Wales Police contended that the leave year ran from 1 April as a consequence of a varying South Wales Police Standing Order (1/23). They contended that Mr Hyman was not employed under a contract of employment but under Orders and Regulations and therefore was not able to claim that he had been treated unlawfully under the terms of the Working Time Regulations. The EAT found however that Mr Hyman was "a worker" under the terms of the Working Time Regulations and that the leave year specified by Police Regulations, together with the relevant standing order was to be treated as a "contractual term" and constituted a "relevant agreement" for the purposes of Regulation 13 of the Regulations. He was awarded his outstanding pay in lieu of holidays.

27 Blackburn & Manley v West Midlands Police ET 2005

An ET has ruled that two part time operational officers in West Midlands Police denied SPPs are employed on "like work" with full time officers under the Equal Pay Act. Full time operational officers receive SPPs.

Since 2002 Chief Officers can award Special Priority Payments (SPPs) to a maximum of 40% of officers in their Force in accordance with three criteria:

- the post carries a significantly higher responsibility level than the norm for the rank;
- the post presents particular difficulties in recruitment or retention; or
- the post has specially demanding working conditions or working environments.

As each Force developed its own SPP arrangements the Police Federation warned that SPPs were potentially divisive and could contravene the equal pay legislation if they were awarded to roles segregated by sex.

West Midlands Police decided to award SPPs to certain specialist posts and operational officers who worked 24/7. Part time operational officers who were not available 24/7 were denied SPPs. Most part time officers are women.

PCs Blackburn and Manley are women operational officers working part time because of their childcare commitments. Accordingly they did not get an SPP. After appealing to the Force to grant them SPPs, they applied to an Employment Tribunal claiming that they were undertaking "like work" under the terms of the Equal Pay Act with PC Bowles, a male operational officer at the same station, who worked full time and got an SPP.

(They also claimed under the Sex Discrimination Act and the Part Time Workers (Prevention of Less Favourable Treatment) Regulations, but the Tribunal decided to hear the case under the Equal Pay Act only for ease).

At the Tribunal hearing the Force contended that working at night was more difficult and more dangerous than working during the day. However this was rejected by the Tribunal who decided on the evidence that there was no practical difference between the jobs of the Claimants and their Comparator.

Equal pay law is complex and cases are notorious for taking a long time. The Equal Pay Act requires Chief Officers to pay men and women the same money for work that is the same or broadly similar ("like work"), work rated as equivalent under a job evaluation scheme or work which is different but which is of equal value in terms of the demands of the job. Where there is a difference in pay the Chief Officer must show that it is genuinely due to a material factor unconnected with sex.

This is the first hurdle cleared - the Claimants have been judged to be doing "like work" with their Comparator. The next hurdle is that the Force will be given an opportunity to argue that even though they did "like work", there was a material difference, between their jobs and the job of the Comparator which justified the difference in pay. This was heard in March and July 2006 and judgment is awaited at the time of publication.

DISABILITY

28 Archibald v Fife Council HL 2004

Positive discrimination permissible under the DDA. The duty to make a reasonable adjustment may require an employer to treat a disabled person more favourably than a non-disabled person.

Ms Archibald was a road sweeper for Fife Council. In April 1999 she became virtually unable to walk following complications after she had a minor operation. She was unable to carry out the essential duties of her post and her employer accepted that she was disabled under the terms of the Disability Discrimination Act (the DDA). They considered making a "reasonable adjustment" for her under s6 of the DDA and accordingly arranged for her to be retrained for a desk job with the Council. She was then required to apply and compete for jobs under the Council's Redeployment Policy. Altogether she applied for over 100 posts, but was not successful. Eventually she was dismissed on the grounds of incapacity in March 2001, 2 years after she had become disabled.

The House of Lords said that the DDA is constructed in an entirely different way to the other discrimination laws – the other laws require everyone to be treated equally, but the DDA "entails a measure of positive discrimination … employers are required to take steps that help disabled people which they are not required to take for others" (ie. non-disabled people). The duty to make a reasonable adjustment under s6 may therefore require an employer to treat a disabled person more favourably than a non-disabled person in order to remove the disadvantage caused by the disability, and this may include transferring an employee to a suitable vacant position. Ms Archibald should have been automatically redeployed to a suitable position without going through the Council's redeployment procedure.

29 Meikle v Nottingham County Council CA 2004

Retaining an employee on full pay may be a "reasonable adjustment" under the DDA.

Ms Meikle was a teacher who had sight and mobility difficulties. She resigned from her job and claimed constructive dismissal, alleging that her employer had failed to make reasonable adjustments for her disabilities. The school had not provided her with large print documents including a timetable which was provided to all teachers on a daily basis; they had not provided her with a classroom with suitable electrical facilities to run her specialist equipment to allow her to read; and they had not provided her with additional non-teaching time to complete her work. As a result she was off sick with eye strain. When she had been off sick for 100 days, her employer, in line with their sickness management absence policy, reduced her pay by 50%.

The Court of Appeal held that Ms Meikle had been constructively dismissed and that her employer had discriminated against her by failing to make a reasonable adjustment to continue paying her full sick pay. In addition, they held that it was not justifiable to have treated Ms Meikle less favourably by having reduced her sick pay whilst she was waiting for reasonable adjustments to be made to her working arrangements.

30 Webster v Chief Constable of Hertfordshire Constabulary ET 2000

The requirement to have perfect colour vision could unlawfully discriminate against men (who are affected by colour blindness more than women)

The Applicant was removed from operational police duties after 10 years service because he suffered from a particular type of colour blindness ("a moderate deuteranomalous loss of colour vision"), which meant that he could not distinguish between different shades of green. He had declared the deficiency when he applied to the Force. 7% of men and 0.5% of women have hereditary defective colour vision. He alleged the need to have perfect colour vision was not justifiable. The ET balanced the needs of the Force against the effects on Mr Webster and concluded that he had been indirectly discriminated against on the ground of his sex.

31 Murphy v Slough Borough Council EAT 2004.

A woman failed to obtain paid maternity leave for her surrogate child even though her disability meant that she could not have children naturally

Ms Murphy was unable to have a child due to a congenital heart disorder. She arranged for a surrogate mother to bear her child and applied to her employer for paid time off when the baby was born. The governors decided to grant only unpaid leave.

Had she had a baby herself she would have been entitled to paid maternity leave. She argued that the reason for her less favourable treatment was her disability. The Tribunal rejected her complaint on the basis that the reason for her treatment was that she was not the birth mother. The EAT disagreed taking the broader view that the reason for her treatment related to her inability to have children.

Nonetheless the claim failed on the basis that the failure to pay was justified.

32 Simpson v West Lothian Council EATS 2004.

Providing training for colleagues as a reasonable adjustment.

Ms Simpson was profoundly deaf, and resigned her employment by reason of depression. She argued, unsuccessfully before the Tribunal, that a reasonable adjustment would have been to provide Deafness Awareness Training to her colleagues at work. This suggestion was rejected out of hand by the Tribunal on the basis that any training to be provided by the employer as a reasonable adjustment should relate to the disabled employee only, not other staff. The EAT overturned this decision, on the basis that in a particular case providing training to other staff might well amount to a reasonable adjustment. This point is in any event now made explicit in the new s18B of the DDA which provides that the training might be for the disabled person or "any other person".

33 Freer Bouskell v Brewster EAT 2003

A woman who suffered from claustrophobia was discriminated against when she was moved to a small office.

The applicant had claustrophobia and was moved from a spacious office to a cramped one. When she saw her new office she had a panic attack and had to leave the building. Her GP explained her condition to the employers but they ignored the doctor's letter. Both Tribunal and EAT held that there had been an unlawful failure to adjust.

34 Swift v Chief Constable of Wiltshire Constabulary 2004

A woman need not be moved from her post as a reasonable adjustment in circumstances where she is not disabled at that particular time.

Ms Swift alleged that she had been bullied and harassed by two of her colleagues, and was off work from February to April 2001 and again from February to July 2002 as a consequence. On her return to work in July 2002 her employer refused her requests not to work with them again. She argued that this amounted to a failure to adjust.

The jointly agreed medical evidence in the case concluded that Ms Swift had suffered from a psychiatric condition between January 2001 until mid-2002 that affected her normal day to day activities (her memory and concentration). The employer argued that she was not disabled in July 2002 when she was requesting the adjustments. Her response was that her condition was "likely to recur" so that her impairment should be treated as continuing. Her claim failed before Tribunal and EAT on the basis that although on her return to work she had suffered from panic attacks, this was not the same as the effects of her previous psychiatric condition. The EAT noted that there may be circumstances where an impairment ceases, but the effect of the impairment continue. In that case, the effects would be regarded as continuing. That is different to a situation where the effects are different (ie panic attacks as opposed to problems with memory and lack of concentration).

HARASSMENT

35 Whitfield v Cleanaway ET 2005

A man subjected to homophobic taunts suffered unlawful harassment on the grounds of his sexual orientation.

The first case to be decided under the Employment Equality (Sexual Orientation) Regulations 2003

In March 2003 Rob Whifield was employed as a manager with Cleanaway of Brentwood in Essex on £54,000 per year. From December that year, he suffered persistent taunts about his (undisclosed) sexuality from colleagues. This included calling him “abnormal”, “queer”, “queen” and “Sebastian” (a reference to a predatory gay character in Little Britain). When he raised the matter informally his senior managers joined in the harassment, giving him a pink T-shirt as a ”prize” after he gave a presentation. Eventually, in May 2004, he resigned.

The ET found that the treatment amounted to unlawful direct discrimination and harassment under the Employment Equality (Sexual Orientation) Regulations 2003, and awarded him £35,000 compensation.

BULLYING

36 Majrowski v St Thomas's NHS Trust CA 2005

A very significant case. The House of Lords finds that the Protection from Harassment Act 1997 can cover workplace bullying and that an employer can be vicariously liable for such bullying.

Mr Majrowski was employed as a clinical audit coordinator by St Thomas's NHS Trust. He alleged that he was bullied, intimidated and harassed by his manager in the course of her employment. He claimed she was excessively critical of his work, imposed unrealistic targets and threatened him with disciplinary action if he failed to achieve them; that she was unreasonably strict about his timekeeping; that she ignored him and was rude and abusive to him in front of work colleagues.

This is a significant case in a number of respects:

- He did not allege that her actions were on the grounds of any of the protected discrimination grounds (sex, race, sexual orientation, religion/belief or disability). The House of Lords found that her behaviour was unlawful under s3 of the Protection from Harassment Act 1997;
- Harassment is not defined under the Act, although it refers to pursuing "a course of conduct on at least 2 occasions" that cause "harassment, alarm or distress" to another person. And that the person "knows or ought to know" that their conduct amounted to harassment;
- The House of Lords found that the employer was vicariously liable for her actions. Unlike the discrimination legislation the employer does not have "the statutory defence" that they had taken such steps as were reasonably practical to prevent the harassment. Neither does the applicant need to have a comparator who was or would have been treated more favourably;
- The decision also opens up the possibility of someone who is not an employee claiming against the employer of a harasser.

RELIGION/BELIEF DISCRIMINATION

37 Williams-Drabble v Pathway Care Solutions ET 2005

The first case to be decided under the Employment Equality (Religion and Belief) Regulations 2003.

An employer unlawfully discriminated against a practicing Christian by imposing a new work rota which prevented her from attending Sunday service.

Mrs Williams-Drabble worked at a residential care home in Nottingham from November 2003. At first her shift pattern was 2x24 hour shifts on Monday and Friday with a Saturday "sleep-over" every 3 weeks that finished at 10am, allowing her to attend her Church's only Sunday service at 5pm. In April 2004 she received a new rota which indicated that she would be working 2 shifts per month from 3pm on Sunday to 10am on Monday. She

explained to the care home owner, Mr Bent, that this would effectively prevent her from practising her faith on these Sundays. He replied that the rota was permanent and if she did not like it, she could resign. Having no alternative, she did so.
The ET found that this was indirect discrimination on the grounds of Mrs Williams-Drabble's religion or belief. They pointed to the fact that two of Mrs Williams-Drabble's co-workers were Muslim, so would have been able to work on the Sundays in question. They found the treatment to be unjustified and therefore, unlawful.

38 Khan v G&J Spencer Group plc ET 2005

A Muslim worker was unlawfully discriminated against when he was dismissed on his return from pilgrimage to Mecca (Hajj).

Mohammed Khan had worked for NIC Hygiene as a bus cleaner since 1996. He was dismissed in March 2004 for gross misconduct after he used his 25 day holiday entitlement and another week's unpaid leave to go for Hajj. He claimed the leave was authorised, but this was denied by the employer.

The ET decided in his favour and awarded him £8,000 compensation for unlawful discrimination on the grounds of religion or belief.

39 Commissioners of Inland Revenue v Ainsworth CA 2005

The right to four weeks' statutory paid holiday under the Working Time Regulations 1998 does not continue to accrue whilst an employee is off on long-term sick-leave (overturning Kigass).

The Court of Appeal has decided that the right to four weeks' statutory paid holiday under the Working Time Regulations 1998 does not continue to accrue whilst an employee is off on long-term sick-leave. The CA considered a number of different approaches to the WTRs – in particular, they considered the question "leave from what?" and concluded that the WTRs did not provide for paid leave when someone is on unpaid leave because of sickness.

This reverses the 2002 EAT decision in Kigass Aero Components v Brown which had decided that workers on unpaid sickness absence were entitled to 4 weeks paid holiday.

The position is different for women on maternity leave, who, under Police Regulations, continue to accrue annual leave (see JBB circular 16/97 and Family Leave and Flexible Working Handbook)

RACE DISCRIMINATION

40 Redfearn v Serco Ltd CA 2006

The CA decides that there was no discrimination on racial grounds when a bus driver was dismissed after he became a candidate for the British National Party

Mr Redfearn worked as a bus driver. He was summarily dismissed when it became known that he was standing for election (and was subsequently elected) as a local councillor as a representative of the British National Party.

West Yorkshire Transport Service sacked him on the grounds of Health and Safety after representations from the trade union in his workplace – they considered that he would present serious risk to the health and safety of other employees and passengers if buses were attacked by people opposed to the BNP, and that his membership of the BNP would cause considerable anxiety to passengers, particularly those carers or relatives of vulnerable passengers (specifically young, mentally handicapped people and elderly Asian women).

His claim that his treatment was race discrimination on the grounds that only white people can be members of the BNP was summarily rejected by the ET. The EAT overturned that decision, but it was restored by the CA.

Employment Tribunal Service check list and cover sheet

You have completed stage one of your application and opted to print and post your form. We would like to remind you that applications submitted on-line are processed much faster than ones posted to us. If you wish to submit on-line please go back to the form and click the submit button, otherwise follow the **Check List** before you post the completed application form to the return address below:

Employment Tribunal Service *
OPD
5th Floor
Victory House
30-34 Kingsway
London
WC2B 6EX

Telephone: 020 7273 8666
Fax: 020 7273 8670
Email: etsopdforms@ets.gsi.gov.uk

Please check the following:

1. Read your application to ensure the information entered is correct and truthful, and that you have not omitted any information, which you feel may be relevant to the claim.

2. You **must not attach** a covering letter to this application. If you have any further relevant information please enter it in the "Other Information" space provided in the form.

3. Please ensure that the form has been signed and dated.

4. The completed form should be returned to the address shown at the top of this page. If you are using a window envelope you may insert this page with your application. Please do not clip or staple this page to your application form.

If you have a general question about the Tribunals process please call 0845 795 9775, or minicom 0845 757 3772 between 9.00am and 5.00pm Monday to Friday.

Once your application has been received you may contact the office listed above directly.

Employment Tribunal Response Form

You can make a response to an Employment Tribunal by completing and editing the form offline. You can save a part or fully completed form, email a saved form to another person for approval, and submit it securely online to the Employment Tribunal Service.

Please make sure you have read the guidance notes on our website or in our booklet on how to make a response before you fill in the form.

Once you have completed your form you can submit it securely online to the relevant Tribunal office. You will receive an email to confirm we have received it. Online responses are processed faster than those sent by post.

Select the type of claim you wish to make:

☑ I want to respond to a claim.

In order to proceed you must enter the case number and names of the parties printed on the form and letter we sent you:

Case number

Names of parties v

Email Form | Submit | Print | Clear | Continue →

Need Help?

If you require any help completing your forms or have a general question about the tribunals process please contact us on:

0845 795 9775

minicom 08457 573 722

between 9 am and 5 pm Monday to Friday, our lines are closed on Bank Holidays.

Support Request

We regret we **cannot** provide any legal advice.

Please Note:

By law, you must provide the information marked with ★ and, if it is relevant, the information marked with ● (see guidance on pre-acceptance procedure).

General Information:

Once you have completed your form you can submit it securely on-line to the ETS. You will receive an email to confirm we have received it. On-line applications are processed faster than ones sent by post.

1 Your details

1.1 Title: Mr Mrs Miss Ms Other

1.2* First name (or names):

1.3* Surname or family name:

1.4 Date of birth (date/month/year): Are you: male? female?

1.5* Address: Number or Name
Street
Town/City
County
Postcode

1.6 Phone number **(where we can contact you during normal working hours):**

1.7 How would you prefer us to communicate with you? E-mail Post Fax
(Please tick only one box)

E-mail address:

Fax number:

2 Respondent's details

2.1* Give the name of your employer or the organisation you are claiming against.

2.2* Address: Number or Name
Street
Town/City
County
Postcode

Phone number:

2.3 If you worked at an address different from the one you have given at 2.2, please give the full address and postcode.

Postcode

Phone number:

2.4 If your complaint is against more than one respondent please give the names, addresses and postcodes of additional respondents.

3 Action before making a claim

3.1* Are you, or were you, an employee of the respondent? Yes No
If 'Yes', please now go straight to section 3.3.

3.2 Are you, or were you, a worker providing services to the respondent? Yes No
If 'Yes', please now go straight to section 4.
If 'No', please now go straight to section 6.

3.3● Is your claim, or part of it, about a dismissal by the respondent? Yes No
If 'No', please now go straight to section 3.5.
If your claim is about constructive dismissal, i.e. you resigned because of something your employer did or failed to do which made you feel you could no longer continue to work for them, tick the box here and the 'Yes' box in section 3.4.

3.4● Is your claim about anything else, in addition to the dismissal? Yes No
If 'No', please now go straight to section 4.
If 'Yes', please answer questions 3.5 to 3.7 about the non-dismissal aspects of your claim.

3.5● Have you put your complaint(s) in writing to the respondent?

Yes Please give the date you put it to them in writing.

No

If 'No', please now go straight to section 3.7.

3.6● Did you allow at least 28 days between the date you put your complaint in writing to the respondent and the date you sent us this claim? Yes No
If 'Yes', please now go straight to section 4.

3.7● Please explain why you did not put your complaint in writing to the respondent or, if you did, why you did not allow at least 28 days before sending us your claim.
(In most cases, it is a legal requirement to take these procedural steps. Your claim will not be accepted unless you give a valid reason why you did not have to meet the requirement in your case. If you are not sure, you may want to get legal advice.)

4 Employment details

4.1 Please give the following information if possible.

When did your employment start?

When did or will it end?

Is your employment continuing? Yes No

4.2 Please say what job you do or did.

4.3 How many hours do or did you work each week? hours each week

4.4 How much are or were you paid?

Pay before tax £ Hourly / Weekly / Monthly / Yearly

Normal take-home pay (including overtime,commission, bonuses and so on) £ Hourly / Weekly / Monthly / Yearly

4.5 If your employment has ended, did you work (or were you paid for) a period of notice? Yes No

If 'Yes', how many weeks or months did you work or were you paid for? weeks months

5 Unfair dismissal or constructive dismissal

Please fill in this section only if you believe you have been unfairly or constructively dismissed.

5.1 ● If you were dismissed by your employer, you should explain why you think your dismissal was unfair. If you resigned because of something your employer did or failed to do which made you feel you could no longer continue to work for them (constructive dismissal) you should explain what happened.

5 Unfair dismissal or constructive dismissal continued

5.1 continued

5.2 Were you in your employer's pension scheme? Yes No

5.3 If you received any other benefits from your employer, please give details.

5.4 Since leaving your employment have you got another job? Yes No
If 'No', please now go straight to section 5.7.

5.5 Please say when you started (or will start) work.

5.6 Please say how much you are now earning (or will earn). £

each

5.7 Please tick the box to say what you want if your case is successful:

a To get your old job back and compensation (reinstatement)

b To get another job with the same employer and compensation (re-engagement)

c Compensation only

6 Discrimination

Please fill in this section only if you believe you have been discriminated against.

6.1 Please tick the box or boxes to indicate what discrimination (including victimisation) you are complaining about:

Sex (including equal pay)	☐	Race	☐
Disability	☐	Religion or belief	☐
Sexual orientation	☐		

6.2 Please describe the incidents which you believe amounted to discrimination, the dates of these incidents and the people involved.

7 Redundancy payments

Please fill in this section only if you believe you are owed a redundancy payment.

7.1 • Please explain why you believe you are entitled to this payment and set out the steps you have taken to get it.

8 Other payments you are owed

Please fill in this section only if you believe you are owed other payments.

8.1 • Please tick the box or boxes to indicate that money is owed to you for:

unpaid wages?

holiday pay?

notice pay?

other unpaid amounts?

8.2 How much are you claiming? £

Is this: before tax? after tax?

8.3 • Please explain why you believe you are entitled to this payment. If you have specified an amount, please set out how you have worked this out.

9 Other complaints

Please fill in this section only if you believe you have a complaint that is not covered elsewhere.

9.1 ● Please explain what you are complaining about and why.
Please include any relevant dates.

10 Other information

10.1 Please do not send a covering letter with this form.
You should add any extra information you want us to know here.

11 Disability

11.1 Please tick this box if you consider yourself to have a disability Yes No

If 'Yes', please say what this disability is and tell us what assistance, if any, you will need as your claim progresses through the system.

12 Your representative

Please fill in this section only if you have appointed a representative. If you do fill this section in, we will in future only send correspondence to your representative and not to you.

12.1 Representative's name:

12.2 Name of the representative's organisation:

12.3 Address:

Number or Name
Street
Town/City
County
Postcode

12.4 Phone number:

12.5 Reference:

12.6 How would you prefer us to communicate with them? (Please tick only one box) Post Fax E-mail

Fax number:

E-mail address:

13 Multiple cases

13.1 To your knowledge, is your claim one of a number of claims arising from the same or similar circumstances? Yes No

Please sign and date here

Signature: Date:

Data Protection Act 1998. We will send a copy of this form to the respondent(s) and Acas. We will put some of the information you give us on this form onto a computer. This helps us to monitor progress and produce statistics. Information provided on this form is passed to the Department of Trade and Industry to assist research into the use and effectiveness of Employment Tribunals.

Additional space for notes.

Employment Tribunals - Multiple Claim Form

Please use this form if you wish to present two or more claims which arise from th
facts. Use additional sheets if necessary.

The following claimants are represented by (if applicable) an
required information for all the additional claimants is the same as stated in the ma

Title
First name (or names)
Surname or family name
Date of birth
Number or Name
Street
Town/City
County
Postcode

Title
First name (or names)
Surname or family name
Date of birth
Number or Name
Street
Town/City
County
Postcode

Title
First name (or names)
Surname or family name
Date of birth
Number or Name
Street

Copy 1

Employment Tribunals - Multiple Claim Form

Please use this form if you wish to present two or more claims which arise from the same set of facts. Use additional sheets if necessary.

The following claimants are represented by (if applicable) and the relevant required information for all the additional claimants is the same as stated in the main claim of

V

Title
First name (or names)
Surname or family name
Date of birth
Number or Name
Street
Town/City
County
Postcode

Title
First name (or names)
Surname or family name
Date of birth
Number or Name
Street
Town/City
County
Postcode

Title
First name (or names)
Surname or family name
Date of birth
Number or Name
Street
Town/City
County
Postcode

ET1a v01

ET1a v01

Copy 1

Title
First name (or names)
Surname or family name
Date of birth
Number or Name
Street
Town/City
County
Postcode

Title
First name (or names)
Surname or family name
Date of birth
Number or Name
Street
Town/City
County
Postcode

Title
First name (or names)
Surname or family name
Date of birth
Number or Name
Street
Town/City
County
Postcode

Title
First name (or names)
Surname or family name
Date of birth
Number or Name
Street
Town/City
County
Postcode

Click Here to return to the Home page when you have finished completing the form

ET1a v01

ET1a v01

Case number:

1 Name of respondent company or organisation

1.1* Name of your organisation:

Contact name:

1.2* Address

Number or Name

Street

Town/City

+ County

Postcode

1.3 Phone number:

1.4 How would you prefer us to communicate with you? (Please tick only one box) E-mail Post Fax

E-mail address:

Fax number:

1.5 What does this organisation mainly make or do?

1.6 How many people does this organisation employ in Great Britain?

1.7 Does this organisation have more than one site in Great Britain? Yes No

1.8 If 'Yes', how many people are employed at the place where the claimant worked?

2 Action before a claim

2.1 Is, or was, the claimant an employee? Yes No
If 'Yes', please now go straight to section 2.3.

2.2 Is, or was, the claimant a worker providing services to you? Yes No
If 'Yes', please now go straight to section 3.
If 'No', please now go straight to section 5.

2.3 If the claim, or part of it, is about a dismissal, do you agree that the claimant was dismissed? Yes No
If 'Yes', please now go straight to section 2.6.

2.4 If the claim includes something **other than** dismissal, does it relate to an action you took on grounds of the claimant's conduct or capability? Yes No
If 'Yes', please now go straight to section 2.6.

2.5 Has the substance of this claim been raised by the claimant in writing under a grievance procedure? Yes No

2.6 If 'Yes', please explain below what stage you have reached in the dismissal and disciplinary procedure or grievance procedure (whichever is applicable).
If 'No' and the claimant says they have raised a grievance with you in writing, please say whether you received it and explain why you did not accept this as a grievance.

3 Employment details

3.1 Are the dates of employment given by the claimant correct? Yes No
If 'Yes', please now go straight to section 3.3.

3.2 If 'No', please give dates and say why you disagree with the dates given by the claimant.

When their employment started

When their employment ended or will end

Is their employment continuing? Yes No

I disagree with the dates for the following reasons.

3.3 Is the claimant's description of their job or job title correct? Yes No
If 'Yes', please now go straight to section 3.5.

3.4 If 'No', please give the details you believe to be correct below.

3.5 Is the information given by the claimant correct about being paid for, or working, a period of notice? Yes No
If 'Yes', please now go straight to section 3.7.

3.6 If 'No', please give the details you believe to be correct below. If you gave them no notice or didn't pay them instead of letting them work their notice, please explain what happened and why.

3.7 Are the claimant's hours of work correct? Yes No
If 'Yes', please now go straight to section 3.9.

3.8 If 'No', please enter the details you believe to be correct. hours each week

3.9 Are the earnings details given by the claimant correct? Yes No
If 'Yes', please now go straight to section 4.

3.10 If 'No', please give the details you believe to be correct below.

Pay before tax £ Hourly / Weekly / Monthly / Yearly

Normal take-home pay (including overtime, commission, bonuses and so on) £ Hourly / Weekly / Monthly / Yearly

6 Other information

6.1 Please do not send a covering letter with this form. You should add any extra information you want us to know here.

7 Your representative

If you have a representative, please fill in the following.

7.1 Representative's name:

7.2 Name of the representative's organisation:

7.3 Address

Number or Name

Street

Town/City

County

Postcode

7.4 Phone number:

7.5 Reference:

7.6 How would you prefer us to communicate with them? (Please tick only one box) E-mail Post Fax

E-mail address:

Fax number:

Please sign and date here

Signature: Date:

Data Protection Act 1998. We will send a copy of this form to the claimant and Acas. We will put some of the information you give us on this form onto a computer. This helps us to monitor progress and produce statistics. Information provided on this form is passed to the Department of Trade and Industry to assist research into the use and effectiveness of Employment Tribunals.

6 Other information

6.1 Please do not send a covering letter with this form. You should add any extra information you want us to know here.

7 Your representative

If you have a representative, please fill in the following.

7.1 Representative's name:

7.2 Name of the representative's organisation:

7.3 Address

Number or Name

Street

+ Town/City

County

Postcode

7.4 Phone number:

7.5 Reference:

7.6 How would you prefer us to communicate with them? (Please tick only one box) E-mail Post Fax

E-mail address:

Fax number:

Please sign and date here

Signature: Date:

Data Protection Act 1998. We will send a copy of this form to the claimant and Acas. We will put some of the information you give us on this form onto a computer. This helps us to monitor progress and produce statistics. Information provided on this form is passed to the Department of Trade and Industry to assist research into the use and effectiveness of Employment Tribunals.

Additional space for notes.

GUIDANCE FOR POLICE FEDERATION REPRESENTATIVES AND MEMBERS ON THE USE OF THE STATUTORY QUESTIONNAIRES

Under the anti-discrimination legislation, there is a statutory questionnaire procedure available to individuals who consider that they have been discriminated against by their employer.

This procedure is also available to Police Officers who consider that they may have been discriminated against by their Police Force.

The Statutory Questionnaire is designed to assist individuals so that they can then decide whether or not to commence proceedings in the Employment Tribunal, and, if so, to formulate and present their case in the most effective manner.

The format for the Questionnaire is set down under each statute.

The Questionnaire is designed to help a potential claimant to decide whether to institute proceedings and, if he/she does so, to formulate and present their case in the most effective manner. The procedure can also help the Respondent to better understand the Claimant's case and decide whether or not discrimination has occurred.

A Questionnaire can be served on the Force at any time within three months of the act complained of prior to filing an application in the Employment Tribunal. Once an application has been filed, then a Questionnaire must be served within 21 days (28 in the case of disability) of the date of the application being filed.

Strictly speaking, there is no legal obligation on a respondent to reply to a statutory questionnaire. A failure to do so can, however, have significant consequences. For example, if a respondent fails to reply within a specified time period, the Tribunal can draw an adverse inference that the respondent has committed an act of unlawful discrimination. This can be crucial in those discrimination cases where there is no obvious evidence of discrimination and the outcome therefore depends on the willingness of a Tribunal to draw such an inference. The specified time limit is:

- For statutory questionnaires on sex, race (where the claim relates to racial, ethnic or national origin and/or harassment), disability, sexual orientation, religion and belief, and equal pay, the period of eight weeks from the date on which the questions were served on the respondent;

- For statutory questionnaires on race (where the claim relates only to colour and/or nationality), a "reasonable period".

The Tribunal can also draw inferences from an evasive or equivocal reply. However, the Tribunal will be far less likely to draw such an inference where the claimant's questions are onerous or go far beyond the issues that are relevant in the claim.

If the respondent fails to reply and the information requested is crucial to assessing the merits of the case, it may be possible to request the information in a different way if legal proceedings are underway (see Section 6 – Employment Tribunal proceedings).

The Statutory Questionnaire provides individuals with the opportunity to ask questions that are specific to their own circumstances and which may be of importance.

In addition, the Federation would like to use the Statutory Questionnaire to monitor Forces' equality policies and the effectiveness of such policies. In this way the Federation should be able to identify good or poor practices operating in Forces, which could, in turn, provide additional evidence for applicants.

The Federation has therefore developed a series of additional standard questions that should be asked in any questionnaire served by members on the Force.

The questions should be set out at question number 6 for the Questionnaires served under the Sex Discrimination Act, the Race Relations Act and the Disability Discrimination Act; and at question number 4 for the Sexual Orientation Regulations, the Religion or Belief Regulations and the Equal Pay Act. Specific additional questions, which relate to the member's particular circumstances should also be included after the set questions. Examples of additional questions are included at the end of this section. (Appendix 5)

Questions that are specific to an individual member's case should also be included in the Questionnaire at this point.

In order to monitor the responses by Forces to the Questionnaires, it is necessary to obtain the individual member's consent to providing a copy of any replies made to questions 4/6(1) to 4/6(14) to the General Secretary of the separate Rank Central Committee providing legal funding for the member.

A standard permission slip is included on the next page.

Any member who serves a Statutory Questionnaire with the assistance of their Federation Representative should be asked to sign and date the attached permission slip.

A copy of this permission slip should then be retained by the Federation representation.

Upon receipt of any reply to the Statutory Questionnaire, a copy of the Questionnaire and reply together with a copy of the relevant permission slip should be forwarded to the Police Federation for the attention of the General Secretary of the relevant separate Rank Central Committee.

Should you require an electronic copy of the documents within Appendix 5, they can be obtained from the Equality Sub Committee Secretary. SEC 67/2002 refers.

REMEMBER

Time Limits for serving a Questionnaire

- **Before a tribunal complaint is lodged:** serve questionnaire within three months of discriminatory act.
- **After tribunal complaint is lodged:** serve questionnaire within 21 days (28 days in case of disability) and later only with the leave of the tribunal.

The Questionnaire should be delivered to the Claimant's employer ie the Chief Constable or Commissioner

Questions and any reply are admissible as evidence if it appears to the court or tribunal that the Respondent deliberately, and without reasonable excuse, omitted to reply within the appropriate period or that his/her reply is evasive or equivocal, the court or tribunal may draw any inference from that fact that it considers it just and equitable to draw, including an inference that he/she committed an unlawful act. Questions and replies are still admissible even if the prescribed forms are not used.

PERMISSION SLIP

POLICE FEDERATION OF ENGLAND AND WALES

I, ...

(NAME IN CAPITALS)

of .....

.....(address)

consent to a copy of my statutory questionnaire (Case No. (if applicable .....) being sent to the General Secretary of the Constable's / Sergeant's / Inspector's Central Committee of the Police Federation.

(Please delete which is not applicable)

I understand that the Federation will be using the questionnaire and reply for research purposes only.

Signed: .....

Dated: .....

STANDARD QUESTIONS FOR STATUTORY QUESTIONNAIRES

The following standard questions should form the basis of the questionnaire that you prepare on behalf of the member together with any additional questions you may wish to ask. The questions should be included at Question 6 in the Sex Discrimination, Race Relations and Disability Discrimination Act Questionnaires and at Question 4 under the Equal Pay Act, Sexual Orientation or Religion or Belief Regulations.

4/6. (1) Please provide a breakdown within each rank of the Force of members by reference to their sex/ethnicity/disabled status/sexual orientation/religion or belief (delete those not applicable) during each of the 5 years to date.

4/6 (2). Policy: How, if at all, is compliance with any equal opportunities policy monitored at:-

a. Force Headquarters level;

b. area/divisional level; and

c. station level.

4/6. (3) Individual: How is an individual's police officer's compliance with any equal opportunities policy reported on or appraised? How regular is such reporting/appraisal?

4/6. (4) General: What if any monitoring for equal opportunities purposes takes place in respect of:-

a. recruitment

b. appraisals

c. career development

d. discipline

If no monitoring is undertaken in relation to the above categories, why not?

4/6. (5) In respect of any grievance procedure describe the extent to which if at all this is monitored by reference to:-

a. sex

b. race

c. sexual orientation

d. religion or belief

e. disabled status

f. the stage at which the grievance is resolved

g. the length of time taken to reach each stage

h. the outcome

i. the reason for bringing the grievance.

4/6. (6) Tribunal: State the number of Employment Tribunal complaints which have been filed against the Force during each of the 5 years to date by reference to:-

a. Whether the applicant was a Police Officer or support staff;

b. Whether the complaint was brought under the Sex Discrimination Act 1975 and/or the Race Relations Act 1976 and/or the Employment Equality (Sexual Orientation) Regulations 2003 and/or the Employment Equality (Religion or Belief) Regulations 2003 and/or the Disability Discrimination Act 1995;

c. Outcome by reference to whether withdrawn, settled, progressed to a full hearing and if so, whether upheld.

4/6. (7) Describe any analysis conducted by the Force following the completion of any Employment Tribunal complaint filed under the Sex Discrimination Act 1975 and/or Race Relations Act 1976 and/or the Employment Equality (Sexual Orientation) Regulations 2003 and/or the Employment Equality (Religion or Belief) Regulations 2003 and/or the Disability Discrimination Act 1995 (as amended) during each of the 5 years to date by reference to:-

a. Who undertakes that analysis;

b. The outcome of that analysis;

c. What changes have taken place as a result;

d. How those changes are monitored.

4/6. (8) In respect of all equal opportunities monitoring describe, (including by reference to the monitoring referred to in your answers to questions (1) – (5):-

a. Who undertakes this monitoring;

b. The frequency it us undertaken;

c. The outcome of the most recent monitoring undertaken;

d. Who the outcome is reported to;

e. The action taken as a result

4/6. (9) **Mainstreaming**

What procedures are in place to ensure that equal opportunity implications are taken into account before Force strategic and policy decisions are made?

4/6. (10) Describe how Force policies and procedures have been tested for differences in impact on:-

a. male and female officers;

b. officers of different races:

c. officers with a disability

d. officers with different religions/beliefs

e. officers with different sexual orientations.

4/6. (11) What if any equal opportunities strategies and targets are incorporated into the Force's current annual policing plan?

4/6. (12). **Commitment**

How, if at all, does the chief officer in practice demonstrate a personal commitment to equal opportunities issues? Please provide full details of any steps taken by the Chief Officer personally in the past 12 months to promote equal opportunities.

4/6. (13). Who has day to day overall responsibility for promoting and/or implementation of equal opportunities within the Force, and what is their rank or grade?

4/6. (14) Has the Force undertaken an equal opportunities training needs analysis? If so:-

a. When was it undertaken?

b. Which ranks were analysed?

Sex Discrimination Act 1975: The Questions Procedure

This booklet is in four parts:

Part 1: **Introduction** *(SD74)*

Part 2: **Questionnaire of the person aggrieved: The Complainant's** *(SD74(1)(a)).*

Part 3: **Reply: The Respondent** *(SD74(1)(b)).*

Appendix: **Notes on the scope of the Sex Discrimination Act 1975.**

Part 1: Introduction

General

- The purpose of this introduction is to explain the questions procedure under Section 74 of the Sex Discrimination Act 1975 *(the prescribed forms, time limits for serving questions and manner of service of questions and replies under section 74 are specified in the Sex Discrimination (Questions and Replies) Order 1975 No. 2048)*

- This procedure is intended to help a person *(referred to in this booklet as the complainant)* who thinks he/she has been discriminated against by another (the respondent) to obtain information from that person about the treatment in question in order to:
  - decide whether or not to bring legal proceedings; and
  - if proceedings are brought, to present his/her complaint in the most effective way.

- We have devised a questionnaire which the complainant can send to the respondent. There is also a matching reply form for use by the respondent — both are included in this booklet. The questionnaire and reply form are designed to assist both the complainant and respondent to identify information which is relevant to the complainant. It is not obligatory for the questionnaire and reply form to be used: the exchange of questions and replies may be conducted, for example, by letter.

- The complainant and respondent should read this booklet thoroughly before completion and retain a copy of the information supplied.

- Guidance for the complainant on the preparation of the questionnaire is set out in Part 2.

- Guidance for the respondent on the use of the reply form is set out in Part 3.

- The Appendix explains the main provisions of the Sex Discrimination Act 1975. If you require further information about this Act or your rights and responsibilities, you can obtain it from the Equal Opportunities Commission *(EOC)* or from the detailed Guide to the Sex Discrimination Act 1975.

- If you require help or advice about completing or responding to this booklet, please contact the EOC.

- You can also obtain copies of this booklet *(Form SD74),* as well as copies of the Guide to the Sex Discrimination Act 1975, free of charge from the Women and Equality Unit. See reverse of booklet for details.

How the questions procedure can benefit both parties

The procedure can benefit both the complainant and the respondent in the following ways:

- If the respondent's answers satisfy the complainant and the treatment was not unlawful discrimination, there will be no need for legal proceedings;
- If the respondent's answers do not satisfy the complainant, they should help to identify what is agreed and what is in dispute between the parties. For example, the answers, should reveal

whether the parties disagree on the facts of the case, or, if they agree on the facts whether they disagree on how the Act applies. In some cases, this may lead to a settlement of the grievance, making legal proceedings against unnecessary.
- If the complainant institutes proceedings against the respondent, the proceedings should be that much simpler because the matters in dispute will have been identified in advance.

What happens if the respondent does not reply or replies evasively
The respondent cannot be compelled to reply to the complainant's questions. However, if the respondent deliberately, and without reasonable excuse, does not reply within a reasonable period, or replies in an evasive or ambiguous way, the respondent's position may be adversely affected should the complainant bring proceedings against him/her. The respondent's attention is drawn to these possible consequences in the note at the end of the questionnaire.

Period within which the questionnaire must be served on the respondent
There are different time limits within which a questionnaire must be served in order to be admissible under the questions procedure in any ensuing legal proceedings. Which time limit applies depends on whether the complaint would be under the employment, training and related provisions of the Act *(in which case the proceedings would be before an employment tribunal)* or whether it would be under the education, goods, facilities and services or premises provisions *(in which case proceedings would be before a county court or, in Scotland, sheriff court).*

Employment tribunal proceedings
In order to be admissible under the questions procedure in any ensuing employment tribunal proceedings, the complainant's questionnaire must be served on the respondent either:
- before a complaint about the treatment concerned is made to an employment tribunal, but not more than 3 months after the treatment in question; or
- if a complaint has already been made to a tribunal, within 21 days beginning when the complaint was received by the tribunal.

However, where the complainant has made a complaint to the tribunal and the period of 21 days has expired, a questionnaire may still be served provided the leave of the tribunal is obtained. This may be done by sending a written application to the Secretary of the Tribunal, stating the names of the complainant and the respondent and setting out the grounds of the application. However, every effort should be made to serve the questionnaire within the period of 21 days as the leave of the tribunal to serve the questionnaire after expiry of the period will not necessarily be obtained.

Use of the questions and replies in employment tribunal proceedings
If you decide to make *(or have already made)* a complaint to an employment tribunal about the treatment concerned and if you intend to use your questions and the reply *(if any)* as evidence in the proceedings, you are advised to send copies of your questions and any reply to the Secretary of the Tribunals before the date of the hearing. This should be done as soon as the documents are available. If they are available at the time you submit your complaint to a tribunal, send the copies with your complaint to the Secretary of the Tribunal.

County or sheriff court proceedings
In order to be admissible under the questions procedure in any ensuing county or sheriff court proceedings, the complainant's questionnaire must be served on the respondent before proceedings in respect of the treatment concerned is brought, but not more than 6 months after the treatment[1]. However, where proceedings have been brought, a questionnaire may still be served provided the leave of the court has been obtained. In the case of county court proceedings, this may be done by obtaining form Ex23 from the county court office, completing it and sending it to the Registrar and the respondent, or, by applying to the Registrar at the pre-trial review. In the cases of sheriff court proceedings, this may be done by making an application to a sheriff.

[1] *Where the respondent is a body of charge of a public sector educational establishment, the 6 month period begins when the complainant as been referred to the appropriate Education Minister and 2 months have elapsed or, if this is earlier, the Minister has informed the complainant that he/she requires no more time to consider the matter.*

Part 2: Questionnaire of person aggrieved: The Complainant

Note:

- **Before filling in this questionnaire, we advise you to prepare what you want to say on a separate piece of paper.**
- If you have insufficient room on the questionnaire for what you want to say, continue on an additional piece of paper, which should be sent with the questionnaire to the respondent.

Enter the name of the person to be questioned (the respondent)

To

Enter the respondent's address

of

Enter your name (you are the complainant)

1. I

Enter your address

of

2. consider that you may have discriminated against me contrary to the Sex Discrimination Act 1975.

Please give as much relevant information as you can about the treatment you think may have been unlawful discrimination. You should mention the circumstances leading up to that treatment and, if possible, give the date, place and approximate time it happened. You should bear in mind that in question 4 of this questionnaire you will be asking the respondent whether he/she agrees with what you say here.

In 3 you are telling the respondent that you think the treatment you have described in 2 may have been unlawful discrimination by them against you. It will help to identify whether there are any legal issues between you and the respondent if you explain why you think the treatment may have been unlawful discrimination.

- *You do not have to complete 3. If you do not wish or unable to do so, you should delete the word "because". If you wish to complete 3, but feel you need more information about the Sex Discrimination Act before doing so, see the appendix attached.*

- *If you do decide to complete 3, you may find it useful to indicate what kind of discrimination you think the treatment may have been ie. whether it was:*
  - *direct sex discrimination;*
  - *indirect sex discrimination;*
  - *direct discrimination against a married person;*
  - *indirect discrimination against a married person;*
    or
  - *victimisation;*

and which provision of the Act you think may make unlawful the kind of discrimination you think you may have suffered.

3. I consider that this treatment may have been unlawful because:

This is the first of your questions to the respondent. You are advised not to alter it.

This is the second of your questions to the respondent. You are advised not to alter it.

The questions at 5 are especially important if you think you may have suffered direct sex discrimination, or direct discrimination against a married person, because they ask the respondent whether your sex or marital status had anything to do with your treatment. They do not ask specific questions relating to indirect sex discrimination, indirect discrimination against a married person or victimisation. Question 6 provides you with the opportunity to ask any other question you think may be of importance. For example, if you think you have been discriminated against by having been refused a job, you may want to know what the qualifications were of the person who did get the job and why that person got the job. If you think you have suffered indirect sex discrimination (or indirect discrimination against a married person) you may find it helpful to include the following questions:

- *Was the reason for my treatment the fact that I could not comply with a condition or requirement which is applied equally to men and women (married and unmarried persons)?*

If so,

- *What was the condition or requirement?*
- *Why was it applied?*

If you think you have been victimised you may find it helpful to include the following questions:

- *Was the reason for my treatment the fact that I had done or intended to do, or that you suspected that I had done or intended to do, any of the following:*
  - *brought proceedings under the Sex Discrimination Act 1975 or the Equal Pay Act 1970;*
  - *gave evidence or information in connection with proceedings under either Act.*
  - *did something else under or by reference to either Act; or*
  - *made an allegation that someone acted unlawfully under either Act?*

4. Do you agree that the statement in 2 is an accurate description of what happened? If not, in what respect do you disagree or what is your version of what happened?

5. Do you accept that your treatment of me was unlawful discrimination by you against me?
   If not:
   a) why not?
   b) for what reason did I receive the treatment accorded to me?
   c) how far did my sex or marital status affect your treatment of me?

6. Other questions *(if appropriate):*

7. My address for any reply you may wish to give to the questions I have raised is:
   on page 3, at question 1 ☐ *below* ☐ *(please tick appropriate box)*

Signed

Date

Address *(if appropriate)*

The questionnaire must be signed and date. If it is to be signed on behalf of (rather than by) the complainant the person signing should:

- *describe himself/herself e.g. solicitor acting for (name of complainant); and*
- *give business address (or home address, if appropriate).*

How to serve papers

- We strongly advise that you retain and keep in a safe place, a copy of the completed questionnaire.
- Send the person to be questioned the **whole** of this document either to their usual last know residence or place of business or if you know they are acting through a solicitor, to that address. If you questions *(ie the introduction, the questionnaire as completed by you and the reply form)* are directed at a limited company or other corporate body or a trade union or employer's association, you should send the papers to the secretary or clerk at the registered or principal office. You should be able to find out where this is by enquiring at your public library. However, if you are unable to do so you will have to send the papers to the place where you think it is most likely they will reach the secretary or clerk. It is your responsibility to see that they receive them.
- You can deliver the papers in person or send them by post.
- If you send them by post, we advise you to use the recorded delivery service *(this will provide you with evidence of delivery).*

By virtue of section 74 of the Act, this questionnaire and any reply are (subject to the provisions of the section) admissible in proceedings under the Act and a court or tribunal may draw any such inference as is just and equitable from a failure without reasonable excuse to reply within a reasonable period, or from an evasive or equivocal reply, including an inference that the person questioned has discriminated unlawfully.

Part 3: Reply: The Respondent

Note:

- Before completing this reply form, we advise you to prepare what you want to say on a separate piece of paper.
- If you have insufficient room on the reply form for what you want to say, continue on an additional piece of paper, which should be attached to the reply form and sent to the complainant.

Enter the name of the person you are replying to (the complainant)

To

Enter the complainant's address

of

Enter your name (you are the respondent)

1. I

Enter your address

of

Complete as appropriate

hereby acknowledge receipt of the questionnaire signed by you and dated

which was served on me on *(date)*

*Please tick relevant box: you are answering question 4 of the complainants questionnaire here. If you **disagree** with the complainant's statement of events, you should explain in what respects you disagree, or your version of what happened, or both.*

2. I agree ☐ that the statement in 2 of the questionnaire is an accurate description of what happened.

I disagree ☐ with the statement in 2 of the questionnaire in that:

Please tick relevant box: you are answering question 5 of the complainant's questionnaire here. If, in answer to paragraph 4 of the questionnaire you have agreed that the statement is an accurate description of what happened but dispute that it is an unlawful description, you should state your reasons. If you have ***disagreed*** *with the facts in the complainant's statement of events, you should answer the question on the basis of your version of the facts. We advise you to look at the attached Appendix and also the relevant parts of the "Guide to the Sex Discrimination Act 1975". You will need to know:*

- *how the Act defines discrimination – see paragraph 1 of the Appendix;*
- *in what situations the Act makes discrimination unlawful – see paragraph 2 of the Appendix; and*
- *what exceptions the Act provides – see paragraph 3 of the Appendix.*

If you think that an exception (eg. the exception for employment where a person's sex is a genuine occupational qualification) applies to the treatment described in 2 of the complainant's questionnaire, you should mention this in paragraph 3a, with an explanation about why you think the exception applies.

3a I accept ☐ that my treatment of you was unlawful discrimination by me against you.

I dispute ☐ that my treatment of you was unlawful discrimination by me against you. My reasons for so disputing are:

3b The reason you received the treatment accorded to you is:

3c Your sex or marital status affected my treatment of you to the following extent:

Replies to the questions in paragraph 6 of the complainant's questionnaire can be entered here.

4.

Delete the whole of this sentence if you have answered all the questions in the complainant's questionnaire. If you are unable or unwilling to answer the questions please tick the appropriate box and give your reasons for not answering them.

5. I have deleted (*in whole or in part*) the paragraphs numbered above

since I am unable ☐

since I am unwilling ☐

➡ *to reply to the corresponding questions of the questionnaire for the reasons given in the box below.*

The reply form must be signed and dated. If it is to be signed on behalf of (rather than by) the respondent the person signing should:

- *describe himself/herself eg. solicitor acting for (name of respondent) or personnel manager of (name of firm); and*
- *give business address (or home address if appropriate).*

Signed

Date

Address *(if appropriate)*

How to serve the reply form on the complainant

- If you wish to reply to the questionnaire we strongly advise that you do so without delay.
- You should retain, and keep in a safe place, the questionnaire sent to you and a copy of your reply.
- You can serve the reply either by delivering it in person to the complainant or by sending it by post.
- If you send it by post, we advise you to use the recorded delivery service *(this will provide you with evidence of deliver).*
- You should send the reply form to the address indicated in paragraph 7 of the complainant's questionnaire.

Notes on the scope of the Sex Discrimination Act 1975

Definitions of discrimination

1. The different kinds of discrimination covered by the Act are summarised below. Some of the explanations have been written in terms of discrimination against a woman, but the Act applies equally to discrimination against men.

   Direct sex discrimination arises where a woman is treated less favourably than a man is *(or would be)* treated **because of her sex.**

   Indirect sex discrimination other than in the fields of employment and vocational training arises where someone applies a condition or requirement to a woman which:
   - is *(or would be)* applied to men and women equally; and
   - is such that the proportion of women who can comply with it is considerably smaller than the proportion of men who can comply with it; and
   - is to the detriment of the woman in question because she cannot comply with it; and
   - is such that the person applying it cannot show that it is justifiable regardless of the sex of the person to whom it is applied.

   Indirect discrimination in employment and vocational training arises where someone applies to a woman a provision, criterion or practice which he applies or would equally apply to a man, but:
   - which is such that it would be to the detriment of a considerably larger proportion of women than of men; and
   - which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied; and
   - which is to the woman's detriment.

   Note: this is a slightly different and slightly broader definition from the one applying to discrimination in fields other than employment and vocational training.

   Direct discrimination against married people in the employment field arises where a married person is treated less favourably than an unmarried person of the same sex is or would be treated, because he or she is married. Indirect discrimination against married people in the employment field arises where someone applies to a married person a provision, criterion or practice which he applies or would apply equally to an unmarried person but:
   - which is such that it would be to the detriment of a considerably larger proportion of married than unmarried people of the same sex; and
   - which he cannot show to be justifiable irrespective of the marital status of the person to whom it is applied; and
   - which is to the detriment of the married person concerned.

   Note: the Sex Discrimination Act does not prohibit discrimination against unmarried people.

   Victimisation arises where a person is treated less favourably than other persons *(of either sex)* are *(or would be)* treated because the person has done *(or intends to do or is suspected of having done or intending to do)* any of the following:
   - brought proceedings under the Sex Discrimination Act or the Equal Pay Act; or
   - given evidence or information in connection with proceedings brought under either Act; or
   - done anything else by reference to either Act (eg. given information to the Equal Opportunities Commission); or
   - made an allegation that someone acted unlawfully under either Act.

   Victimisation does **not**, however, occur where the reason for the less favourable treatment is an allegation which was false and not made in good faith.

Unlawful discrimination

2. The provisions of the Act which make discrimination unlawful are indicated in the table over the page. Those in Group A are the employment provisions, for the purposes of which discrimination means direct sex discrimination, indirect sex discrimination, direct discrimination against married persons, indirect discrimination against married persons, and victimisation. Complaints about discrimination which is unlawful under these provisions must be made to an employment tribunal. For detailed information about these provisions see chapter 3 of the **Guide to the Sex Discrimination Act 1975.** For the purposes of the provisions in Group B, discrimination means direct sex discrimination, indirect sex discrimination and victimisation, but not direct or indirect discrimination against married persons. Complaints about discrimination which is unlawful under these provisions must be made to a county court or, in Scotland, a sheriff court. For detailed information about these provisions see chapters 4 and 5 of the **Guide.**

Exceptions

3. Details of exceptions to the requirements of the Act not to discriminate may be found in the **Guide.** the exceptions applying to the employment field are described in chapter 3; those applying to the educational field, in chapter 4; and those applying to the provision of goods, facilities and services and premises, in chapter 5. General exceptions

Provisions of the Sex Discrimination Act 1975 which make discrimination unlawful

	Section of Act	Paragraphs of guide to the Act
Group A		
Discrimination by employers in recruitment and treatment of employees.	**6**	**3.1-3.17**
Discrimination against contract workers.	**9**	**3.21**
Discrimination against partners.	**11**	**3.22**
Discrimination by trade unions, employers associations etc.	**12**	**3.23, 3.24**
Discrimination by qualifying bodies.	**13**	**3.25-3.28**
Discrimination in vocational training.	**14**	**3.29-3.30**
Discrimination by employment agencies.	**15**	**3.31-3.34**
Group B		
Discrimination by bodies in charge of educational establishments.	**22**	**4.2-4.6, 4.11-4.15**
Other discrimination in education	**23**	**4.7-4.8, 4.14-4.15**
Discrimination in the provision of goods, facilities or services.	**29**	**5.2-5.9, 5.13-5.16**
Discrimination in the disposal or management of premises.	**30**	**5.10-5.16**
Discrimination by landlords against prospective assignees or sublessees.	**31**	**5.17**
Discrimination by, or in relation to, barristers (or advocates in Scotland)	**35A, 35B**	**5.18-5.20** (take to cover Scotland too)

Produced by:

Women and Equality Unit
35 Great Smith Street
LONDON
SW1P 3BQ

Telephone: 0845 001 0029
Email: info-womenandequalityunit@dti.gsi.gov.uk

For help or advice about completing or responding to this booklet, please contact the EOC:

The Equal Opportunities Commission
Arndale House
Arndale Centre
MANCHESTER
M4 3EQ
Telephone: 0845 601 5901
Fax: 0161 838 1733

Website: www.eoc.org.uk

To order additional copies of this publication, please contact:

DTI Publications Orderline
ADMAIL 528
LONDON SW1W 8YT

T 0870 1502500
E publications@dti.gsi.gov.uk
www.dti.gov.uk/publications

URN 02/1578

Copies are also available on the web-site at www.womenandequalityunit.gov.uk and at Jobcentre Plus offices and Citizen Advice Bureaux.

RACE RELATIONS ACT 1976

ASKING QUESTIONS UNDER THE PROVISIONS OF SECTION 65 OF THE RACE RELATIONS ACT 1976, AS AMENDED BY THE RACE RELATIONS (AMENDMENT) ACT 2000

CONTENTS

Guidance on the procedure for asking questions under section 65 of the Act

Part I - Introduction
Part II - Guidance for the complainant
Part III - Guidance for the respondent

Questionnaire of complainant

Reply by respondent (2 copies)

Appendix – Notes on the scope of the Race Relations Act 1976

A complainant should obtain TWO copies of this booklet, one to send to the respondent and the other to keep.
Before completing the questionnaire or the reply form (as appropriate), the complainant and the respondent should read Part I of the guidance and (again as appropriate) Part II or III.

Issued by The Home Office and
The Department for Education and Employment

GUIDANCE ON THE PROCEDURE UNDER SECTION 65 OF THE RACE RELATIONS ACT 1976

PART 1 – INTRODUCTION

1 The purpose of this guidance is to explain the questions procedure under section 65 of the Race Relations Act 1976 ("the Act")[1] . This guidance has been updated to take into account the provisions of the Race Relations (Amendment) Act 2000 ("the Amendment Act") which came into force on 2 April 2000. The procedure is intended to help a person (referred to in this guidance as the **complainant**) who thinks he has been discriminated against by another (the **respondent**) to obtain information from that person about the treatment in question in order to

(a) decide whether or not to bring legal proceedings, and
(b) if proceedings are brought, to present his complaint in the most effective way.

A questionnaire has been devised which the complainant can send to the respondent and there is also a matching reply form for use by the respondent (both are included here). The questionnaire and the reply form have been designed to assist the complainant and respondent in identifying information which is relevant to the complaint. It is not, however, obligatory for the questionnaire or the reply form to be used; the exchange of questions and replies may be conducted, for example, by letter. This questionnaire should not be used in respect of race relations complaints relating to immigration decisions that are to be considered as part of one-stop immigration and asylum appeals (see section 57A of the Act, inserted by section 6(2) of the Amendment Act).

2 This guidance is intended to assist both the complainant and the respondent. Guidance for the complainant on the preparation of the questionnaire is set out in Part II; and guidance for the respondent on the use of the reply form is set out in Part III. Guidance is also provided in the margins of the questionnaire. The guidance is not part of the questionnaire. The main provisions of the Act are referred to in the appendix to this guidance. Further information about the Act will be found in the various leaflets published by the Commission for Racial Equality which may be obtained from:

Central Books
Telephone: 020 8986 5488
Fax: 020 8533 5821
E-mail: cre@centralbooks.com

Further information is also available from the CRE's website at www.cre.gov.uk and from The Home Office website at www.homeoffice.gov.uk. The CRE's leaflet on the employment provisions of the Act may also be obtained, free of charge, from any employment office or Jobcentre of the Employment Service. The CRE's leaflets may also be obtained from local racial equality councils.

1 The prescribed forms, time limits for serving questions and manner of service of questions and replies under section 65 are specified in The Race Relations (Questions and Replies) Order 1977 (SI 1977 No. 842).

How the questions procedure can benefit both parties

3 The procedure can benefit both the complainant and the respondent in the following ways:-

(1) If the respondent's answers satisfy the complainant that the treatment was not unlawful discrimination, there will be no need for legal proceedings.

(2) Even if the respondent's answers do not satisfy the complainant, they should help to identify what is agreed and what is in dispute between the parties. For example, the answers should reveal whether the parties disagree on the facts of the case, or, if they agree on the facts, whether they disagree on how the Act applies. In some cases, this may lead to a settlement of the grievance, again making legal proceedings unnecessary.

(3) If it turns out that the complainant institutes proceedings against the respondent, the proceedings should be that much simpler because the matters in dispute will have been identified in advance.

What happens if the respondent does not reply or replies evasively?

4 The respondent cannot be compelled to reply to the complainant's questions. However, by virtue of section 65 of the Act, this questionnaire and any reply are (subject to the provisions of the section) admissible in proceedings under the Act and a court or tribunal may draw any such inference as is just and equitable from a failure without reasonable excuse to reply within a reasonable period, or from an evasive or equivocal reply, including an inference that the person questioned has discriminated unlawfully. The respondent's attention is drawn to these possible consequences in the note at the end of the questionnaire.

5 New section 65(4A) of the Act, inserted by section 5(2) of the Amendment Act, provides that, in proceedings under new section 19B of the Act, a court will not be able to draw the inferences in paragraph 4 above if:

(a) at the time of doing the relevant act the respondent was carrying out public investigation or public prosecutor functions; and

(b) he or she reasonably believes that a reply or a different reply would be likely to prejudice any criminal investigation, any decision to institute criminal proceedings, or any criminal proceedings, or would reveal the reason behind a decision not to prosecute, or not to continue, criminal proceedings.

The Act does not prevent a complainant from seeking a reply at a later date when the circumstances set out above may no longer apply.

Period within which questionnaire must be served on the respondent

6 There are different time limits within which a questionnaire must be served in order to be admissible in any ensuing legal proceedings. Which time limit applies depends on whether the complaint would be under the employment, training and related provisions of the Act (in which case the proceedings would be before an employment tribunal), or whether it would be under the functions of a public nature, education, goods, facilities and services or premises provisions (in which case proceedings would be before a designated county court or, in Scotland, a sheriff court).

Employment tribunal cases

7 In order to be admissible under the questions procedure in any ensuing employment tribunal proceedings, the complainant's questionnaire must be served on the respondent either:

(a) before a complaint about the treatment concerned is made to an employment tribunal, but not more than 3 months after the treatment in question; or

(b) if a complaint has already been made to a tribunal, within 21 days beginning when the complaint was received by the tribunal.

However, where the complainant has made a complaint to a tribunal and the period of 21 days has expired, a questionnaire may still be served provided the permission of the tribunal is obtained. This may be done by sending to the Secretary of the Tribunals a written application, which must state the names of the complainant and the respondent and set out the grounds of the application. However every effort should be made to serve the questionnaire within the period of 21 days as the permission of the tribunal to serve the questionnaire after the expiry of that period will not necessarily be obtained.

Court cases

8 In order to be admissible under the questions procedure in any ensuing county or sheriff court proceedings, the complainant's questionnaire must be served on the respondent before proceedings in respect of the treatment concerned are brought, but not more than 6 months after the treatment [2] . However, where proceedings have been brought, a questionnaire may still be served provided the permission of the court has been obtained. In the case of county court proceedings, this may be done by obtaining form N244 from the county court office, and completing it and sending it to the court, with the appropriate fee, and the respondent. In the case of sheriff court proceedings, this may be done by making an application to a sheriff.

PART II – GUIDANCE FOR THE COMPLAINANT

NOTES ON PREPARING THE QUESTIONNAIRE

9 Before filling in the questionnaire, you are advised to prepare what you want to say on a separate piece of paper. If you have insufficient room on the questionnaire for what you want to say, you should continue on an additional piece of paper, which should be sent with the questionnaire to the respondent.

Paragraph 2

10 You should give, in the space provided in paragraph 2, as much relevant factual information as you can about the treatment you think may have been unlawful discrimination, and about the circumstances leading up to that treatment. You should also give the date, and if possible and if relevant, the place and approximate time of the treatment. You should bear in mind that in paragraph 4 of the questionnaire you will be asking the respondent whether he agrees with what you say in paragraph 2.

2 Where a person has applied in writing to the CRE for assistance in respect of his case, the time limit of 6 months is extended by 2 months. It is open to the CRE to extend the period by a further month.

Paragraph 3

11 In paragraph 3 you are telling the respondent that you think the treatment you have described in paragraph 2 may have been unlawful discrimination by him against you. It will help to identify whether there are any legal issues between you and the respondent if you explain in the space provided why you think the treatment may have been unlawful discrimination. However, you do not have to complete paragraph 3; if you do not wish or are unable to do so, you should delete the word "because". If you wish to complete the paragraph, but feel you need more information about the Race Relations Act before doing so, you should look to the appendix to this guidance.

12 If you decide to complete paragraph 3, you may find it useful to indicate –

(a) what **kind** of discrimination you think the treatment may have been ie whether it was direct discrimination, indirect discrimination, or victimisation (for further information about the different kinds of discrimination see paragraph 1 of the appendix)

(b) which provision of the Act you think may make unlawful the kind of discrimination you think you may have suffered. (For an indication of the provisions of the Act which make the various kinds of discrimination unlawful, see paragraph 2 of the appendix.)

Paragraph 6

13 You should insert here any other question which you think may help you to obtain relevant information. (For example, if you think you have been discriminated against by having been refused a job, you may want to know what were the qualifications of the person who did get the job and why that person got the job.)

14 Paragraph 5 contains questions which are especially important if you think you may have suffered direct discrimination because they ask the respondent whether racial considerations had anything to do with your treatment. Paragraph 5 does not, however, ask specific questions relating to indirect discrimination or victimisation. If you think you may have suffered indirect discrimination you may find it helpful to include the following question in the space provided in paragraph 6:

Paragraph 6:

> "Was the reason for my treatment the fact that I could not comply with a condition or requirement which is applied equally to people regardless of their racial group?
>
> If so –
> (a) what was the condition or requirement?
> (b) why was it applied?"

15 If you think you may have been victimised you may find it helpful to include the following question in the space provided in paragraph 6:

"Was the reason for my treatment the fact that I had done or intended to do, or that you suspected I had done or intended to do, any of the following:
(a) brought proceedings under the Act; or
(b) gave evidence or information in connection with proceedings under the Act; or
(c) did something else under or by reference to the Act; or
(d) made an allegation that someone acted unlawfully under the Act?"

Signature

16 The questionnaire must be signed and dated. If it is to be signed on behalf of (rather than by) the complainant, the person signing should –

(a) describe himself (eg "solicitor acting for (name of complainant)"), and
(b) give his business (or home, if appropriate) address.

WHAT PAPERS TO SERVE ON THE PERSON TO BE QUESTIONED

17 You should send the person to be questioned the whole of this document (ie the guidance, the questionnaire and the reply forms), with the questionnaire completed by you. You are strongly advised to retain, and keep in a safe place, a copy of the completed questionnaire (and you might also find it useful to retain a copy of the guidance and the uncompleted reply form).

HOW TO SERVE THE PAPERS

18 You can either deliver the papers in person or send them by post. If you decide to send them by post you are advised to use the recorded delivery service so that, if necessary, you can produce evidence that they were delivered.

WHERE TO SEND THE PAPERS

19 You can send the papers to the person to be questioned at his usual or last known residence, business address, or the office or establishment where he works or is normally attached. If you know he is acting through a solicitor you should send them to him at his solicitor's address. If you wish to question a limited company or other corporate body or a trade union or employers' association, you should send the papers to the secretary or clerk at the registered or principal office of the company, etc. You should be able to find out where its registered or principal office is by enquiring at a public library. If you are unable to do so, however, you will have to send the papers to the place where you think it is most likely they will reach the secretary or clerk (eg at, or c/o, the company's local office). It is your responsibility, however, to see that the secretary or clerk receives the papers.

USE OF THE QUESTIONS AND REPLIES IN EMPLOYMENT TRIBUNAL PROCEEDINGS

20 If you decide to make (or already have made) a complaint to an employment tribunal about the treatment concerned and if you intend to use your questions and the reply (if any) as evidence in the proceedings, you are advised to send copies of your questions and any reply to the Secretary of the Tribunals before the date of the hearing. This should be done as soon as the documents are available; if they are available at the time you submit your complaint to a tribunal, you should send the copies with your complaint to the Secretary of the Tribunals.

PART III – GUIDANCE FOR THE RESPONDENT

NOTES ON COMPLETING THE REPLY FORM

21 Before completing the reply form, you are advised to prepare what you want to say on a separate piece of paper. If you have insufficient room on the reply form for what you want to say, you should continue on an additional piece of paper, which should be attached to the reply form sent to the complainant.

22 Here you are answering the question in paragraph 4 of the questionnaire. If you agree that the complainant's statement in paragraph 2 of the questionnaire is an accurate description of what happened, you should delete the second sentence.

23 If you disagree in any way that the statement is an accurate description of what happened, you should explain in the space provided in what respects you disagree, or your version of what happened, or both.

Paragraph 3

24 Here you are answering the question in paragraph 5 of the questionnaire. If, in answer to paragraph 4 of the questionnaire, you have agreed with he complainant's description of his treatment, you will be answering paragraph 5 on the basis of the facts in his description. If, however, you have disagreed with that description, you should answer paragraph 5 on the basis of your version of the facts. To answer paragraph 5, you are advised to look at the appendix to this guidance.
You need to know:-

(a) how the Act defines discrimination – see paragraph 1 of the appendix,
(b) in what situations the Act makes discrimination unlawful – see paragraph 2 of the appendix; and
(c) what exceptions the Act provides – see paragraph 3 of the appendix.

25 If you think that an exception (eg the exception for employment where being of a particular racial group is a genuine occupational qualification) applies to the treatment described in paragraph 2 of the complainant's questionnaire, you should mention this in paragraph 3a of the reply form and explain why you think the exception applies.

Signature

26 The reply form should be signed and dated. If it is to be signed on behalf of (rather than by) the respondent, the person signing should-

(a) describe himself (eg "solicitor acting for *(name of respondent)*"or "personnel manager of *(name of firm)*"), and
(b) give his business (or home, if appropriate) address.

SERVING THE REPLY FORM ON THE COMPLAINANT

27 If you wish to reply to the questionnaire you are strongly advised to do so without delay. **You should retain, and keep in a safe place, the questionnaire sent to you and a copy of your reply.**

28 You can serve the reply either by delivering it in person to the complainant or by sending it by post. If you decide to send it by post you are advised to use the recorded delivery service, so that, if necessary, you can produce evidence that it was delivered.

29 You should send the reply form to the address indicated in paragraph 7 of the complainant's questionnaire.

THE RACE RELATIONS ACT 1976 SECTION 65(1)(a)

QUESTIONNAIRE OF PERSON AGGRIEVED (THE COMPLAINANT)

Name of person to be questioned (the respondent)

To

Address

of

Name of complainant

1. I

Address of

of

consider that you may have discriminated against me contrary to the Race Relations Act 1976.

Give date, approximate time, place and factual description of the treat-ment received and of the circumstances leading up to the treat-ment (see paragraph 10 of the guidance)

2. On

Complete if you wish to give reasons, otherwise delete the word “because” (see paragraphs 11 and 12 of the guidance)

3. I consider that this treatment may have been unlawful because:

This is the first of your questions to the respondent. You are advised not to alter it

4. Do you agree that the statement in paragraph 2 is an accurate description of what happened? If not in what respect do you disagree or what is your version of what happened?

This is the second of your questions to the respondent. You are advised not to alter it.

5 Do you accept that your treatment of me was unlawful discrimination by you against me?

If not

a why not?

b for what reason did I receive the treatment accorded to me?
and

c how far did considerations of colour, race, nationality (including citizenship) or ethnic or national origins affect your treatment of me?

Enter here any other questions you wish to ask (see paragraphs 13-15 of the guidance)

6.

*Delete as appropriate above is if you delete the first alternative, insert the address to which you want the reply to be sent

7 My address for any reply you may wish to give to the questions raised *that set out in paragraph 1 above/the following address

See paragraph 16 of the guidance

Signature of complainant ……..

Date……..

NB By virtue of section 65 of the Act, this questionnaire and any reply are (subject to the provisions of the
section) admissible in proceedings under the Act and a court or tribunal may draw any such inference as is just and
equitable from a failure without reasonable excuse to reply within a reasonable period, or from an evasive or
equivocal reply, including an inference that the person questioned has discriminated unlawfully

THE RACE RELATIONS ACT 1976 SECTION 65(1)(b)
REPLY BY RESPONDENT

Name of complainant

To

Address

of

Name of complainant

1. I

Address

of

Complete as appropriate

hereby acknowledge receipt of the questionnaire signed by you and dated
which was served on me on (date)

* Delete as appropriate

2. I ***agree/disagree** that the statement in paragraph 2 of the questionnaire is an accurate description of what happened.

If you agree that the statement in paragraph 2 of the questionnaire is accurate, delete this sentence. If you disagree complete this sentence (see paragraphs 22 and 23 of the guidance)

I disagree with the statement in paragraph 2 of the questionnaire in that

* Delete as appropriate

3. I ***accept/dispute** that my treatment of you was unlawful discrimination by me against you.

If you accept the complainant's assertion of unlawful discrimination in paragraph 3 of the questionnaire delete the sentences at a,b and c. Unless completed a sentence should be deleted (see paragraphs 24 and 25 of the guidance)

a My reasons for so disputing are

b The reason why you received the treatment accorded to you is

c Considerations of colour, race, nationality (including citizenship) or ethnic national origins affected my treatment of you to the following extent:-

Replies to questions in paragraph 6 of the questionnaire should be entered here

4

Delete the whole of this sentence if you have answered all the questions in the questionnaire. If you have not answered all the questions, delete "unable" or "unwilling" as appropriate and give your reasons for not answering.

If, at the time of doing the relevant act, you were carrying out public investigation or public prosecutor functions; and you reasonably believe that to respond, or to give a different response, would be likely to prejudice any criminal investigation, any decision to institute criminal proceedings, or any criminal proceedings, or would reveal the reason behind a decision not to prosecute, or not to continue, criminal proceedings, you should refer to section 5(2) of the Race Relations (Amendment) Act 2000. This provides that, in such circumstances, you may be able to decline to respond to a section 65 questionnaire without the risk of adverse inferences being drawn.

5 I have deleted (in whole or in part) the paragraph(s) numbered……
above, since I am unable/unwilling to reply to the relevant questions of the questionnaire for the following reasons:-

See paragraph 26 of the guidance

Signature of respondent…….

Date ……..

APPENDIX

NOTES ON THE SCOPE OF THE RACE RELATIONS ACT 1976, AS AMENDED BY THE RACE RELATIONS (AMENDMENT) ACT 2000

Definitions of discrimination

1 The different kinds of discrimination covered by the Act are summarised below.

Direct discrimination arises where a person is treated less favourably than another is (or would be) treated because of his (or someone else's) colour, race, nationality (including citizenship) or ethnic or national origins.

Indirect discrimination arises where a person is treated unfavourably because he cannot comply with a condition or requirement which

(a) is (or would be) applied regardless of colour, race, nationality (including citizenship) or ethnic or national origins, and
(b) is such that the proportion of persons of a particular racial group (ie one defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins) who can comply with it is considerably smaller than the proportion of persons not of that group who can comply with it, and
(c) is to the detriment of the person in question because he cannot comply with it, and
(d) is such that the person applying it cannot show that it is justifiable regardless of the colour, race, nationality including citizenship) or ethnic or national origins of the person to whom it is applied

Victimisation arises where a person is treated less favourably than other persons are (or would be) treated because that person has done (or intends to do or is suspected of having done or intending to do) any of the following:-

(a) brought proceedings under the Act; or
(b) given evidence or information in connection with proceedings brought under the Act;

or

(c) done anything else by reference to the Act (eg given information to the Commission for Racial Equality);

or

(d) made an allegation that someone acted unlawfully under the Act.

Victimisation does not, however, occur where the reason for the less favourable treatment is an allegation which was false and not made in good faith.

Unlawful discrimination

2 The provisions of the Act which make discrimination unlawful are indicated in the table on the next page. Complaints about discrimination which is unlawful under the provisions in Group A (the employment provisions) must be made to an employment tribunal. Complaints about discrimination which is unlawful under the provisions in Group B must be made to a county court or in Scotland, a sheriff court.

Exceptions

3 The Act provides for a number of exceptions in relation to employment, housing, the provision of goods and services, and public functions.

PROVISIONS OF THE RACE RELATIONS ACT 1976 (AS AMENDED) WHICH MAKE DISCRIMINATION UNLAWFUL

	Section of Act
GROUP A	
Discrimination by employers in recruitment and treatment of employees	4
Discrimination against contract workers	7
Discrimination against partners	10
Discrimination by trade unions, employers' associations etc	11
Discrimination by bodies which confer qualifications or authorisations needed for particular kinds of jobs	12
Discrimination in the provision of training	13 and 15
Discrimination by employment agencies	14
GROUP B	
Discrimination by bodies in charge of educational establishments	17
Discrimination (other than that covered by section 17) by local education authorities	18
Discrimination by planning authorities	19A
Discrimination (other than that covered by other provisions of the Act) by public authorities	19B
Discrimination in the provision of goods, facilities or services to the public or a section of the public	20
Discrimination in the disposal of premises	21
Discrimination by landlords against prospective assignees or sublessees	24
Discrimination by clubs or associations with 25 or more members (other than clubs or associations covered by section 11 or 20)	25
Discrimination by, or in relation to, barristers	26A
Discrimination by, or in relation to, advocates	26B

The Employment Equality (Sexual Orientation) Regulations 2003: The Questionnaire

This booklet is in four parts:

Part 1: **Introduction**

Part 2: **Questionnaire of the person aggrieved: The Complainant's** *(regulation 33).*

Part 3: **Reply by respondent** *(regulation 33).*

Appendix: **Notes on the scope of The Employment Equality (Sexual Orientation) Regulations 2003.**

Part 1: Introduction

General

- The purpose of this introduction is to explain the questions procedure under Section 33 of the Employment Equality Act (Sexual Orientation) Regulations 2003
- The procedure is intended to help a person *(referred to in this booklet as the complainant)* who thinks he/she has been discriminated against by another *(the respondent)* to obtain information from that person about the treatment in question in order to:
  - decide whether or not to bring legal proceedings; and
  - if proceedings are brought, to present his/her complaint in the most effective way.
- We have devised a questionnaire which the complainant can send to the respondent. There is also a matching reply form for use by the respondent — both are included in this booklet. The questionnaire and reply form are designed to assist both the complainant and respondent to identify information which is relevant to the complainant. It is not obligatory for the questionnaire and reply form to be used: the exchange of questions and replies may be conducted, for example, by letter.
- The complainant and respondent should read this booklet thoroughly before completion and retain a copy of the information supplied.
- Guidance for the complainant on the preparation of the questionnaire is set out in Part 2.
- Guidance for the respondent on the use of the reply form is set out in Part 3.
- The notes at the end of this booklet explain the main provisions of the Employment Equality (Sexual Orientation) Regulations 2003. You can obtain further information about the legislation from the DTI website www.dti.gov.uk.er/equality/, or about your rights and responsibilities from the Acas good practice guide entitled *Sexual Orientation and the Workplace.* The Acas guidance is available soon their website www.acas.org.uk
- Employees who require help of advice about completing this booklet can get advice from Citizens Advice Bureaux, law centres or trade union. They may also seek independent legal advice from a solicitor. Employees and employers can seek practical advice from Acas via their national helpline (08457 47 47 47)..
- You can obtain copies of this booklet *("URN 04/1010"),* as well as copies of the Acas guide mentioned above free of charge. See reverse of booklet for details.

Purpose of the questions procedure

The questionnaire can provide the complainant with more information so that he or she can make a better informed decision about whether to bring a complaint and if they do will be able to present it more effectively.

- If the respondent's answers satisfy the complainant there may be no need for legal proceedings;
- If the respondent's answers do not satisfy the complainant, they should help to identify what is agreed and what is in dispute between the parties. For example, the answers should reveal whether the parties disagree on the facts of the case, or, if they agree on the facts whether they disagree on how the regulations apply. In some cases, this may lead to a settlement of the grievance, making legal proceedings unnecessary.
- If the complainant institutes proceedings against the respondent, the proceedings should be simpler because the matters in dispute will have been identified in advance.

What happens if the respondent does not reply or replies evasively

The respondent cannot be compelled to reply to the complainant's questionnaire. However, if the respondent does not reply within eight weeks, or replies in an evasive or equivocal manner without a reasonable excuse, a court or tribunal may draw adverse inferences from that, should the complainant bring proceedings against him/her. The respondent's attention is drawn to these possible consequences in the note at the end of the questionnaire.

Period within which proceedings must be brought

There are different time limits for bringing a complaint under the Regulations. A complaint to an employment tribunal must be presented within 3 months of the alleged act. Where a complaint is brought against an institution of Higher Education or Further Education the complaint must be brought in the county or sheriff court within 6 months of the alleged act. A court or tribunal has a discretion to accept a late complaint if it would be just and equitable to do so.

Employment tribunal proceedings

In order to be admissible as evidence in any ensuing employment tribunal proceedings, the complainant's questionnaire must be served on the respondent either:

(a) before a complaint about the treatment concerned is made to an employment tribunal; or

(b) if a complaint has already been made to a tribunal, within 21 days beginning when the complaint was received by the tribunal.

However, where the complainant has made a complaint to a tribunal and the period of 21 days has expired, a questionnaire may still be served provided the permission of the tribunal is obtained. This may be done by sending to the Secretary of the Tribunals a written application, which must state the names of the complainant and the respondent and set out the grounds of the application.However, every effort should be made to serve the questionnaire within the period of 21 days as the permission of the tribunal to serve the questionnaire after the expiry of that period will not necessarily be obtained.

County of Sheriff Court proceedings

In order to be admissible in any ensuing county or sheriff court proceedings, the complainant's questionnaire must be served on the respondent before proceedings in respect of the treatment concerned are brought, but not more than 6 months after the treatment. However, where proceedings have been brought, a questionnaire may still be served provided the permission of the court has been obtained. In the case of county court proceedings, this may be done by obtaining the appropriate form from the county court office, completing it and sending it to the court, with the appropriate fee, and the respondent. In the cases of sheriff court proceedings, this may be done by making an application to a sheriff.

Part 2: Questionnaire of person aggrieved: The Complainant

Note:

- Before filling in this questionnaire, we advise you to prepare what you want to say on a separate piece of paper.
- If you have insufficient room on the questionnaire for what you want to say, continue on an additional piece of paper, which should be sent with the questionnaire to the respondent.

Enter the name of the person to be questioned (the respondent)

To

Enter the respondent's address

of

Enter your name (you are the complainant)

1.1 I

Enter your address

of

1.2. consider that you may have discriminated against me [subjected me to harassment] contrary to the Employment Equality (Sexual Orientation) Regulations 2003

Please give as much relevant information as you can about the treatment you think may have been unlawful discrimination. You should mention the circumstances leading up to that treatment and, if possible, give the date, place and approximate time it happened. You should bear in mind that at paragraph 4 of this questionnaire you will be asking the respondent whether he/she agrees with what you say here.

In paragraph 1.3 you are telling the respondent that you think the treatment you have described in 1.2 may have been unlawful discrimination [harassment]by them against you. You do not have to complete 1.3. If you do not wish or are unable to do so, you should delete the word 'because'. If you wish to complete paragraph 1.3, but feel you need more information about the Employment Equality (Sexual Orientation) Regulations 2003 before doing so, see the notes attached.

- *If you do decide to complete paragraph 1.3, you may find it useful to indicate what kind of discrimination [harassment] you think the treatment may have been ie. whether it was:*
  - *direct discrimination;*
  - *indirect discrimination;*
  - *harassment;*
    or
  - *victimisation;*

and which provision of the regulations you think may make unlawful the kind of discrimination you think you may have suffered.

1.3. I consider that this treatment may have been unlawful because:

This is the first of your questions to the respondent. You are advised not to alter it.

This is the second of your questions to the respondent. You are advised not to alter it.

- *The questions at paragraph 3 are especially important if you think you may have suffered direct discrimination, or indirect discrimination because they ask the respondent whether your sexual orientation had anything to do with your treatment. They do not ask specific questions relating to victimisation. Question at paragraph 4 provide you with the opportunity to ask any other questions you think may be of importance. For example, if you think you have been discriminated against by having been refused a job, you may want to know what the qualifications were of the person who did get the job and why that person got the job.*

If you think you have been victimised you may find it helpful to include the following questions:

- *'Was the reason for my treatment the fact that I had done or intended to do, or that you suspected I had done or intended to do, any of the following:*
  - *brought proceedings under the employment Equality (Sexual Orientation) Regulations 2003;*
  - *gave evidence or information in connection with proceedings under the regulations;*
  - *did something else under or by reference to the regulations; or*
  - *made an allegation that someone acted unlawfully under the regulations?'*

2. Do you agree that the statement in1. 2 is an accurate description of what happened? If not, in what respect do you disagree or what is your version of what happened?

3. Do you accept that your treatment of me was unlawful discrimination [harassment] by you against me?
   If not:
   a) why not?
   b) for what reason did I receive the treatment accorded to me?
   c) how far did considerations of sexual orientation affect your treatment of me?

4. Any other questions you may wish to ask:

5. My address for any reply you may wish to give to the questions I have raised is:
   at 1 above ☐ *below* ☐ *(please tick appropriate box)*

The questionnaire must be signed and dated. If it is to be signed on behalf of (rather than by) the complainant the person signing should:

- *describe himself/herself e.g. 'solicitor acting for (name of complainant)'; and*
- *give business address (or home address, if appropriate).*

Signed

Date

Address *(if appropriate)*

How to serve papers

- We strongly advise that you retain and keep in a safe place, a copy of the completed questionnaire.
- Send the person to be questioned the **whole** of this document either to their usual last known residence or place of business or if you know they are acting through a solicitor, to that address. If your questions are directed at a limited company or other corporate body or a trade union or employer's association, you should send the papers to the secretary or clerk at the registered or principal office. You should be able to find out where this is by enquiring at your public library. However, if you are unable to do so you will have to send the papers to the place where you think it is most likely they will reach the secretary or clerk. It is your responsibility to see that they receive them.
- You can deliver the papers in person or send them by post.
- If you send them by post, we advise you to use the recorded delivery service *(this will provide you with proof of delivery).*

By virtue of regulation 33 of the Employment Equality (Sexual Orientation) Regulations 2003 Act, this questionnaire and any reply are (subject to the provisions of that regulation) admissible in proceedings under the Regulations. A court or tribunal may draw any such inference as is just and equitable from a failure without reasonable excuse to reply within eight weeks of service of this questionnaire, or from an evasive or equivocal reply, including an inference that the person questioned has committed an unlawful act.

Part 3: Reply: The Respondent

Note:

- Before completing this reply form, we advise you to prepare what you want to say on a separate piece of paper.
- If you have insufficient room on the reply form for what you want to say, continue on an additional piece of paper, which should be attached to the reply form and sent to the complainant.

Enter the name of the person you are replying to (the complainant)

To

Enter the complainant's address

of

Enter your name (you are the respondent)

1. I

Enter your address

of

Complete as appropriate

hereby acknowledge receipt of the questionnaire signed by you and dated

which was served on me on *(date)*

*Please tick relevant box: you are answering question 4 of the complainants questionnaire here. If you **disagree** with the complainant's statement of events, you should explain in what respects you disagree, or your version of what happened, or both.*

2. I agree ☐ that the statement in 2 of the questionnaire is an accurate description of what happened.

I disagree ☐ with the statement in 2 of the questionnaire in that:

Please tick relevant box: you are answering question at paragraph 3 of the complainant's questionnaire here. If, in answer to paragraph 2 of the questionnaire you have agreed that the statement is an accurate description of what happened but dispute that it is an unlawful discrimination, you should state your reasons. If you have ***disagreed*** *with the facts in the complainant's statement of events, you should answer the question on the basis of your version of the facts. We advise you to look at the attached notes and also the relevant parts of the Employment Equality (Sexual Orientation) Regulations 2003. You will need to know:*

- *how the regulations define discrimination and in what situations the regulations make discrimination unlawful – see paragraph 1 of the attached notes; and*
- *what exceptions the regulations provide – see paragraph 3 of the attached notes.*

If you think that an exception (eg. the exception for employment where a person's sexual orientation is a genuine occupational qualification) applies to the treatment described in paragraph 1.2 of the complainant's questionnaire, you should mention this in paragraph 3a, with an explanation about why you think the exception applies.

3a I accept ☐ that my treatment of you was unlawful discrimination [harassment] by me against you.

I dispute ☐ that my treatment of you was unlawful discrimination [harassment] by me against you. My reasons for so disputing are:

3b The reason you received the treatment accorded to you and the answers to the other questions in paragraph 3 of the questionnaire are:

4. Replies to questions in paragraph 4 of the questionnaire:

Delete the whole of this sentence if you have answered all the questions in the complainant's questionnaire. If you are unable or unwilling to answer the questions please tick the appropriate box and give your reasons for not answering them.

5. I have deleted (*in whole or in part*) the paragraphs numbered ☐ above

since I am unable ☐

since I am unwilling ☐

➡ *to reply to the relevant questions in the complainant's questionnaire for the reasons given in the box below.*

The reply form must be signed and dated. If it is to be signed on behalf of (rather than by) the respondent the person signing should:

- *describe himself/herself eg. 'solicitor acting for (name of respondent)' or 'personnel manager of (name of firm)'; and*
- *give business address (or home address if appropriate).*

Signed

Address *(if appropriate)*

How to serve the reply form on the complainant

- If you wish to reply to the questionnaire we strongly advise that you do so without delay.
- You should retain, and keep in a safe place, the questionnaire sent to you and a copy of your reply.
- You can serve the reply either by delivering it in person to the complainant or by sending it by post.
- If you send it by post, we advise you to use the recorded delivery service *(this will provide you with evidence of deliver).*
- You should send the reply form to the address indicated in paragraph 5 of the complainant's questionnaire.

Notes on the scope of the Employment Equality (Sexual Orientation) Regulations 2003

Definitions of discrimination

1. The different kinds of discrimination covered by the regulations are summarised below:

   Direct discrimination (Regulation 3) occurs where, on grounds of sexual orientation a treats B less favourably than he treats or would treat other persons. For example, if an employer refuses to give a person a job simply because he is gay, that is direct discrimination.

   Indirect discrimination (Regulation 3) arises where an organisation introduces selection criteria, policies, benefits, employment rules or any other practices which, although they are applied to all employees, have the effect of disadvantaging people of a particular sexual orientation unless the practice can be justified. Indirect discrimination is unlawful whether it is intentional or not. To justify it, an employer must show that there is a legitimate aim (eg a real business need) and that the practice is proportionate to that aim (ie necessary, and there is no alternative means available).

   Victimisation (Regulation 4) arises where a person is treated detrimentally because they have made a complaint or intend to make a complaint about discrimination or harassment or have given evidence or intend to give evidence relating to a complaint about discrimination or harassment.

   Harassment (Regulation 5) arises where a person suffers behaviour that is offensive, frightening or in any way distressing. It may be in intentional bullying which is obvious or violent, but it can also be unintentional, subtle and insidious. It may involve nicknames, teasing, name calling or other behaviour which is not with malicious intent but nevertheless is upsetting. It may be about the individual's sexual orientation or it may be about the sexual orientation of those with whom the individual associates. It may not be targeted at an individual but consist of a general culture which, for instance, appears to tolerate the telling of homophobic jokes.

How to find out more about the provisions of the regulations

2. The DTI has prepared explanatory notes which explain the provisions of the regulations. The notes give general explanations only and should not be regarded as a complete or authorative statement of the law. You can access the explanatory notes by visiting the DTI's website at www.dti.gov.uk/er/equality/. Acas has also published a good practice guide entitled *Sexual Orientation and the Workplace.* The Acas guide can be found on its website at www.acas/org/uk.

Exceptions

3. Regulations 7 of the sexual orientation Regulations allows an employer, when recruiting for a post, to treat job applicants differently on grounds of sexual orientation if being of a particular sexual orientation is a genuine occupational requirement ("GOR") for that post. An employer may also rely on this exception when promoting, transferring or training people for a post, and when dismissing someone from a post, where a GOR applies in respect of that post. A GOR may only apply in relation to discrimination under regulation 3, so it cannot be used to justify victimisation or harassment. In regulation 7(3) of the sexual orientation Regulations there is an exception for requirements related to sexual orientation which are applied to employment for purposes of an organised religion.

Produced by:

Employment Relations Directorate
Department of Trade and Industry
1 Victoria Street
LONDON SW1H 0ET

Telephone: 020 7215 5000

For help or advice about completing this form employees can contact the Citizens Advice Bureaux, law centres or trade union. They may also seek independent legal advice from a solicitor.

To order additional copies of this publication, please contact:

DTI Publications Orderline
ADMAIL 528
LONDON SW1W 8YT

Telephone: 08701 502 500
Email: publications@dti.gsi.gov.uk
Website: www.dti.gov.uk/publications

URN 04/1010

Copies are also available on the DTI website at http://dti.gov.uk/er/equality and at Jobcentre Plus offices and Citizen Advice Bureaux.

The Employment Equality (Religion or Belief) Regulations 2003: The Questionnaire

This booklet is in four parts:

Part 1: **Introduction**

Part 2: **Questionnaire of the person aggrieved: The Complainant's** *(regulation 33).*

Part 3: **Reply by respondent** *(regulation 33).*

Appendix: **Notes on the scope of The Employment Equality (Religion or Belief) Regulations 2003.**

Part 1: Introduction

General

- The purpose of this introduction is to explain the questions procedure under Section 33 of the Employment Equality (Religion or Belief) Regulations 2003.
- The procedure is intended to help a person *(referred to in this booklet as the complainant)* who thinks he/she has been discriminated against by another *(the respondent)* to obtain information from that person about the treatment in question in order to:
- decide whether or not to bring legal proceedings; and
- if proceedings are brought, to present his/her complaint in the most effective way.
- We have devised a questionnaire which the complainant can send to the respondent. There is also a matching reply form for use by the respondent – both are included in this booklet. The questionnaire and reply form are designed to assist both the complainant and respondent to identify information which is relevant to the complaint. It is not obligatory for the questionnaire and reply form to be used: the exchange of questions and replies may be conducted, for example, by letter.
- The complainant and respondent should read this booklet thoroughly before completion and retain a copy of the information supplied.
- Guidance for the complainant on the preparation of the questionnaire is set out in Part 2.
- Guidance for the respondent on the use of the reply form is set out in Part 3.
- The notes at the end of this booklet explain the main provisions of the Employment Equality (Religion or Belief) Regulations 2003. You can obtain further information about the legislation from the DTI website www.dti.gov.uk/er/equality/, or about your rights and responsibilities from the Acas good practice guide entitled *Religion or Belief and the Workplace*. The Acas guidance is available on their website www.acas.org.uk
- Employees who require help or advice about completing this booklet can get advice from Citizens Advice Bureaux, law centres or trade union. They may also seek independent legal advice from a solicitor. Employees and employers can seek practical advice from Acas via their national helpline (08457 47 47 47).
- You can obtain copies of this booklet *("URN 04/1011"),* as well as copies of the Acas guide mentioned above free of charge. See reverse of booklet for details.

Part 1: Introduction *(continued)*

Purpose of the questions procedure

The questionnaire can provide the complainant with more information so that he or she can make a better informed decision about whether to bring a complaint and if they do will be able to present it more effectively.

- If the respondent's answers satisfy the complainant there may be no need for legal proceedings;
- If the respondent's answers do not satisfy the complainant, they should help to identify what is agreed and what is in dispute between the parties. For example, the answers should reveal whether the parties disagree on the facts of the case, or, if they agree on the facts whether they disagree on how the regulations apply. In some cases, this may lead to a settlement of the grievance, making legal proceedings unnecessary.
- If the complainant institutes proceedings against the respondent, the proceedings should be simpler because the matters in dispute will have been identified in advance.

What happens if the respondent does not reply or replies evasively

The respondent cannot be compelled to reply to the complainant's questions. However, if the respondent does not reply within eight weeks, or replies in an evasive or equivocal manner without a reasonable excuse, a court or tribunal may draw adverse inferences from that, should the complainant bring proceedings against him/her. The respondent's attention is drawn to these possible consequences in the note at the end of the questionnaire.

Period within which proceedings must be brought

There are different time limits for bringing a complaint under the Regulations. A complaint to an employment tribunal must be presented within 3 months of the alleged act. Where a complaint is brought against an institution of Higher Education or Further Education the complaint must be brought in the county or sheriff court within 6 months of the alleged act. A court or tribunal has a discretion to accept a late complaint if it would be just and equitable to do so.

Employment tribunal proceedings

In order to be admissible as evidence in any ensuing employment tribunal proceedings, the complainant's questionnaire must be served on the respondent either:

(a) before a complaint about the treatment concerned is made to an employment tribunal; or

(b) if a complaint has already been made to a tribunal, within 21 days beginning when the complaint was received by the tribunal.

However, where the complainant has made a complaint to a tribunal and the period of 21 days has expired, a questionnaire may still be served provided the permission of the tribunal is obtained. This may be done by sending to the Secretary of the Tribunals a written application, which must state the names of the complainant and the respondent and set out the grounds of the application. However, every effort should be made to serve the questionnaire within the period of 21 days as the permission of the tribunal to serve the questionnaire after the expiry of that period will not necessarily be obtained.

County or Sheriff Court proceedings

In order to be admissible in any ensuing county or sheriff court proceedings, the complainant's questionnaire must be served on the respondent before proceedings in respect of the treatment concerned are brought, but not more than 6 months after the treatment. However, where proceedings have been brought, a questionnaire may still be served provided the permission of the court has been obtained. In the case of county court proceedings, this may be done by obtaining the appropriate form from the county court office, completing it and sending it to the court, with the appropriate fee, and the respondent. In the cases of sheriff court proceedings, this may be done by making an application to a sheriff.

Part 2: Questionnaire of person aggrieved: The Complainant

Note:
- Before filling in this questionnaire, we advise you to prepare what you want to say on a separate piece of paper.
- If you have insufficient room on the questionnaire for what you want to say, continue on an additional piece of paper, which should be sent with the questionnaire to the respondent.

Enter the name of the person to be questioned (the respondent)

To

Enter the respondent's address

of

Enter your name (you are the complainant)

1.1 I

Enter your address

of

1.2. consider that you may have discriminated against me [subjected me to harassment] contrary to the Employment Equality (Religion or Belief) Regulations 2003

Please give as much relevant information as you can about the treatment you think may have been unlawful discrimination. You should mention the circumstances leading up to that treatment and, if possible, give the date, place and approximate time it happened. You should bear in mind that at paragraph 4 of this questionnaire you will be asking the respondent whether he/she agrees with what you say here.

In paragraph 1.3 you are telling the respondent that you think the treatment you have described in 1.2 may have been unlawful discrimination [harassment] by them against you. You do not have to complete 1.3. If you do not wish or are unable to do so, you should delete the word 'because'. If you wish to complete paragraph 1.3, but feel you need more information about the Employment Equality (Religion or Belief) Regulations 2003 before doing so, see the notes attached.

- *If you do decide to complete paragraph 1.3, you may find it useful to indicate what kind of discrimination [harassment] you think the treatment may have been ie. whether it was:*
  - *direct discrimination;*
  - *indirect discrimination;*
  - *harassment;*
    or
  - *victimisation;*

and which provision of the regulations you think may make unlawful the kind of discrimination you think you may have suffered.

1.3. I consider that this treatment may have been unlawful because:

This is the first of your questions to the respondent. You are advised not to alter it.

This is the second of your questions to the respondent. You are advised not to alter it.

- *The questions at paragraph 3 are especially important if you think you may have suffered direct discrimination, or indirect discrimination because they ask the respondent whether your sexual orientation had anything to do with your treatment. They do not ask specific questions relating to victimisation. Question at paragraph 4 provide you with the opportunity to ask any other questions you think may be of importance. For example, if you think you have been discriminated against by having been refused a job, you may want to know what the qualifications were of the person who did get the job and why that person got the job.*

If you think you have been victimised you may find it helpful to include the following questions:

- *'Was the reason for my treatment the fact that I had done or intended to do, or that you suspected I had done or intended to do, any of the following:*
  - *brought proceedings under the employment Equality (Religion or Belief) Regulations 2003;*
  - *gave evidence or information in connection with proceedings under the regulations;*
  - *did something else under or by reference to the regulations; or*
  - *made an allegation that someone acted unlawfully under the regulations?'*

2. Do you agree that the statement in 1. 2 above is an accurate description of what happened? If not, in what respect do you disagree or what is your version of what happened?

3. Do you accept that your treatment of me was unlawful discrimination [harassment] by you against me?
   If not:
   a) why not?
   b) for what reason did I receive the treatment accorded to me?
   c) how far did considerations of sexual orientation affect your treatment of me?

4. Any other questions you may wish to ask:

5. My address for any reply you may wish to give to the questions I have raised is:
   at 1 above ☐ *below* ☐ *(please tick appropriate box)*

The questionnaire must be signed and dated. If it is to be signed on behalf of (rather than by) the complainant the person signing should:

- *describe himself/herself e.g. 'solicitor acting for (name of complainant)'; and*
- *give business address (or home address, if appropriate).*

Signed

Date

Address *(if appropriate)*

How to serve papers

- We strongly advise that you retain and keep in a safe place, a copy of the completed questionnaire.
- Send the person to be questioned the **whole** of this document either to their usual last known residence or place of business or if you know they are acting through a solicitor, to that address. If your questions are directed at a limited company or other corporate body or a trade union or employer's association, you should send the papers to the secretary or clerk at the registered or principal office. You should be able to find out where this is by enquiring at your public library. However, if you are unable to do so you will have to send the papers to the place where you think it is most likely they will reach the secretary or clerk. It is your responsibility to see that they receive them.
- You can deliver the papers in person or send them by post.
- If you send them by post, we advise you to use the recorded delivery service *(this will provide you with proof of delivery).*

By virtue of regulation 33 of the Employment Equality (Religion or Belief) Regulations 2003 Act, this questionnaire and any reply are (subject to the provisions of that regulation) admissible in proceedings under the Regulations. A court or tribunal may draw any such inference as is just and equitable from a failure without reasonable excuse to reply within eight weeks of service of this questionnaire, or from an evasive or equivocal reply, including an inference that the person questioned has committed an unlawful act.

Part 3: Reply: The Respondent

Note:

- Before completing this reply form, we advise you to prepare what you want to say on a separate piece of paper.
- If you have insufficient room on the reply form for what you want to say, continue on an additional piece of paper, which should be attached to the reply form and sent to the complainant.

Enter the name of the person you are replying to (the complainant)

To

Enter the complainant's address

of

Enter your name (you are the respondent)

1. I

Enter your address

of

Complete as appropriate

hereby acknowledge receipt of the questionnaire signed by you and dated

which was served on me on *(date)*

*Please tick relevant box: If you **disagree** with the complainant's statement of events, you should explain in what respects you disagree, or your version of what happened, or both.*

2. I agree ☐ that the statement in 1.2 of the questionnaire is an accurate description of what happened.

I disagree ☐ with the statement in 2 of the questionnaire in that:

Please tick relevant box: you are answering question at paragraph 3 of the complainant's questionnaire here. If, in answer to paragraph 2 of the questionnaire you have agreed that the statement is an accurate description of what happened but dispute that it is an unlawful discrimination, you should state your reasons. If you have ***disagreed*** *with the facts in the complainant's statement of events, you should answer the question on the basis of your version of the facts. We advise you to look at the attached notes and also the relevant parts of the Employment Equality (Religion or Belief) Regulations 2003. You will need to know:*

- *how the regulations define discrimination and in what situations the regulations make discrimination unlawful – see paragraph 1 of the attached notes; and*
- *what exceptions the regulations provide – see paragraph 3 of the attached notes.*

If you think that an exception (eg. the exception for employment where a person's religion or belief is a genuine occupational qualification) applies to the treatment described in paragraph 1.2 of the complainant's questionnaire, you should mention this in paragraph 3a, with an explanation about why you think the exception applies.

3a I accept ☐ that my treatment of you was unlawful discrimination [harassment] by me against you.

I dispute ☐ that my treatment of you was unlawful discrimination [harassment] by me against you. My reasons for so disputing are:

3b The reason you received the treatment accorded to you and the answers to the other questions in paragraph 3 of the questionnaire are:

4. Replies to questions in paragraph 4 of the questionnaire:

Delete the whole of this sentence if you have answered all the questions in the complainant's questionnaire. If you are unable or unwilling to answer the questions please tick the appropriate box and give your reasons for not answering them.

5. I have deleted (*in whole or in part*) the paragraphs numbered ☐ above

since I am unable ☐

since I am unwilling ☐

➡ *to reply to the relevant questions in the complainant's questionnaire for the reasons given in the box below.*

The reply form must be signed and dated. If it is to be signed on behalf of (rather than by) the respondent the person signing should:

- *describe himself/herself eg. 'solicitor acting for (name of respondent)' or 'personnel manager of (name of firm)'; and*
- *give business address (or home address if appropriate).*

Signed

Date

Address *(if appropriate)*

How to serve the reply form on the complainant

- If you wish to reply to the questionnaire we strongly advise that you do so without delay.
- You should retain, and keep in a safe place, the questionnaire sent to you and a copy of your reply.
- You can serve the reply either by delivering it in person to the complainant or by sending it by post.
- If you send it by post, we advise you to use the recorded delivery service *(this will provide you with evidence of deliver).*
- You should send the reply form to the address indicated in paragraph 5 of the complainant's questionnaire.

Notes on the scope of the Employment Equality (Religion or Belief) Regulations 2003

Definitions of discrimination

1. The different kinds of discrimination covered by the regulations are summarised below:

   Direct discrimination (Regulation 3) occurs where, on grounds of religion or belief A treats B less favourably than he treats or would treat other persons.

   Indirect discrimination (Regulation 3) arises where an organisation introduces selection criteria, policies, benefits, employment rules or any other practices which, although they are applied to all employees, have the effect of disadvantaging people of a particular religion or belief unless the practice can be justified. Indirect discrimination is unlawful whether it is intentional or not. To justify it, an employer must show that there is a legitimate aim (eg a real business need) and that the practice is proportionate to that aim (ie necessary, and there is no alternative means available).

   Victimisation (Regulation 4) arises where a person is treated detrimentally because they have made a complaint or intend to make a complaint about discrimination or harassment or have given evidence or intend to give evidence relating to a complaint about discrimination or harassment.

   Harassment (Regulation 5) arises where a person suffers behaviour that is offensive, frightening or in any way distressing. It may be intentional bullying which is obvious or violent, but it can also be unintentional, subtle and insidious. It may involve nicknames, teasing, name calling or other behaviour which is not with malicious intent but nevertheless is upsetting. It may be about the individual's religion or belief or it may be about the religion or belief of those with whom the individual associates. It may not be targeted at an individual but consist of a general culture which, for instance, appears to tolerate the telling of religious jokes.

How to find out more about the provisions of the regulations

2. The DTI has prepared explanatory notes which explain the provisions of the regulations. The notes give general explanations only and should not be regarded as a complete or authorative statement of the law. You can access the explanatory notes by visiting the DTI's website at www.dti.gov.uk/er/equality/. Acas has also published a good practice guide entitled *Religion or Belief and the Workplace*. The Acas guide can found on its website at www.acas/org/uk.

Exceptions

3. Regulation 7 of the religion or belief Regulations allows an employer, when recruiting for a post, to treat job applicants differently on grounds of religion or belief if being of a particular religion or belief is a genuine occupational requirement ("GOR") for that post. An employer may also rely on this exception when promoting, transferring or training people for a post, and when dismissing someone from a post, where a GOR applies in respect of that post. A GOR may only apply in relation to discrimination under regulation 3, so it cannot be used to justify victimisation or harassment. In regulation 7(3) of the religion or belief Regulations there is an exception where the employer has an ethos based on religion or belief, and being of a particular religion or belief is a GOR for the job.

Produced by:

Employment Relations Directorate
Department of Trade and Industry
1 Victoria Street
LONDON
SW1H 0ET

Telephone: 020 7215 5000

For help or advice about completing this form employees can contact the Citizens Advice Bureaux, law centres or trade union. They may also seek independent legal advice from a solicitor.

To order additional copies of this publication, please contact:

DTI Publications Orderline
ADMAIL 528
LONDON SW1W 8YT

Telephone: 08701 502 500
Email: publications@dti.gsi.gov.uk
Website: www.dti.gov.uk/publications

URN 04/1011

Copies are also available on the DTI website at http://dti.gov.uk/er/equality and at Jobcentre Plus offices and Citizen Advice Bureaux.

The Disability Discrimination Act 1995 - Employment Provisions

The Questions Procedure

DL56

The DDA - 1995

The Disability Discrimination Act introduces new measures aimed at ending the discrimination which many disabled people face.

The Act gives disabled people new rights in the areas of

- employment
- access to goods, facilities and services
- the management, buying, or renting of land or property.

Some of these rights, including all the duties covering employers, were introduced on 2 December 1996. Others will be introduced over time.

In addition the Act

- requires schools, colleges and universities to provide information for disabled people;
- allows the Government to set minimum standards to assist disabled people to use public transport; and
- sets up the National Disability Council to advise the Government on eliminating discrimination against disabled people.

Information on the Act is available from

DRC Helpline
FREEPOST MID02164
Stratford-upon-Avon
CV37 9BR

Telephone 08457 622 633
Textphone 08457 622 644
Fax 08457 622 878

Contents

Guidance on the questions procedure

Part I - Introduction
Part II - Guidance for the complainant
Part III - Guidance for the respondent

Complainant's questionnaire

Respondent's reply

Appendix - Notes on the scope of the Disability Discrimination Act 1995.

A complainant should prepare two copies of this booklet, one to send to the respondent and the other to keep.

The complainant and the respondent should read Part I of the guidance (as well as the appendix if unfamiliar with the Act's provisions). Before completing the questionnaire the complainant should also read Part II of the guidance and before completing the reply form the respondent should read Part III.

Guidance on the questions procedure

Part I - Introduction

1. The purpose of this guidance is to explain the questions procedure (sometimes known as the "questionnaire procedure") under section 56 of the Disability Discrimination Act 1995. The prescribed forms, time limits for serving questions and manner of service of questions and replies under section 56 are specified in the Disability Discrimination (Questions and Replies) Order 1996 (SI 1996 No.2793). The procedure is intended to help a person (referred to in this guidance as the complainant) who thinks he or she has been discriminated against by another (the respondent) under the employment provisions of the Act to obtain information from that person about the treatment in question in order to

- decide whether or not to bring legal proceeding before an employment tribunal; and
- if proceedings are brought, to present his or her complaint in the most effective way.

A questionnaire has been devised which the complainant can send to the respondent and there is also a matching reply form for use by the respondent. Both forms are included in this booklet which can be obtained from Jobcentres and Citizens Advice Bureaux and the DRC. The questionnaire and the reply form have been designed to assist the complainant and respondent to identify information which is relevant to the complaint. It is not, however, obligatory for the questionnaire or the reply form to be used: the questions can be put by letter and a letter could also be sent responding to the questionnaire.

2. This guidance is intended to assist both the complainant and the respondent. Guidance for the complainant on the preparation of the questionnaire is set out in Part II; and guidance for the respondent on the use of the reply form is set out in Part III. The main employment provisions of the Disability Discrimination Act are referred to in the appendix to this guidance and it may help to read this appendix now if you are unfamiliar with the Act. If you do not do so, you may not understand some of the terms used in the guidance. A variety of further information about the employment provisions of the Act (including audio cassette and Braille formats) is available free of charge from: DRC Helpline.

There is also a Code of Practice for the elimination of discrimination in the field of employment against disabled persons or persons who have had a disability (ISBN 0-11-270954-0). The Code is admissible in evidence in any proceedings under the Act before an employment tribunal or court. It may be obtained from The Stationery Office (formerly HMSO) and good booksellers.

Braille and audio cassette versions

3. Versions of this booklet in audio cassette (DL57) and Braille (DL58) formats are available from DDA Information - see before Contents section.

4. Although some complainants may wish to obtain these versions of the booklet for ease of understanding, they are advised to use the standard printed questionnaire (getting someone else to complete it on their behalf as necessary) to serve on the respondent. This is because, if the material is relevant to an employment tribunal complaint, the tribunal is likely to insist that it is submitted by the complainant in a standard written form. In addition, the use of an alternative format without also providing a completed standard printed questionnaire might (depending on the circumstances) provide the respondent with a

reasonable excuse for not responding (see paragraph 7). This could work to the detriment of the complainant.

5. A complainant might normally use an alternative format in the course of his or her relationship with the respondent (e.g. as an employee/employer). If so, the complainant might choose to use that format for the questionnaire but, bearing in mind the points in the previous paragraph, it would be advisable to obtain the agreement of the respondent to the use of the alternative format.

How the questions procedure can benefit both parties

6. The procedure can benefit both the complainant and the respondent in the following ways

- if the respondent's answers satisfy the complainant that there was no unlawful discrimination, there will be no need for legal proceedings

- even if the respondent's answers do not satisfy the complainant, they should help to identify what is agreed and what is in dispute between the parties. For example, the answers should reveal whether the parties disagree on the facts of the case or, if they agree on the facts, whether they disagree on how the Act applies. In some cases, this may lead to a settlement of a grievance, again making legal proceedings unnecessary

- if it turns out that the complainant institutes proceedings against the respondent, the proceedings should be that much simpler because the matters in dispute will have been identified in advance.

What happens if the respondent does not reply or replies evasively

7. The respondent cannot be compelled to reply to the complainant's questions. However, if the respondent deliberately, and without reasonable excuse, does not reply within a reasonable period, or replies in an evasive or ambiguous way, his or her position may be adversely affected should the complainant bring proceedings. The respondent's attention is drawn to these possible consequences in the note at the end of the questionnaire.

Period within which a questionnaire must be served on the respondent

8. A question in a questionnaire and any reply by a respondent is admissible in employment tribunal proceedings if the complainant's questionnaire is served on the respondent either:

- before a complaint about the treatment concerned is made to an employment tribunal, but not more than 3 months after the treatment in question; or

- if a complaint has already been made to a tribunal, within 21 days of the complaint being received by the tribunal.

9. However, where the complainant has made a complaint to a tribunal and the period of 21 days has expired, a questionnaire may still be served provided the leave of the tribunal is obtained. This may be done by sending to the Secretary of the Tribunal a written applica-

tion, which must state the names of the complainant and the respondent and set out the grounds of the application. If the tribunal gives leave, it will specify the period for serving the questionnaire. However, every effort should be made to serve the questionnaire within the period of 21 days as the leave of the tribunal to serve the questionnaire after the expiry of that period will not necessarily be obtained.

Part II - Guidance for the complainant

Notes on preparing the questionnaire

10. Before filling in the questionnaire, you are advised to prepare what you want to say in advance. If you have insufficient room on the questionnaire for what you want to say, you should continue on an additional piece of paper, which should be attached to the questionnaire and sent with it to the respondent.

Paragraph 2 of the questionnaire

11. You should give, in the space provided in paragraph 2, as much relevant factual information as you can about the treatment, or the failure to make an adjustment, that you think may have been unlawful discrimination and about the circumstances leading up to that treatment or failure. You should also, if possible and if relevant, give the date, place and approximate time of the treatment or failure to make an adjustment that you are complaining about. You should bear in mind that in paragraph 4 of the questionnaire you will be asking whether the respondent agrees with what you say in paragraph 2.

Paragraph 3 of the questionnaire

12. In paragraph 3 you are telling the respondent that you think the treatment or failure to make an adjustment you have described in paragraph 2 may have been unlawful discrimination by the respondent against you. It will help to identify whether there are any legal issues between you and the respondent if you explain in the space provided why you think the treatment or failure may have been unlawful discrimination. However, you do not have to complete paragraph 3; if you do not wish or are unable to do so, you should delete the word “because”. If you wish to complete the paragraph but feel you need more information about the Disability Discrimination Act before doing so, you should look at the appendix to this guidance or seek further information as outlined in the second paragraph of this guidance.

13. If you decide to complete paragraph 3, you may feel it useful to indicate:

- what kind of discrimination you think has occurred i.e. whether it was: unjustified less favourable treatment for a reason related to your disability; unjustified failure to make a reasonable adjustment; or victimisation; and

- which provision of the Act you think may make unlawful the kind of discrimination you think may have occurred. (For further information about the provisions of the Act which relate to these kinds of discrimination see the appendix to this guidance.)

14. If you wish to make a complaint of discrimination against a provider of insurance services who has an arrangement with your employer to provide or offer insurance services

to his employees you may wish to describe the insurance service provided and the way in which you feel discrimination has occurred . Complaints specifically against a provider of insurance services arranged via your employer should be made direct to the insurance company and not to your employer. (Section 18 of the Act is the relevant section: paragraph 16 of the appendix to this guidance.)

Paragraph 6 of the questionnaire

15. You should insert here any other question which you think may help you to obtain the relevant information. (For example, if you think you were discriminated against by having been refused a job, you may want to know what the qualifications were of the person who did get the job and why that person got the job.)

16. The questionnaire does not ask specific questions relating to victimisation. If you think you may have been victimised you may therefore find it helpful to include a question in the space provided in paragraph 6. Information on victimisation is included in paragraph 3 of the appendix.

Signature

17. The questionnaire must be signed and dated. If it is to be signed on behalf of (rather than by) the complainant, the person signing should

- describe himself or herself (e.g. “solicitor acting for (name of complainant)” or “signing on behalf of (name of complainant) who has asked me to complete the form on his/her behalf”); and

- give his/her business (or if appropriate, home) address.

What documents to serve on the respondent

18. You should send the person to be questioned the whole of this booklet (i.e. the guidance, the questionnaire and the reply form), with the questionnaire completed by you. Some disabled people may need to arrange for someone to complete a written version of the form on their behalf. Refer to paragraphs 3 - 5 of this guidance about use of alternative formats. You are strongly advised to retain, and keep in a safe place, a copy of the completed questionnaire. You will probably also find it useful to retain a spare copy of the uncompleted booklet as well as the audio or Braille format of these if you obtained one.

How to serve the documents

19. You can either deliver the documents in person or send them by post. If you decide to send them by post you are advised to use the recorded delivery service, so that, if necessary, you can produce evidence that they were delivered.

Where to send the documents

20. You can send the documents to the respondent at his or her usual or last known residence or place of business. If you know that he or she is acting through someone else (e.g. a solicitor) you should send them to the appropriate address. If you wish to question a limited company or other corporate body, a trade organisation or a provider of insurance services, you should deliver or send the documents to the secretary or clerk at the registered or principal office of the organisation. You should be able to find out where its

registered or principal office is by enquiring at a public library. If you are unable to do so, however, you will have to send the documents to the place where you think it is most likely they will reach the secretary or clerk (e.g. at, or c/o, the company's local office). It is your responsibility, however, to see that the secretary or clerk receives the documents.

Use of the questions and replies in employment tribunal proceedings

21. If you decide to make (or already have made) a complaint to an employment tribunal about the treatment concerned and if you intend to use your questions and the reply, if any, as evidence in the proceedings, you are advised to send copies of your questions and any reply to the Secretary of the Tribunals before the date of the hearing. This should be done as soon as the documents are available; if they are available at the time you submit your complaint to a tribunal, you should send the copies with your complaint to the Secretary of the Tribunals.

Part III - Guidance for the respondent

Notes on completing the reply form

22. Before completing the reply form, you are advised to prepare what you want to say in advance. If you have insufficient room on the reply form for what you want to say, you should continue on an additional piece of paper, which should be attached to the reply form sent to the complainant.

Paragraph 2 of the reply form

23. Here, you are answering the questions in paragraph 4 of the questionnaire. If you agree that the complainant's statement in paragraph 2 of the questionnaire is an accurate description of what happened, you should delete the second sentence.

24. If you disagree in any way that the statement is an accurate description of what happened, you should delete the first sentence and explain in the space provided in what respects you disagree, or give your version of what happened, or both.

Paragraph 3 of the reply form

25. Here you are answering the questions in paragraph 5 of the questionnaire. If, in answer to paragraph 4 of the questionnaire, you have agreed with the complainant's description of his or her treatment, you will be answering paragraph 5 on the basis of the facts in that description. If, however, you have disagreed with that description, you should answer paragraph 5 on the basis of your version of the facts.

26. To answer paragraph 5, you are advised to look at the appendix to this guidance and any other relevant information on the provisions of the Act relating to employment or the definition of disability that you may wish to obtain. Further information is available free of charge from the address or 'phone numbers given before the Contents section. Paragraph 2 of this guidance describes how an employment Code of Practice can be purchased.

27. You may need to know

- who is covered by the Act - see paragraph 1 of the appendix
- how the Act defines discrimination - see paragraphs 2 and 3 of the appendix
- how you can determine whether your treatment of the complainant might be justified - see paragraph 4 of the appendix
- in what situations the Act makes discrimination unlawful - see paragraph 5 of the appendix
- what is meant by the term “reasonable adjustment” - see paragraphs 6 - 9 of the appendix
- what if a lease prohibits a particular adjustment - see paragraphs 10 - 11 of the appendix
- how the Act covers discrimination in relation to pensions or group insurance - see paragraphs 12 - 16 of the appendix
- how the Act covers discrimination against contract workers - see paragraphs 17 - 18 of the appendix
- how the Act covers discrimination by trade organisations - see paragraph 19 of the appendix
- who is exempted from duties under the employment provisions of the Act - see paragraphs 20 - 22 of the appendix.

28. In responding to the questions in paragraph 5 of the questionnaire, you should delete “accept” or “dispute” in the first statement of paragraph 3 of the reply form. If you are disputing that you did anything unlawful, you should decide whether or not you wish to give reasons and complete or delete the second statement in paragraph 3. This might include reasons why provisions of the Act did not apply in the particular circumstance (e.g. if you had fewer than 15 employees on or after 1 December). If you consider that what you did was justified under the Act, then you should say so under the third statement in paragraph 3.

Paragraph 4 of the reply form

29. Here you are answering any questions in paragraph 6 of the questionnaire, which the complainant may have asked in order to obtain information he or she considers relevant. Reference may have been made to victimisation - if so, you are advised to look at paragraph 3 of the appendix to this guidance.

Signature

30. The reply form should be signed and dated. If it is to be signed on behalf of (rather than by) the respondent, the person signing should

- describe himself or herself (e.g. “solicitor acting for (name of respondent)” or “personnel manager of (name of firm)”; and
- give his or her business (or, if appropriate, home) address.

Serving the reply form on the complainant

31. If you wish to reply to the questionnaire you are strongly advised to do so without delay. If the complainant has provided an audio cassette or Braille format of the questionnaire, it is a matter for you whether you provide your reply in a similar format. However, you may wish to do so if, for example, that is the format which the individual has normally used in the course of involvement with you. You are strongly advised to retain, and keep in a safe place, the booklet sent to you with the completed questionnaire in it, and a copy of your reply.

32. You can serve the reply either by delivering it in person to the complainant or by sending it by post. If you decide to send by post you are advised to use the recorded delivery service, so that, if necessary, you can produce evidence that it was delivered.

33. You should send the reply form to the address indicated in paragraph 7 of the complainant's questionnaire.

The Disability Discrimination Act 1995 s56(2)(a)

Complainant's questionnaire

To ……
{Name of person to be questioned (the respondent).}

of ……
{Address}

1. I ……
{Name of complainant}

of ……
{Address}

consider that you may have discriminated against me contrary to the Disability Discrimination Act 1995 ("the Act") by unjustifiably

(a) for a reason relating to my disability, treating me less favourably than you would treat people to whom that reason does not or would not apply, or

(b) failing to take steps which it was reasonable in all the circumstances to have to take to prevent your employment arrangements or premises putting me at a substantial disadvantage compared with people who are not disabled.

2.

{Give details including a factual description of the treatment received or the failure complained of. Describe any relevant circumstances leading up to this and include any relevant dates or approximate dates (see paragraph 11 of this guidance).}

3. I consider this treatment or failure on your part may have been unlawful because

{Complete if you wish to give reasons, otherwise delete the word "because" (see paragraphs 12 - 14 of the guidance).}

4. Do you agree that the statement in paragraph 2 above is an accurate description of what happened? If not, in what respect do you disagree or what is your version of what happened?

{This is the first of your questions to the respondent. You are advised not to alter it.}

5. Do you accept that your treatment of me or any failure complained of was unlawful? If not –

(a) why not?

(b) do you consider your treatment of me or your failure to take action was justified for any material or substantial reason(s)?

{This is the second of your questions to the respondent. You are advised not to alter it.}

6.

{Any other questions you wish to ask (see paragraphs 15 - 16 of the guidance).}

7. My address for any reply you may wish to give to the questions raised above is that set out in paragraph 1 above/the following address.

{Delete as appropriate. If you delete the first alternative, insert
the address to which you want the reply to be sent.}

Signature of complainant …….

Date …….

{(see paragraph 17 of the guidance).}

N.B. By virtue of section 56(3) of the Act, this questionnaire and any reply are (subject to the provisions of section 56 and any orders made under that section) admissible in proceedings under Part II of the Act and a tribunal may draw any inference it considers is just and equitable from a failure without reasonable excuse to reply within a reasonable period, or from an evasive or equivocal reply, including an inference that the respondent has discriminated unlawfully under Part II of the Act.

The Disability Discrimination Act 1995 s56(2)(b)

Respondent's reply

To ……..……..
{Name of complainant}

of ……..
{Address}

1. I ……
{Name of respondent}

of ……..
{Address}

hereby acknowledge receipt of the questionnaire signed by you

and dated …….. which was served on me on (date) …….
{Complete as appropriate}

2. I agree that the statement in paragraph 2 of the questionnaire is an accurate description of what happened/I disagree with the statement in paragraph 2 of the questionnaire in that:

{If you agree that the statement in paragraph 2 of the questionnaire is accurate, delete the second sentence. If you disagree, delete the first sentence and complete the second one (see paragraphs 23 - 24 of the guidance).}

3. I accept/dispute that my treatment of you or any failure to take action on my part was unlawful.

{Delete as appropriate (see paragraphs 25 - 28 of the guidance).}

My reasons for disputing this are:

{Include any reasons which in your view explain your treatment of the applicant or any decision not to take action.}

I consider my treatment of you or my failure to take action was justified for the following material and substantial reason(s):

{Include any reasons which in your view justify your treatment of the applicant or any decision not to take action.}

4.

{Replies to questions in paragraph 6 of the questionnaire (see paragraph 29 of the guidance).}

5. I have deleted (in whole or in part) the paragraph(s) numbered …….. above, since I

am unable/unwilling to reply to the relevant questions in the correspondingly numbered paragraph(s) of the questionnaire for the following reasons:

{Delete the whole of this sentence if you have answered all the questions in the questionnaire. If you have not answered all the questions delete “unable” or “unwilling” as appropriate and give your reasons for not answering.}

Signature of respondent ……..

Date ……..

{(see paragraph 30 of the guidance)}

Appendix

Notes on the scope of The Disability Discrimination Act

Who is covered by the Act?

1. The Act covers disabled people and the employment provisions also cover people who have had a disability. People who are not, and have not been, disabled can be covered by the Act only in relation to complaints of victimisation. A disabled person under the Act is anyone with "a physical or mental impairment which has a substantial and long-term adverse effect upon his ability to carry out normal day-to-day activities". If there is doubt about whether a complainant is covered by this definition, further information about the definition (including audio cassette and Braille formats) is available free of charge from DDA Helpline (see before Contents section for details). There is also statutory Guidance on matters to be taken into account in determining questions relating to the definition of disability (ISBN 0-11-270955-9). This can be obtained from The Stationery Office (formerly HMSO) and good booksellers.

What is discrimination under the Act?

2. From 1 December 1998, the Act makes it unlawful for employers with 15 or more employees to discriminate against current or prospective employees. Discrimination occurs when, for a reason related to a disabled person's disability, an employer treats a disabled person less favourably than someone to whom that reason does not apply, and the employer cannot show that this treatment is justified. It also occurs when an employer fails to comply with a duty to make a reasonable adjustment in relation to the disabled person, and the failure cannot be justified.

3. Victimisation is a special form of discrimination covered by the Act. The Act makes it illegal for a person to be treated less favourably than others in the same circumstances because he or she has:

- brought, or given evidence or information in connection with proceedings under the Act (whether or not proceedings are later withdrawn)
- done anything else under the Act
- or alleged someone has contravened the Act (whether or not the allegation is later dropped); or because he or she is believed or suspected to have done or intended to do any of these things.

When can an employer justify less favourable treatment or failure to make a reasonable adjustment?

4. Such treatment, or failure, can only be justified if the reason for it is both material to the circumstances of the particular case and substantial. An employer cannot justify less favourable treatment if a reasonable adjustment would remove, or make less substantial, the reason for that treatment.

Is discrimination unlawful in all areas of employment?

5. Yes. Employers should not discriminate in any area of employment, including recruitment; terms and conditions of service; arrangements made for employees who become disabled (or who have a disability which worsens); opportunities for promotion, transfer, training or receiving any other benefits, or refusal of such opportunities; pensions; dismissal or any other detriment.

What is the duty of reasonable adjustment?

6. An employer may have to make a reasonable adjustment, if any arrangements made by or on behalf of the employer or any physical feature of the premises occupied by the employer substantially disadvantage a disabled person compared with non-disabled people. An employer has to take such steps as it is reasonable for him or her to have to take in all the circumstances to prevent the arrangements or the feature from having that effect.

"Arrangements" covers

- arrangements for deciding who should be offered employment, for example the selection and interview process, and the premises used for them; and
- terms, conditions and arrangements on which employment, promotion, transfers, training and other benefits are provided.

7. An employer is not under an obligation to make an adjustment if he or she does not know, and could not reasonably be expected to know:

- that the disabled person concerned is or may be an applicant for the work in question; or
- that the person has a disability which is likely to place the person at a substantial disadvantage.

What is a reasonable adjustment?

8. The Act gives a number of examples of "steps" which employers may have to take, if it is reasonable for them to have to do so in all the circumstances of the case, to prevent their arrangements or premises placing a disabled person at a substantial disadvantage in comparison with people who are not disabled. These are

- making adjustments to premises
- allocating some of the disabled person's duties to another person
- transferring the person to fill an existing vacancy
- altering the person's working hours
- assigning the person to a different place of work
- allowing the person to be absent during working hours for rehabilitation, assessment or treatment
- giving the person, or arranging for him or her to be given, training
- acquiring or modifying equipment
- modifying instructions or reference manuals
- modifying procedures for testing or assessment
- providing a reader or interpreter
- providing supervision.

Steps other than those listed, or a combination of steps, will sometimes have to be taken.

When is it reasonable for an employer to have to make an adjustment?

9. The Act lists a number of factors which may, in particular, have a bearing on whether it will be reasonable for the employer to have to make a particular adjustment. These are

- the effectiveness of the particular adjustment in preventing the disadvantage
- the practicability of the adjustment
- the financial and other costs of the adjustment and the extent of any disruption caused
- the extent of the employer's financial and other resources; and
- the availability to the employer of financial or other assistance to help make an adjustment.

There may be other relevant factors than those listed in the Act.

What if a lease prohibits a particular adjustment?

10. If an employer rents premises and proposes as a reasonable adjustment to make an alteration to those premises which the lease states must not be made, or can only be made subject to certain conditions or to conditions imposed by the landlord, the employer should write to the landlord explaining that he or she proposes to make the alteration in order to comply with a duty of reasonable adjustment and asking for the landlord's permission for the alteration. The employer does not then have to make the alteration until the landlord has given permission.

11. The landlord must reply to the employer within 21 days or such longer time as is reasonable. The landlord cannot unreasonably withhold his or her consent for the alteration but can attach reasonable conditions if he or she gives consent.

Discrimination in relation to occupational pension schemes and group insurance schemes for employees

12. Employers must not discriminate in the way they provide pension schemes to disabled people. Regulations provide that an employer is regarded as justified in treating a disabled person less favourably than a non-disabled person in applying the eligibility conditions for receiving certain benefits if, because of the person's disability, the cost of providing them with the benefit is likely to be substantially greater than for a comparable person without that disability. This justification applies to the following benefits provided under an occupational pension scheme: termination of service, retirement, old age, death, accident, injury, sickness or invalidity. Employers must produce material evidence to show that there is justification.

13. An employer who sets a uniform rate of contribution to such a scheme is justified in applying this to a disabled employee, even if he or she is not eligible for some of the benefits.

14. The Act also places trustees and managers of occupational pension schemes under a duty to refrain from discriminatory acts. Complaints against such trustees or managers should be made through the pensions dispute resolution mechanism. Information about the scheme should give details about this. If necessary, a complaint may be made to the Pensions Ombudsman. The Occupational Pensions Advisory Service (OPAS) can provide

an advice and conciliation service for members of the public who have problems with their occupational pension. OPAS can be contacted at 11 Belgrave Road, London SW1U 1RB. Tel: 0171 233 8080. The questionnaire procedure is not for use in such complaints.

15. The duty of reasonable adjustment does not apply to the provision of benefits under an occupational pension scheme.

16. The Act also applies to provision of group insurance, such as permanent health insurance or life insurance, by an insurance company for employees under an arrangement with their employer . A disabled person in (or who applies, or is considering applying, to join) a group of employees covered by such an arrangement is protected from discrimination in the provision of the insurance services in the same way as if he or she were a member of the public seeking the services of that insurance company under the part of the Act relating to the provision of goods, facilities and services. However, the right of redress in this case would be exercised through an employments tribunal (and not the courts).

Discrimination by organisations which hire contract workers

17. The Act covers people who hire contract workers, even though the workers are directly employed by someone else (such as an employment business). The Act makes it unlawful for a person hiring contract workers to discriminate against them. These disabled contract workers are also protected from unlawful discrimination by their actual employer (e.g. the employment business).

18. Both the hirer and the actual employer may have a duty to make a reasonable adjustment in respect of a disabled worker.

Discrimination by trade organisations

19. The Act places duties on trade organisations, as regards disabled members and applicants for membership, in similar terms to the duties on employers as regards employees and applicants for employment. Therefore, the need to justify less favourable treatment for a reason relating to disability applies as in the case of an employer. The Act includes a requirement on trade organisations to make reasonable adjustments. However, this duty will be brought into force in stages . That for reasonable adjustments to any arrangements they might make will come into force in October 1999. The duty to make reasonable adjustments to premises is likely to be introduced in 2004. If this questionnaire is being used in relation to a complaint of discrimination by a trade organisation both the complainant and respondent should check - if need be - whether the duty of reasonable adjustment is yet in force.

Who does not have duties under the Act?

20. The employment provisions of the Act do not apply to employers with fewer than 15 employees , whether full or part time. This means, for example, that an independent franchise is exempt if it employs fewer than 15 people, even if it is part of a network in which 15 or more people are employed altogether. It also means that organisations with fluctuating numbers of employees are not exempt whenever there are at least 15 people employed.

21. Anyone who is employed under a contract of service or apprenticeship or a contract personally to do any work is counted as an employee. This includes permanent and temporary workers, whether full or part time. It also includes employees whom the employer contracts out to another organisation. Such contract workers should also be included in the count of employees when determining whether the small firms exemption applies to the organisation which hires them.

22. The employment provisions do not apply to prison officers, fire-fighters, members of the different types of police forces, employees who work wholly or largely outside Great Britain, members of the Armed Forces and employees who work on board ships, aircraft or hovercraft and employers therefore have no duties towards them under those provisions.

Provisions of the Disability Discrimination Act relating to discrimination in the field of employment

Category of discrimination followed by section of Act and paragraphs of Code of Practice

Unlawful discrimination by employers - section 4 - paragraphs 5.1 - 5.29, 6.1 - 6.23.
Meaning of “discrimination” - section 5 - paragraphs 4.1 - 4.11.
Duty of employer to make adjustments - section 6 - paragraphs 4.12 - 4.48.
Exemption for small business - section 7 - paragraph 2.6.
Enforcement, remedies and procedures - section 8, sch 3 pt 1 - paragraphs 8.1 - 8.3, annex 3.
Validity of certain agreements - section 9 - paragraphs 4.49 - 4.52.
Charities and support for particular groups of persons - section 10 - paragraph 4.10.
Advertisements suggesting that employers will discriminate against disabled persons - section 11 - paragraphs 5.7 - 5.8.
Discrimination against contract workers - section 12 - paragraphs 7.1 - 7.8.
Discrimination by trade organisations - section 13 - paragraphs 7.9 - 7.13.
Meaning of “discrimination” in relation to trade organisations - section 14 - paragraph 7.11.
Duty of trade organisations to make adjustments - section 15 - paragraph 7.12.
Alterations to premises occupied under leases - section 16, sch 4 pt 1 - paragraphs 4.40 - 4.48.
Insurance services - section 18 - paragraphs 6.17 - 6.18.

Parts VII (Supplemental) and VIII (Miscellaneous) of the Act also have a bearing on employment issues (for example, victimisation).

Victimisation - section 55 - paragraphs 4.53 - 4.54.

DL56

Equal Pay Act 1970: The Questionnaire

This booklet is in four parts:

Part 1:	**Introduction**	
Part 2:	**The Complainant's questions**	*(A question form to be completed by the person with an equal pay complaint).*
Part 3:	**The Respondent's reply**	*(A reply form to be completed by the employer).*
Part 4:	**Guidance Notes**	

Part 1: Introduction

What is the purpose of the equal pay questionnaire?

- The Equal Pay Act 1970 requires equal pay between men and women where they are employed on equal work. The Act applies equally to men and women but does not give anyone the right to claim equal pay with another person of the same sex.

- In this questionnaire the term "equal work" is used to describe work that is the same or broadly similar (known as "like work"); work that has been rated as equivalent under a job evaluation study; or work of equal value. The concept of "equal pay" includes both pay and other terms and conditions of the contract of employment. Further information on the scope and interpretation of equal pay legislation is provided in Part 4.

- The questionnaire is intended to help people who believe they may not have received equal pay to obtain information from their employers to find out whether this is the case and, if so, why. The information should help to establish key facts early on and make it easier to resolve any disputes in the workplace. If the person decides to take a case to an employment tribunal, the information should enable the complaint to be presented in the most effective way and the proceedings should be that much simpler because the matters in dispute have been identified in advance.

- Throughout the questionnaire the person who thinks they may have an equal pay case is called the ***complainant*** and the employer is called the ***respondent***.

How does the questionnaire work in practice?

- Under Section 7B of the Equal Pay Act 1970 a person is entitled to write to his or her employer asking for information that will help establish whether he or she has received equal pay and, if not, what the reasons are. This questionnaire has been devised so that the person with the complaint can send questions to their employer. The matching reply form gives the employer an opportunity to say whether they agree with the complainant and if not, they can set out the reasons why. Although questions and replies can be conducted by letter, the use of the questionnaire will help ensure that relevant questions are asked.

- The focus of the questionnaire is on establishing whether a person with an equal pay complaint is receiving less favourable pay and contractual terms and conditions than a colleague or colleagues of the opposite sex; and whether the employer agrees that the people being compared are doing "equal work".

Where can I go for advice or to find further information?

- If you require help or advice about completing or responding to this questionnaire, please see the end of this booklet for details of organisations that can help. Guidance can also be found on the Equal Opportunities Commission's website: *www.eoc.org.uk*

How to complete the questionnaire

- **The person with an equal pay complaint (the complainant) should complete Part 2**. This is a question form that includes standard questions for the employer to answer. Space is also provided for any additional questions because not all equal pay cases are the same and not all questions may be relevant to all circumstances.

- Once Part 2 has been completed, the whole questionnaire should be sent to the employer. It can be sent to either before a complaint is made to an employment tribunal or within 21 days of making such a complaint (for further details see Part 4, paragraph 8).

- **The employer (the respondent) should complete Part 3**. This reply form gives the employer the opportunity to say whether they agree with the complainant and if not, explain the reasons why. Although completion of the questionnaire is not compulsory, an employment tribunal may draw any inference it considers is just and equitable from a failure, without a reasonable excuse, to reply within **8 weeks**, or from an evasive or equivocal reply.

Guidance

Please read the whole of this booklet thoroughly before completing Part 2 or Part 3 and keep a copy of the completed questionnaire. Guidance notes for completing the questionnaire are set out alongside the questions in both Parts 2 and 3. Further guidance is set out in Part 4 which also explains the main provisions of the Equal Pay Act 1970 and answers frequently asked questions.

Terms used in the questionnaire

The questionnaire is a formal document so you should be aware of the following definitions:

- ***Complainant*** means the person who thinks they may have an equal pay complaint.

- ***Respondent*** means the employer who is responding to the questions.

- ***Comparator*** means the person the complainant is comparing themselves with. A comparator must be an actual person of the opposite sex who is being treated more favourably and is shown to be employed on "like work", "work rated as equivalent", or "work of equal value". A complainant can compare themselves with a predecessor or successor in their job. The comparator must be in the "same employment" as the complainant.

- ***Same employment*** is a term used in the Equal Pay Act which broadly means that the comparator should be employed by the complainant's employer or an associated employer. However, the term has to be interpreted in the light of European Community law and the decisions of our domestic courts and European Court of Justice.

- ***Equal work*** is the term used in this questionnaire to describe work that is the same or broadly similar (known as "like work"); work that has been rated as equivalent under a job evaluation study; or work of equal value.

- ***Equal pay.*** The concept of "equal pay" includes both pay and other terms and conditions of the contract of employment.

Further information on the terms used in equal pay legislation is provided in Part 4.

Part 2: The Complainant's Questions to the Respondent

Enter the name of the person to be questioned (the respondent)

To

Enter the respondent's address

of

Enter your name (you are the complainant)

1. I

Enter your address

of

believe, for the following reasons, that I may not have received equal pay in accordance with the Equal Pay Act 1970:

Please give a short summary of the reason(s) that cause you to believe that you may not have received equal pay.

You may find it helpful to complete this summary after you have completed the rest of your questions and are clear who you comparing yourself with and what your claim is about.

To claim equal pay you should have reason to believe that a person of the opposite sex is being treated more favourably for doing "equal work".

Help in completing this form is available from the Equal Opportunities Commission. See the end of this booklet for contact details or see their website: www.eoc.org.uk

Please give the name(s), or, if not known, the job title(s), of the person or persons with whom equal pay is being claimed. These are referred to as your "comparators".

Please provide details of their work location and job titles to help your employer to identify them, especially if you do not know their names.

In order to bring a claim you must compare yourself with a person of the opposite sex who is doing "equal work".

See Part 4 (paragraph 3) for further information about comparators.

2 (a) I am claiming equal pay with the following comparator(s):

2 (b) Do you agree that I have received less pay than my comparator(s)?

(If appropriate) further details are provided below:

The concept of "pay" includes both your pay and other terms and conditions of your contract of employment.

You may wish to specify what element(s) of your pay and benefits package you feel are not equal to that of your comparator. For example, a lower weekly salary or annual salary, no bonus payments, less holidays etc.

You may also wish to indicate over what time period you think your comparator has received more favourable terms than you.

See Part 4 (paragraph 2) for further information about comparing your pay and benefits package.

2 (c) If you agree that I have received less pay, please explain the reasons for this difference.

In this questionnaire the term "equal work" is used to describe work that is the same or broadly similar (known as "like work"); work rated as equivalent under a job evaluation study; or work of equal value.

See Part 4 (paragraph 1) for further details of what is meant by these expressions.

3. The Equal Pay Act requires equal pay between men and women where they are employed on equal work, which comprises like work, work rated as equivalent, or work of equal value.

3 (a) Do you agree that my work is equal to that of my comparator(s)?

3 (b) If you do not think I am doing equal work, please give your reasons.

4. Any other relevant questions you may want to ask *(you may wish to use a separate piece of paper)*.

Question 4 provides you (the complainant) with the opportunity to ask any other relevant questions you think may be important. For example, you may want to know:

• details of how pay is determined for you and your comparator(s) within the organisation e.g. details of pay schemes, job grading systems or how skills and experience are reflected in the pay system;

• information relating to the pay and benefits package of you and your comparator(s) e.g. basic pay, benefits such as company car, private health insurance and occupational pension;

• whether your employer thinks there are significant differences between your duties and those of your comparator(s);

• details of the duties (e.g. job description and person specification) of your post and the post(s) of your comparator(s);

• whether the organisation has an equal opportunities policy and what steps have been taken to implement the EOC's Code of Practice on Equal Pay?

Guidance can be found on the Equal Opportunities Commission's website: www.eoc.org.uk

Insert the address you want the reply to be sent to if different from your home address on page 2.

5. Please send your reply to the following address if different from my home address on

The questionnaire must be signed and dated. If it is to be signed on behalf of (rather than by) the complainant the person signing should:

- *describe himself/herself e.g. 'solicitor acting for (name of complainant)'; and*
- *give business address (or home address, if appropriate).*

Signed

Dated

Address *(if appropriate)*

By virtue of section 7B of the Equal Pay Act, this questionnaire and any reply are (subject to the provisions of the section) admissible in proceedings under the Act and a tribunal may draw any such inference as is just and equitable from a failure without reasonable excuse to reply within 8 weeks or from an evasive or equivocal reply, including an inference that the person questioned has discriminated unlawfully.

Please note:

Your employer (the respondent) does not have to reply to your questions. However, if they deliberately, and without a reasonable excuse, do not reply within 8 weeks, or reply in an evasive or ambiguous way, their position may be adversely affected if you decide to take the case to an employment tribunal. For example, the tribunal may decide that an employer did not provide a clear explanation for a difference in pay because there was no genuine reason for this difference.

How to serve the questions on your employer (the respondent)

- We strongly advise you to keep a copy of the completed questionnaire in a safe place.
- Send the person to be questioned the **whole** of this document either to their usual last known residence or place of business or if you know they are acting through a solicitor, to that address.
- If your questions are directed to a limited company or other corporate body or a trade union or employers' association, you should send the papers to the secretary or clerk at the registered or principal office. You should be able to find out where this is by enquiring at your public library. However, if you are unable to do so you will have to send the papers to the place where you think it is most likely they will reach the secretary or clerk. It is your responsibility to see that they receive them.
- You can deliver the papers in person or send them by post.
- If you send them by post, we advise you to use the recorded delivery service *(this will provide you with evidence of delivery).*

Part 3: The Respondent's Reply

- Part 3 is a reply form to be completed by the employer (the respondent).
- **Please read the guidance in Part 4 before completing the reply**. You may wish to prepare what you want to say on a separate piece of paper.
- If you do not have enough space on the reply form for what you want to say, continue on an additional piece of paper, which should be attached to the reply form and sent to the complainant.

Enter the name of the questioner (the complainant)

To

Enter the complainant's address

of

Enter your name (you are the respondent)

1. I

Enter your organisation's name and address

of

Complete as appropriate

acknowledge receipt of the questionnaire signed by you and dated

which was served on me on *(date)*

2.
Set out below are the complainant's questions and my response to them:

2 (a) Do you agree that the complainant has not received equal pay in accordance with the Equal Pay Act 1970?

Please tick relevant box.

Yes ☐
No ☐ **Please give your reasons below:**

*If you **do not agree** with the complainant's statement, you should explain why you disagree.*

To answer the question you will need to know:
- *What is included within the concept of equal pay;*
- *in what situations the Act makes unequal pay unlawful; and*
- *what defence the Act provides to an employer.*

See guidance notes in Part 4 for further information.

2 (b) Do you agree that the complainant has received less pay than his or her comparator(s)?

Please tick relevant box.

Yes ☐ **Please explain the reasons for any difference below.**

No ☐ **Please explain why you do not agree below.**

*If you **agree**, you should explain the reasons for any difference in pay.*

*If you **do not agree** you should explain why you disagree.*

The concept of "equal pay" includes both pay and other terms and conditions of the contract of employment. If the complainant and her or his comparator are doing "equal work", it is up to the employer to show that the difference in pay is genuinely due to a factor other than the difference in sex.

Part 4 includes further information about the employer's defence and material factors.

If you think the defence of a genuine material factor applies, please provide details of any such factors and an explanation about why you think the defence applies.

If the complainant has identified particular elements of their pay package (e.g. not receiving a bonus or a company car) that they think are unequal, you should also address these specific elements in your response.

2 (c) Do you agree that the complainant is doing work equal to that of his or her comparator(s)?

Please tick relevant box.

Yes ☐

No ☐ **The reasons are:**

*If you **do not agree** that the complainant's work is equal to that of his or comparator(s), you should explain why you disagree.*

We advise you to look at the guidance notes in Part 4 for information on "equal work".

2 (d) ***(If appropriate)*** **My replies to your further questions are as follows:**

Replies to the questions in paragraph 4 of the complainant's questionnaire can be entered here.

See the guidance notes in Part 4.

Delete the whole of this sentence if you have answered all the questions in the complainant's questionnaire.

If you are unable or unwilling to answer some or all of the questions please tick the appropriate box and give your reasons for not answering them.

3. I have deleted (*in whole or in part*) the paragraphs numbered above

since I am unable ☐

since I am unwilling ☐

➡ **to reply to the corresponding questions of the questionnaire for the reasons given in the box below.**

The reply form must be signed and dated. If it is to be signed on behalf of (rather than by) the respondent the person signing should:

- *describe himself/herself e.g. 'solicitor acting for (name of respondent)' or 'personnel manager of (name of firm, government department etc)'; and*
- *give business address (or home address if appropriate).*

Signed

Dated

Address *(if appropriate)*

Please note:

You (the respondent) do not have to reply to the complainant's questions. However, if you deliberately, and without reasonable excuse, do not reply within 8 weeks, or reply in an evasive or ambiguous way, your position may be adversely affected should the complainant bring proceedings. The tribunal can draw any inference that it considers just and equitable from an equivocal response or deliberate failure to respond. For example, it may conclude that a respondent did not provide a proper explanation for a difference in pay because there was no genuine reason for this difference.

How to serve the reply form on the complainant

- If you wish to reply to the questionnaire, you should do so within **8 weeks**.
- You should retain, and keep in a safe place, the questions sent to you and a copy of your reply.
- You can serve the reply either by delivering it in person to the complainant or by sending it by post.
- If you send it by post, we advise you to use the recorded delivery service *(this will provide you with evidence of delivery).*
- You should send the reply form to the address indicated in paragraph 5 of the complainant's questionnaire.

Part 4: Guidance Notes – Please read carefully

These guidance notes explain the main provisions of the Equal Pay Act 1970 and answer frequently asked questions but you are advised to read the *Guide to the Equal Pay Act* published by the Women and Equality Unit for more detailed information about the Act. Further information can also be found on the EOC website: *www.eoc.org.uk*, and in the various leaflets published by the EOC. See the end of the booklet for information on how to obtain copies of the leaflets and the Guide.

1. The scope of the Equal Pay Act 1970

The purpose of the Equal Pay Act is to eliminate discrimination as regards pay and other terms and conditions between men and women in the same employment when they are employed to do:

- **like work** – work of the same or a broadly similar nature;
- **work rated as equivalent** – that is, in jobs which a job evaluation study of part or all of their employer's workforce has shown to have an equal value;
- **work of equal value** – that is, in jobs which are equal in value in terms of the demands made on them under headings such as effort, skill and decision-making.

2. What is covered under equal pay?

For the purposes of the Equal Pay Act the concept of pay includes both pay and other terms and conditions of contracts such as piecework, output and bonus payments, holidays and sick leave. European law has extended the concept to include redundancy payments, travel concessions, employers' pension contributions and occupational pension benefits. This means that there may still be a breach of the principle of equal pay where a man and a woman receive the same basic rate of pay, but other benefits (such as a company car, private health care etc) are not provided on an equal basis. While the Equal Pay Act applies to pay or benefits provided by the contract of employment, the Sex Discrimination Act covers non-contractual arrangements including the allocation of benefits such as access to a workplace nursery or travel concessions.

3. What is a comparator?

In order to bring a claim, a person must compare themselves with an actual worker of the opposite sex who is treated more favourably and is shown to be employed on "like work", "work rated as equivalent", or "work of equal value". This person is their "comparator". A complainant can compare themselves with a predecessor or successor in their job. The comparator must be in the "same employment" as the person making the equal pay complaint. "Same employment" is a term used in the Equal Pay Act which broadly means that the comparator should be employed by the complainant's employer or an associated employer. However, the term has to be interpreted in the light of European Community law and the decisions of our domestic courts and European Court of Justice.

4. The employer's defence

If a person is receiving unequal pay with someone of the opposite sex who is doing equal work, the employer has to show that the difference in pay is genuinely due to a factor other than the difference in sex. It is for the employer to show that such a factor exists and is material, i.e. that it is the real reason for the difference. For example, in some circumstances different geographic locations may justify a difference in pay, or the operation of market forces, such as the need to recruit for particular jobs or the need to retain employees occupying particular jobs. The employer must be able to show that **all** of the difference of pay is genuinely attributable to that factor. The employer must also show that the factor is "objectively justified" if he relies upon a factor that applies independently of a worker's sex, but is potentially indirectly discriminatory because it affects a greater proportion of workers of one sex than the other. For example, rewarding workers for being

prepared to work longer hours at short notice may indirectly discriminate against women workers with childcare responsibilities. To show objective justification the employer must show that the difference in pay corresponds to a real need of his business, is necessary to achieve that business objective, and that it is not out of proportion to the objective.

5. What if the employer is asked to identify confidential information?

Employers are expected to answer the questionnaire as fully as possible. However sometimes they may be asked to provide information that is confidential to another person. For example, the complainant might ask for exact details of a colleague's pay package or appraisal review. If the information is confidential, and that colleague does not want it to be disclosed, the employer will need to consider how much information can be given.

It is likely that in many cases employers will be able to answer detailed questions in general terms whilst still preserving the anonymity and confidence of their workers. For example, they could describe groupings on a pay scale, or confirm that a comparator's pay is above a certain rate. Where more than one comparator is named, information could be provided in an anonymized way. If only one comparator is named, employers could provide some of the information being sought in a generalised fashion – for example by explaining more fully how the pay system operates. Much of the information requested will not be confidential. For example, it could include details of pay schemes and job grading systems, job descriptions, or how skills and experience are reflected in the employer's pay system.

The questionnaire does not alter the common law duty of confidence that all employers have towards their employees. Certain information about individuals is protected by the common law of confidence and the Data Protection Act 1998. Where information is confidential, an employer would only be able to disclose the information if he had the consent of the individual in question, where he had a legal obligation to do so, or where there was a strong public interest requirement. For advice on specific issues relating to data protection an employer may wish to refer to the Information Commissioner.

In some cases employers may not feel able to disclose specific information that they believe is confidential. If the case proceeds to a tribunal complaint, tribunals may order disclosure of relevant information if they believe it is in the interests of justice to do so.

6. What happens if the employer does not reply or replies evasively?

The employer does not have to reply to the complainant's questions. However, if the employer deliberately, and without reasonable excuse, does not reply within 8 weeks, or replies in an evasive or ambiguous way, the tribunal may take this into account and the employer's position may be adversely affected should the complainant bring proceedings. The tribunal can draw any inference that it considers just and equitable from an equivocal response or deliberate failure to respond. For example, it may conclude that the employer did not provide a proper explanation for a difference in pay because there was no genuine reason for this difference.

There may be circumstances where the employer is unable or unwilling to respond to a question. For example, an employer may not feel able to provide confidential information relating to the comparator in response to the questionnaire if the comparator did not want such information disclosed. The tribunal cannot draw any inferences if the employer has a reasonable excuse for failing to respond. Paragraph 3 of the response gives the respondent (the employer) the opportunity to explain why he or she has chosen not to reply to a particular question. If an employer does not feel able to provide information in response to the questionnaire, the reason for any refusal should be clearly outlined in the questionnaire. It is important that the explanation for any refusal is both genuine and clear.

7. What happens if the questionnaire reveals an equal pay problem?

In the first instance, it is likely to be in all parties' interests to try to resolve the problem within the workplace. Many employers have their own internal grievance procedure that the complainant might use to seek resolution of their complaint. If the complainant is a member of a trade union they may

wish to seek advice from their trade union representative. The information gained from the questionnaire can be used as a basis of discussion between the employer and worker and should help to resolve any difficulties. Failing this the information can be used as evidence in employment tribunal proceedings. If both sides agree that there is an equal pay problem, the employer will have to take action to ensure that there is no discrimination in terms and conditions.

8. Applying to Employment Tribunal

The majority of problems in the workplace are resolved through discussion with your employer or manager. However, if all else fails you might want to consider applying to the Employment Tribunal. Please note that the equal pay legislation contains strict time limits within which you must bring a claim. You can make an application at any time while you are doing the job to which the claim relates, or within six months of leaving that job. In order to be admissible in any ensuing employment tribunal proceedings, the complainant's questionnaire must be served on the respondent either:

- before a complaint is made to an employment tribunal, or
- within 21 days after making such a complaint to a tribunal.

However, where the complainant has made a complaint to the tribunal and the period of 21 days has expired, a questionnaire may still be served provided the leave of the tribunal is obtained. This may be done by sending a written application to the Secretary of the Tribunal, stating the names of the complainant and the respondent and setting out the grounds of the application. However, every effort should be made to serve the questionnaire within the period of 21 days as the leave of the tribunal to serve the questionnaire after expiry of the period will not necessarily be obtained.

9. Use of the questions and replies in employment tribunal proceedings

If you decide to make *(or have already made)* a complaint to an employment tribunal about equal pay and if you intend to use your questions and the reply *(if any)* as evidence in the proceedings, you are advised to send copies of your questions and any reply to the Secretary of the Tribunals before the date of the hearing. This should be done as soon as the documents are available. If they are available at the time you submit your complaint to a tribunal, send the copies with your complaint to the Secretary of the Tribunal.

10. Protection against victimisation

The Sex Discrimination Act protects complainants from being victimised for making a complaint in good faith about equal pay or for giving evidence about such a complaint.

11. Where can I find further information about employment tribunals?

You can call the Employment Tribunals Service enquiry line on 0845 795 9775, minicom 0845 757 3722 or go to the ETS website on *www.employmenttribunals.gov.uk*

12. Where can I find help in trying to resolve any dispute?

Acas can assist both parties to try to resolve disputed claims and is willing to help in situations where a worker feels they have grounds to complain either before or after an application has been made to an Employment Tribunal. Acas offices are listed in Yellow Pages or can be found at *www.acas.org.uk*

13. Where can I find further information and advice?

Detailed information on equal pay legislation is provided in the *Guide to the Equal Pay Act 1970*

published by the Women and Equality Unit (see below for contact details).

The Equal Opportunities Commission's (EOC) website includes advice specifically for complainants. In addition, advice for employers on good equal pay practice is provided in the EOC's *Code of Practice on Equal Pay*. The EOC has also produced an Equal Pay Kit that will make it easier for employers who want to undertake a pay review to ensure that their pay system is fair. This can be found on the EOC website listed below. Further information can also be found in the various leaflets published by the EOC.

Workers may wish to seek advice from their trade union representative. Employers can obtain information on equal pay through Equality Direct on 0845 600 3444 or *www.equalitydirect.org.uk*

If you require help or advice about completing or responding to this questionnaire, please contact the Equal Opportunities Commission (EOC) who can also advise on the Sex Discrimination Act:

The Equal Opportunities Commission
Arndale House
Arndale Centre
MANCHESTER
M4 3EQ
Telephone: 0845 601 5901
Fax: 0161 838 1733

Website: *www.eoc.org.uk*

14. Where can I obtain further copies of the questionnaire?

Further copies of this questionnaire "Form EPA 7B" (including a Welsh language version); the *Guide to the Equal Pay Act 1970;* and the *Guide to the Sex Discrimination Act 1975* can be obtained from the DTI Publications Orderline on 0870 1502 500 or can be obtained online from: *www,dti.gov.uk/publications* quoting reference ***URN 03/806*** for the questionnaire.

Women and Equality Unit
Telephone: 020 7273 8880

Fax: 020 7273 8813
Emails: info-women&equalityunit@dti.gsi.gov.uk

Copies of this questionnaire ("Form EPA 7B") are also available on the web-site at *www.womenandequalityunit.gov.uk*

FORM: EPA 7B

ADDITIONAL QUESTIONS FOR CONSIDERATION OF INCLUSION IN STATUTORY QUESTIONNAIRES

HARASSMENT

1 What steps have the Force taken to implement the European Commissions Code of Practice Protecting the Dignity of Men and Women at Work?

2 Identify the number of [sex] [race] [sexual orientation] [religion or belief] [disability] complaints, informal or formal made during each of the 5 years to date, stating:-

a. the nature of the complaint;

b. the date of the complaint;

c. the rank of the complainant, and alleged harasser;

d. the action taken;

e. whether the complaint was against [name of individual].

3 Describe the instructions issued to [name of individual officer] about the avoidance of [sexual] [racial] [sexual orientation] [religion or belief] [disability] harassment at work by reference to:-

a. whether the instruction was written or oral;

b. who it was issued by;

c. when it was issued;

d. the steps taken to monitor the effectiveness of that instruction.

4 Describe the equal opportunities training undertaken by [names of individuals/ officers] with reference to the date of the training, the course programme and course materials.

5 Do you accept that [name of Officer/individual]

subjected me to the following treatment:-

a. example

b. example

c. if yes, why?

d. if not, why not?

7 Describe the steps that have been taken to investigate my complaint of harassment including the date of each such step.

8 What action if any has been taken against [name of officer/individual] in respect of the treatment described in 6.6 above. If none, please explain why.

FLEXIBLE WORKING

1 Do you agree that a provision/criterion/practice has been applied to me? If so, describe the provisional criteria practice, if not, why not?

2 Please identify whether the provision/criterion/practice has been tested for it's disparate impact amongst male and female officers, and if so, how, when and what was the outcome of that testing?

3 Do you accept that your application of this provision/criterions/practice means that a considerably larger proportion of men than women can comply? If you disagree, please provide full supporting reasons.

4 What are the reasons you have applied this provision/criterion/practice to me?

5 Do you agree that I have suffered a detriment by reason of the application of this provision/criterion/practice? If you disagree, please provide reasons why.

6 Please identify any existing flexible working practices implemented by the Force stating in each case:-

a. the nature of the practice;

b. when it was introduced;

c. the number of officers working under this practice in each case stating their [sex] and rank;

7 Do you monitor flexible working practices within the Force? If not, why not?

If so, describe the outcome of that monitoring during each of the 5 to day by reference to:-

a. number of requests made by [sex] and rank;

b. whether the request was granted or not granted.

PREGNANCY/MATERNITY

1 Describe the Force's maternity policy by reference to:-

a. the last time the policy was reviewed and updated

b. who is responsible for ensuring it is properly implemented

c. how its implementation is monitored and the outcome of the same

d. what is stated in the policy

2 How many complaints arising out of pregnancy or maternity leave have you had in the last five years in:-

a. the Force

b. the Applicant's unit

Please include informal grievances, formal grievance and tribunal complaints and state how many complaints of each were received.

3 Please provide a breakdown of the number of pregnant officers in the last five years that there have been in:-

a. the Force

b. the Applicant's unit

4 In relation to the [Applicant's line manager or name of relevant individual/officer] provide the following information:-

a. how many pregnant officers has he/she supervised before the Applicant and during what period?

b. describe the training, if any, he/she has had in relation to maternity policies, with reference to the date of training, the course programme and training materials

5 Describe the Force policy on risk assessment of pregnant workers by reference to:-

a. the last time the policy was reviewed and updated

b. who is responsible for ensuring it is properly implemented

c. how its implementation is monitored and the outcome of the same

d. what is stated in the policy

e. Whether they were successful upon appeal and on what grounds;

6 Was the Applicant's risk assessed? If so, when , by whom and what was the outcome of that assessment? If not, why not?

PROMOTION/SELECTION

1 State the number of candidates who participated in the selection process identifying in each case their [sex] [ethnicity] [disabled status] [religion or belief] [sexual orientation].

2 Identify the number of candidates who were (a) successful and (b) unsuccessful and by reference to:-

a. [sex] [ethnicity] [disabled status] [religion or belief] [sexual orientation];

b. Stage of the assessment process that the candidate was unsuccessful (if appropriate).

3 Identify the number of persons who carried out an assessment of candidates during the promotion process by reference to their:-

a. [sex] [ethnicity] [disabled status] [religion or belief] [sexual orientation];

b. the equal opportunities training undertaken including the date(s), course programme and course material;

c. the number of assessments carried out and in each case whether the candidate assessed passed/failed and the [sex] [ethnicity] [disabled status] [religion or belief] [sexual orientation] of the candidate assessed.

4 Please provide the information in 3 (a)-(c) above in relation to the persons who carried out an assessment of the complainant.

5 In relation to the questions/tests used during the promotion/selection process state:-

a. who devised these;

b. whether they were audited in terms of their compliance with equal opportunities, and if so, when, how, and by whom?

c. Whether there were benchmark responses and of so, who devised these?

6 How many candidates appealed the decision reached, in each case stating:-

a. Colour, race, ethnic or national origins;

b. Sex;

c. Disabled status;

d. Sexual orientation;

e. Religion or belief;

f. Whether they were successful upon appeal and on what grounds.

UNSATISFACTORY PERFORMANCE/ATTENDANCE

1. Provide a breakdown within each rank of the Force of members who have been the subject of Unsatisfactory Performance/Attendance pursuant to the Police (Conduct) Regulations 1999 during each of the 5 years to date by reference to:-

   - Whether the matter proceeded to an unsatisfactory performance/attendance hearing;
   - Whether the members performance/attendance was found to be below the required standard;
   - The action taken;
   - The [sex] [ethnicity] [disabled status] [religion or belief] [sexual orientation] of the member.

2. Identify the number of unsatisfactory performance/attendance cases that have been undertaken by the reporting and countersigning officer by reference to:-

   - [sex] [ethnicity] [disabled status] [religion or belief] [sexual orientation] of the member investigated;
   - the outcome of each case and the stage at which it concluded.

3. Describe the equal opportunities training undertaken by the reporting or countersigning officer by reference to:-

   - date of the training;
   - the extent to which the training dealt with avoiding discriminatory practices and outcomes in the Unsatisfactory Performance/Attendance.

4. Describe each and every stage of the Unsatisfactory Performance/Attendance process (including the initial informal process) by reference to:-

   - Date of each stage;
   - The reporting or countersigning officer involved;
   - The [sex] [ethnicity] [disabled status] [religion or belief] [sexual orientation] of each person.

5. Describe how the application of the Unsatisfactory Performance/Attendance process in this case was tested so as to ensure equal opportunities principles were not infringed and describe the outcome of that testing.

6. Identify and describe any Force guidance, policy and or practice in relation to the application of the Unsatisfactory process. Confirm this was followed in this case, and if not, how and why was it not followed?

Supplementary Questions for Box 4 of Equal Pay Act Questionnaire

1. Please state how many male officers and how many female officers are in service with the Respondent.

2. Please set out the Respondent's policy in relation to making [please specify name of allowance/bonus/payment/benefit claimed] payments.

3. Of those who receive [insert name of allowance/bonus/payment/benefit claimed] please state how many are women and how many are men.

4. Of the men who receive this allowance/bonus/payment/benefit please provide their names and a description of their duties together with the person specification for their posts.

5. Please set out a description of my duties, together with any person specification.

6. Please set out any significant differences between my post and that of the males identified in reply to question [4].

7. If the difference in pay is due to a difference in duties which is of practical importance, please specify the frequency that these duties are performed, the nature and extent of any differences including in the level of responsibility and the training and qualifications required to undertake these duties.

8. Further, please specify any significant differences between my job and that of the officers identified in reply to question [4] above in relation to the demands of the job, the effort, skill and level of decision making required.

9. Please provide details of how the relative value of my post and that of my comparator/s has been determined.

10. Please specify whether the Respondent has conducted a job evaluation survey in relation to the posts identified in your reply to question [4] and my post. If so, please set out a copy of the results of that survey.

11. Please set out any material factors which you say objectively justify the difference in pay between myself and those officers identified in reply to question [4] above, specifying the real need identified in each case, and the grounds upon which the Respondent contends that the practice resulting in a disparity in pay is appropriate and necessary for achieving that need.

12. Please specify the annual gross wages and/or benefits/allowances/bonus payments made to the officers identified in the reply to question [4] above.

13. Please specify my annual gross wages plus any allowances, payments/benefits/bonuses.

14. Please state what steps have been taken by the Respondent to implement the Equal Opportunities Commission's Code of Practice on Equal Pay.

Disability Discrimination Act Questions under 6

1. Do you accept that I am disabled under the Disability Discrimination Act definition? If not, why not?

2. Please provide copies of your Force policy in respect of disabled officers

3. Do you have a central budget for dealing with disabled persons in the workplace? If so, please provide details.

4. Please provide details of the Force annual budget for the current financial year?

Reasonable Adjustments

5. What reasonable adjustments were considered for me in relation to the assessment/selection process for the post I was applying for?

6. Who made the decision about reasonable adjustments in my case and why?

7. What training in Part II of the DDA have they had and when?

8. In coming to their decision, who did they consult?

9. What qualifications (formal or otherwise) do these people have to advise on my situation?

10. Please provide copies of documents/notes/ minutes/ reports prepared during the consultation period, by all parties.

11. Were outside agencies/experts such as Disability Employment Advisors or charities consulted? If not, why not?

12. Does the Force occupy the premises at [ ]?

13. Do you agree that a provision/criterion/practice [describe] has been applied to me?

14. Do you accept that the application of the provision/ criterion/practice has caused me a substantial disadvantage compared with non-disabled employees?

15. If you disagree, please provide supporting reasons?

16. What are the reasons you applied this provision/criterion/practice to me?

17. What steps did you consider?

Risk Assessments

18. Did anybody carry out a risk assessment? Who?

19. Are they a competent person under Management of Health and Safety at Work?

20. Please provide copies of any risk assessment?

21. Was the Safety Rep consulted? Who and when?

Absence

22. Please outline your policy on absence and how you record sickness absence, disability sickness absence and disability related absence?

23. Please give details of my recorded reason for each type of absence between [ ] and [ ] showing which category each period falls under.

24. How many disabled officers have been put on half pay for each type of absence between [ ] and [ ]?

25. How many disabled officers have been put on no pay for each type of absence between [ ] to [ ]?

26. How many non-disabled officers have been put on half pay/off pay during the same period? Please state reasons.

27. Why was I put on half pay/off pay?

Confidentiality

28. Please provide a copy of your Force policy in regard to confidentiality and the DDA?

CONFIDENTIAL

POLICE FEDERATION
OF ENGLAND AND WALES

RESOLUTION INFORMATION SHEET
for
Representation in Equality Issues

The Police Federation of England & Wales has designed the Resolution Information Sheet (RIS) to improve the service its representatives give to its members on matters of equality and diversity and to assist in the seamless delivery of advice given both by its representatives and its external solicitors. It should be completed in all cases where you are asked to advise or assist a member and/or negotiate a resolution within an internal Grievance or Fairness at Work Procedure.

The RIS **must** be completed where representatives are advising members who are involved, or are likely to become involved, in Employment Tribunal (ET) proceedings and/or where legal advice or representation may be required.

PLEASE READ EXPLANATORY NOTES PRIOR TO COMPLETION

1. Member's Details

Claimant/Respondent
(delete as appropriate)

Name: ..... Rank .....

Male/Female ..... Ethnic Classification .....
(see 16 + 1 classification code below)

Contact Address: .....

.....

.....

.....

Contact Tel No: ..... e-mail .....

Force ..... Number .....

Date of Joining ..... Annual Salary £.....

White-British		White-Irish		White-Other			
Mixed-White & Black Caribbean		Mixed-White & Black African		Mixed-White & Asian		Mixed-Other	
Asian/Asian British-Indian		Asian/Asian British-Pakistani		Asian/Asian British-Bangladeshi		Asian/British-Other	
Black/Black British-Caribbean		Black/Black British-African		Black/Black British-Other		Chinese	
Other Ethnic Group (Please specify)						Prefer not to say	

CONFIDENTIAL

2. Representative's Details

Name: .....

Contact Address: .....

.....

.....

Contact Tel No: ..... e-mail .....

3. Summary of Issue(s) (include relevant times, dates, locations and persons present)

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

If necessary please continue on separate sheets

CONFIDENTIAL

4. Details of Force Procedures (including any grievance/discipline investigations, interviews, dates, persons present and resulting action)

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

5. Details of Witnesses (indicating if statements are/will be available to you)

.....

.....

.....

.....

.....

6. Details of Documentation or other evidence (include use of Statutory Questionnaires, additional information provided and disclosure of relevant documents)

.....

.....

.....

.....

.....

.....

7. What does the member want to achieve by pursuing this matter? (include details of any resolution strategy proposed or being pursued)

.....

.....

.....

.....

.....

If necessary please continue on separate sheets

CONFIDENTIAL

It is important that this section of the Resolution Information Sheet is completed if you are representing members involved or likely to become involved in Employment Tribunal proceedings and who may require legal representation.

8. Tick box to indicate on what grounds the Claimant believes that the treatment amounts to unlawful discrimination. (remember that the treatment may be unfair, but it is unlawful only if the member suffers a detriment on grounds prohibited by the anti-discrimination legislation).

Gender	Pregnancy	Marital/Civil partnership status
Racial/ethnic/ national origin	Disability	Sexual Orientation
Part-time status	Religion/belief	Age

9. Has a claim (ET1) been made to the Tribunal? (Yes/No)
(remember the time limit of 3 calendar months less 1 day from the date of the last alleged discriminatory act)

Claimant: If yes: What date was it registered…..

If no: What is the last date for it to be registered? ……

Respondent: If yes:

What date was it registered? ……
Was it registered within the time limit? ……(Yes/No)
If no: date of last alleged discriminatory act? ……
Response Form (ET3) completed? ……(Yes/No)
If no: date for 28 day time limit? ……

10. What detriment has the member suffered because of this treatment?
(**Claimant only**: include any loss of career prospects, additional expenses, financial loss, or injury to feelings. This will be used to assess the cost, merits and benefits of the case when deciding to provide legal funding)

……
……
……
……
……

11. Additional Information (e.g. include any other legal advice requested or proceedings being taken regarding these issues)

……
……
……
……
……

Remember: The Representative should retain the original RIS for the addition of further information. Copies of the RIS and other documentation should be provided to the member and forwarded with the application for legal advice/representation.

RESOLUTION INFORMATION SHEET
REPRESENTATIVES CHECKLIST

FOR ALL CASES

1. Have you managed the member's expectations about what a formal grievance and/or the lodging of Tribunal proceedings may achieve?

2. Have you taken steps to explore/achieve a local resolution?

3. Have you included all relevant dates? Are they in chronological order?

4. Is the three-month time limit time imminent? If so, is it necessary to lodge Tribunal proceedings to protect the time limit?

5. If Tribunal proceedings have been issued have you obtained all the relevant documentation, e.g. statutory questionnaire answers, ET1 and/or ET3?

6. If Tribunal proceedings have been issued, have you considered lodging a statutory questionnaire within the 21 day time limit?

7. Are there any relevant medical issues? eg is the member off sick as a result of the alleged discrimination? What stage have they reached in the sick pay regime (6/12 months/discretion to remain on full/half pay)?

8. Is there any issue relating to probationary service?

9. Is there any issue relating to unsatisfactory attendance/performance?

10. Is there any issue relating to criminal or disciplinary misconduct?

11. Is there any issue relating to medical retirement?

FOR HARASSMENT CASES

12. If acting for complainant: has the member provided full details of the alleged harassment, including the nature of it, what was said, who said it (inc rank), when it was said? Has the member identified why he/she considered it to be unlawful (e.g. how was it sexist or racist)?

13. If acting for respondent: have they answered each of the allegations made, and have they lodged their ET3 in the 28-day time limit?

14. Are there are any witnesses who endorse/oppose the given version of events? If so, have you provided their contact details?

15. Has any formal complaint been made against the alleged harasser?

16. Has there been an investigation into the alleged harassment?

17. Has any disciplinary action been taken against the alleged harasser?

18. Are there any relevant documents, e.g. emails, pocket book extracts?

PROMOTIONS/POSTINGS/TRANSFERS

19. Do you have details regarding the promotion/ posting/ transfer, including the name of the decision-maker and the date of the decision?

20. Are there any relevant documents, e.g. written applications, review/ appraisal forms, interview notes, memos, or letters of refusal/rejection?

GRIEVANCE/DISCIPLINE

21. Has the correct procedure been followed?

22. Have you copies of relevant documents, e.g. Reg 9 notices, decisions?

PART-TIME/FLEXIBLE WORKING

23. What was the request for pt/flexible working and when was it made?

24. Do you have a copy of the request (if written)?

25. Do you know how previous requests for part-time/flexible working have been treated? Either on behalf of the member or others?

26. Do you have details of the gender breakdown of officers working in his/her unit/ station/ division/Force?

27. If the member considers that he/she has been treated less favourably on grounds of his/her part-time status, has he/she given evidence of how a comparable full-time officer is treated?

MATERNITY/PATERNITY

28. Has the member provided appropriate details, e.g. expected week of confinement, due date, actual birth date, dates or ordinary/additional maternity leave, dates of paternity leave?

29. Does the Force have maternity/paternity policies and have you got copies?

VICTIMISATION

30. Have you identified the "protected" act of discrimination for which the member is being victimised?

Recording of information provided by members

Representatives should record all relevant information on the Resolution Information Sheet (RIS) and should retain the original for the addition of any further information. Copies of the RIS and other documentation should be provided to the member and also forwarded with the application for legal advice/representation. Any further information recorded on the RIS should also be copied and provided to the member and legal representative

AND DON'T FORGET

Refer to your Equality & Diversity Handbook for further information!

RESOLUTION INFORMATION SHEET

EXPLANATORY NOTES

The Police Federation of England & Wales has designed the Resolution Information Sheet (RIS) to improve the service its representatives give to its members on matters of equality and diversity and to assist in the seamless delivery of advice given both by its representatives and its external solicitors. It should be completed in all cases where you are asked to advise or assist a member and/or negotiate a resolution within an internal Grievance or Fairness at Work Procedure.

The RIS must be completed where representatives are advising members who are involved, or are likely to become involved, in Employment Tribunal (ET) proceedings and/or where legal advice or representation may be required.

Representatives should retain the original RIS for the addition of any further information. Copies of the RIS and other documentation should be provided to the member and also forwarded with the application for legal advice/representation. Any further information recorded on the RIS should also be copied and provided to the member and legal representative.

Before forwarding the RIS with an application for legal advice or representation, remember the importance of asking what the member wants to achieve by seeking the Federation's support. Whilst it is important to comply with the relevant time limits relating to Employment Tribunal proceedings, ask yourself whether there are any steps you can take to achieve a resolution of the member's issues at a local level. Remember at all times the importance of managing the member's expectations about what pursuing a formal grievance and/or the lodging ET proceedings may achieve.

Q1 Member's details

This is self-explanatory, but please identify whether the member is (or may become) an Applicant or Respondent to ET proceedings.

Q2 Representative's details

When providing your contact details, make sure that you have set up appropriate "Chinese Wall" arrangements in circumstances where another Federation representative may be advising the Applicant or Respondent (as the case may be) on the other side.

Q3 Summary of Issue(s)

Below are set out some questions which may focus your mind when completing this section of the RIS. However, in complex cases, consider asking the member to provide you with a full confidential statement.

For all cases:

- Have you included all relevant dates? Are they in chronological order?

- Are there any relevant medical issues? e.g. is the member off sick as a result of the alleged discrimination? What stage have they reached in the sick pay regime (6/12 months/discretion to remain on full/half pay)?

- Is there any issue relating to probationary service?

- Is there any issue relating to unsatisfactory performance?

- Is there any issue relating to criminal or disciplinary misconduct?

- Is there any issue relating to medical retirement?

For cases of alleged harassment:

- If acting for complainant: has the member provided full details of the alleged harassment, including the nature of it, what was said, who said it (including rank) and when it was said?

- Has the member identified why they considered it to be unlawful (e.g. how was it sexist or racist)?

- If acting for respondent: have they answered each of the allegations made against them?

For cases arising from decisions on promotions, postings, transfers etc:

- Do you have details regarding the promotion/ posting/ transfer, including the name of the decision-maker and the date of the decision?

- Are there any relevant documents, e.g. written applications, review/ appraisal forms, interview notes, memos, or letters of refusal/rejection?

For cases involving working patterns to accommodate childcare requirements:

- Have you described the type of part-time or flexible working pattern requested, and identified when the request was made and/or rejected?

- Do you know how previous requests for such working patterns have been treated (either on behalf of the member or others)?

- Do you have details of the gender breakdown of officers working in the member's unit/station/division/Force?

- If the member considers that they have been treated less favourably on grounds of part-time status, have they given evidence of how a comparable full-time officer is treated?

For pregnancy/maternity/paternity cases:

- Has the member provided appropriate details, e.g. expected week of confinement, due date, actual birth date, dates or ordinary/additional maternity leave, dates of paternity leave?

- Does the Force have maternity/paternity policies and have you got copies?

For victimisation cases:

- Have you identified the "protected" act of discrimination for which the member is being victimised? For example, when was the previous complaint of discrimination? If the member has brought previous ET proceedings, please give full details.

Q4 Details of Force procedures

Include details of any grievance/discipline investigations, interviews, dates, persons present and details of the outcome. If you think the correct procedure has not been followed, say so.

In cases of alleged harassment, please state whether any formal complaint has been made against the alleged harasser, whether there has been an investigation into the alleged harassment, and whether any disciplinary action has been taken against the alleged harasser.

Q5 Details of witnesses

In many discrimination cases, the outcome of an ET hearing revolves around the word of the member against the word of a manager or other officers. Witness evidence can therefore be crucial. Consider:

- Are there are any witnesses who support the member's version of events?

- Can you identify the relevance of their evidence? In other words, to what aspect of the member's case does their evidence relate?

- Have you provided contact details for witnesses?

- Have they been approached to confirm whether or not they are happy to give evidence in support of the member? If they are happy to help, can any of them provide you with confidential statements now?

Q6 Details of documentation or other evidence

Remember to attach documentation relevant to the case. This can include the formal grievance, any supporting statements, Regulation 9 notices, management decisions, related memoranda, pocket notebook extracts, correspondence on a request for part-time working, any statutory questionnaires that have been served or answered, correspondence with the ET, details of Force policies on equal opportunities, responses to subject access requests under the Data Protection Act, etc.

Q7 What does the member want to achieve by pursuing this matter?

In many ways, this is the most important question on the RIS. At the start of a case, a member may simply be looking for a quick local resolution, such as an apology, allowing them to progress their career. While the lodging of ET proceedings can be appropriate or necessary, the effect is often to create animosity and to "cement" attitudes. Sometimes, the

longer a case goes on, the harder it can be to settle it.

When completing this section, remember to include details of any resolution strategy you or the member have proposed and (if relevant) how successfully it is being pursued. This includes whether you have made contact with ACAS.

Q8 Tick boxes

The treatment about which a member complains may be unfair, but that by itself will not make it unlawful discrimination. The treatment about which the member complains must be on grounds that are prohibited by the anti-discrimination legislation.

In certain cases, remember to specify why the member falls within the protected ground, namely:

- For race cases – specify (as appropriate) the member's race, ethnic origin and nationality.

- For sexual orientation cases – specify the member's sexual orientation;

- For religion/belief cases – specify the member's religion/belief from which their complaint has arisen;

- For disability cases – specify the member's disability.

Q9 Time limits

The legal time limits for lodging papers with the ET differ according to whether you are acting for a Claimant or a Respondent.

If acting for a Claimant

Please specify whether a claim has already been presented to the ET. Remember that there is a time limit for lodging ET proceedings of three months less one day from the date of the alleged discriminatory act. The ET will only extend this time limit in those limited circumstances where it decides it is "just and equitable" to do so.

- If it has been lodged, state when it was lodged. Provide a copy of the claim form with the papers and the response from the Force (if it has been supplied) and any correspondence with the ET or any other party.

- If it has not been lodged, say so. (This is important because sometimes representatives send in a completed ET form when requesting legal advice or representation; the external solicitors may assume it has been lodged when it has not.) Write down what you think is the last day by which the ET claim should be lodged.

If acting for a Respondent

Please specify whether the member's response to the claim has been lodged with the ET. Remember that there is a time limit of 28 days in which to lodge a response with the ET.

- If it has been lodged, state when it was lodged. Provide a copy of both the claim form and the response (and any additional response from the Force, if it has been supplied), and any correspondence with the ET or any other party.

- If it has not been lodged, say so. (This is important because sometimes representatives send in a completed response when requesting legal advice or representation; the external solicitors may assume it has been lodged when it has not.) Write down what you think is the last day by which the response should be lodged.

Q10 What detriment has the member suffered?

This question only needs to be answered where you are acting for an Applicant. Examples of detriment include:

- Financial loss (e.g. time spent on lower level of sick pay, lost competence threshold payment);

- Loss of career prospects;

- Additional expenses incurred;

- Injury to health (please specify whether there is supporting medical evidence);

- Injury to feelings.

Remember the importance of managing the member's expectations; ET awards are lower than members assume and in many cases the only remedy will be award for "injury to feelings". This information will be used by the Federation to assess whether, separate to the merits of the claim, it is a cost-effective one to support. It is extremely rare that the Federation will recover the legal costs it has incurred in supporting a member's claim to the ET, and so it must be satisfied in all cases that the benefits to the member personally, and to the wider membership, are in proportion to the likely legal costs.

Q11 Additional information

Please provide full details of such matters as: legal advice requested or taken in connection with the case; any proceedings that have been issued; whether you consider the case impacts upon Force policy and/or has wide implications for the membership; and so on.

CONFIDENTIAL

POLICE FEDERATION FIRST CONTACT
EQUAL OPPORTUNITIES MONITORING

A 'contact' is defined as "a situation in which any Force employee communicates with a Federation Representative to obtain equal opportunities information in respect of a grievance"

Only the initial contact should be recorded

FEDERATION REPRESENTATIVE

Name, Rank & No.: .....

Date of first contact: .....

AGGRIEVED PERSON

Location .....

Male / Female ..... Ethnicity .....

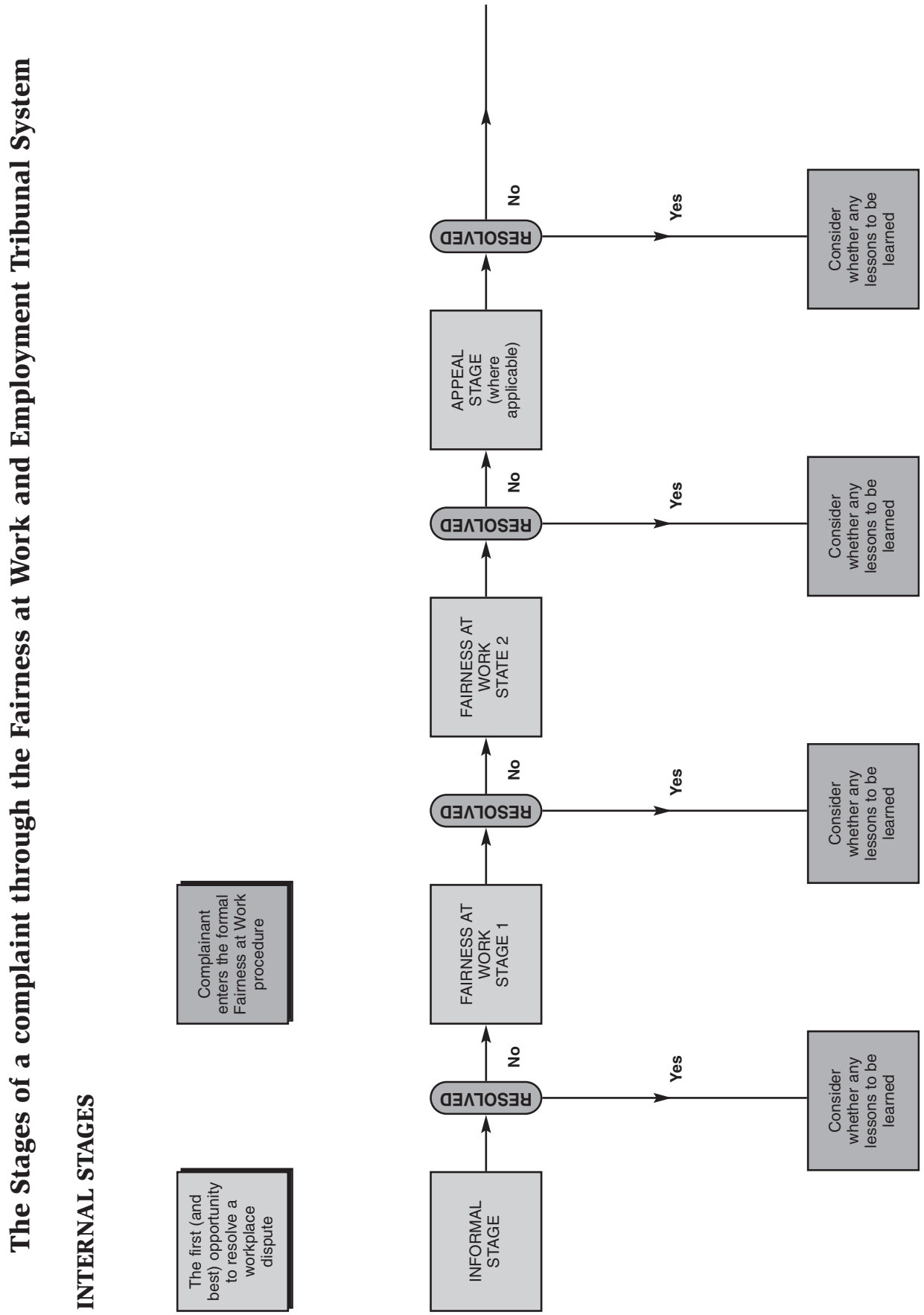
Police / Special Constable / Support Staff

TYPE OF GRIEVANCE

Appraisal / Assessment	
Behaviour – police colleague	
Behaviour – police supervisor/manager	
Behaviour – support staff colleague	
Behaviour – support staff supervisor/manager	
Complaints & Discipline issue	
Conditions of service	
Disability	
Flexible Working	
Health & Safety issue	
Maternity / Paternity	
Occupational health / welfare issue	
Staff movement – police transfer	
Staff movement – police promotion process	
Staff movement – support staff transfer	
Staff movement – support staff promotion process	
Other	

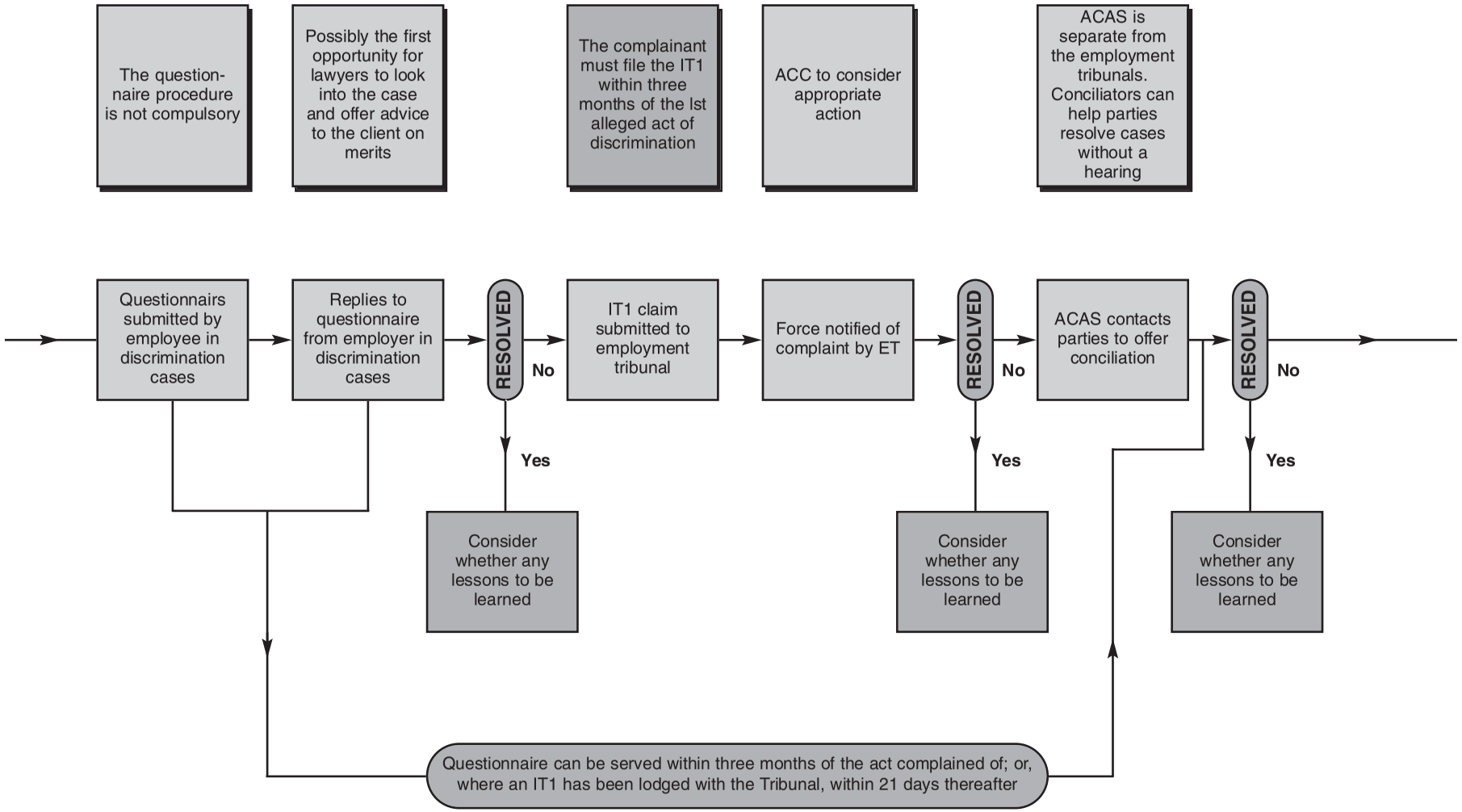
Please forward this form immediately to the Federation Office clearly marked 'confidential' for the attention of the Equality Liaison Officer.

GRIEVANCE/FAIRNESS AT WORK/EMPLOYMENT TRIBUNAL FLOWCHART



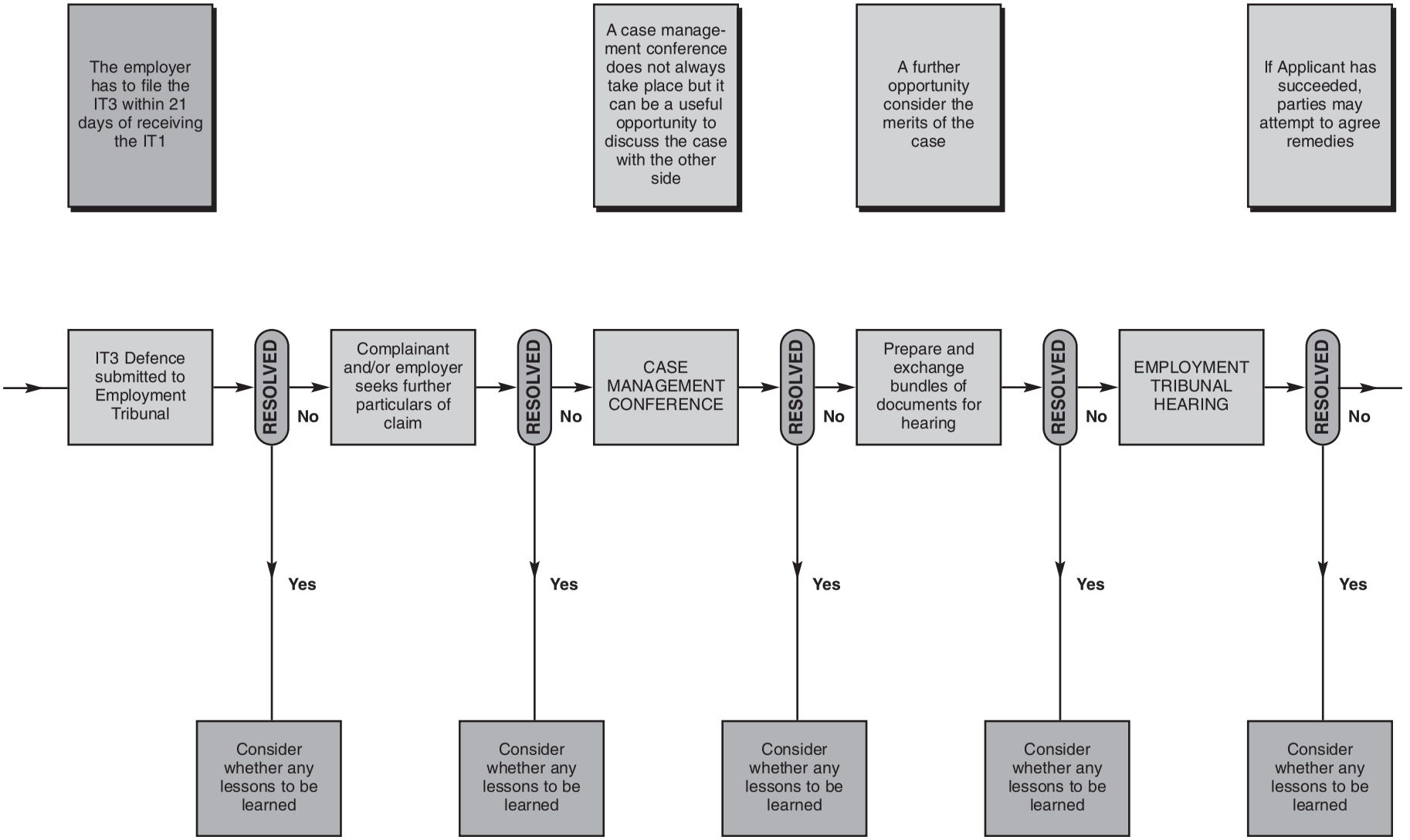
The Stages of a complaint through the Fairness at Work and Employment Tribunal System

EXTERNAL STAGES



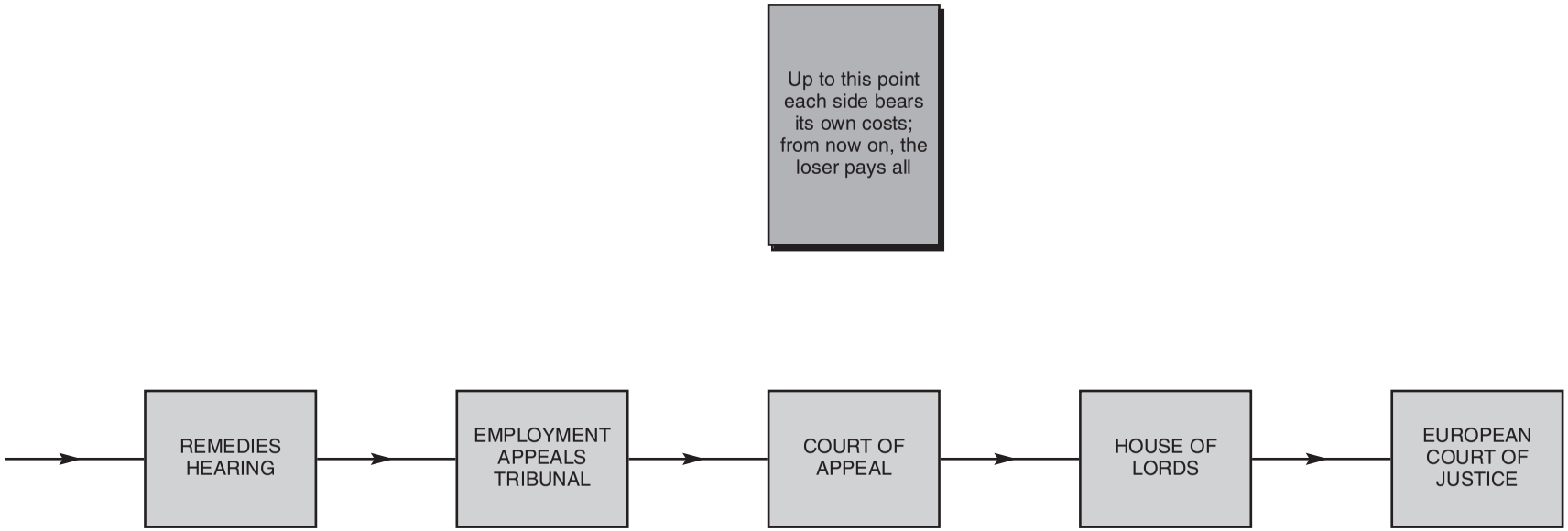
The Stages of a complaint through the Fairness at Work and Employment Tribunal System

EXTERNAL STAGES (continued)



The Stages of a complaint through the Fairness at Work and Employment Tribunal System

EXTERNAL STAGES (continued)



LEGAL SUPPORT & FUNDING CRITERIA FOR EMPLOYMENT TRIBUNALS

The funding of all legal advice and/or assistance for members is discretionary.

In exercising discretion the following factors should be taken into account:-

(a) the likely success of the cases;

(b) the likely costs of providing the legal advice and/or legal assistance;

(c) the potential benefit to the member;

(d) the benefit of the case to the membership as a whole;

(e) the existence of alternative procedures;

(f) any other relevant matters.

The exercise of discretion will often involve having to balance the above factors in making any determination as to the extent to which, if at all, they will fund legal assistance (by way of representation or otherwise).

NOTES ON CRITERIA

The likely success of the case

On receipt of a request for legal assistance, the Federation may seek legal advice from solicitors with a view to determining the extent to which, if at all, legal assistance would be appropriate. The assessment of merits made by the solicitors instructed will be taken into account.

There is no specific formula adopted, although generally legal assistance will not be granted where the prospects of success are less than 'evens'.

False hope cannot be encouraged on the part of members nor can a litigious member be allowed to utilise funds which could be effectively used on behalf of other members.

COSTS

Consideration will be given to the potential exposure of its funds in providing the legal assistance requested. In circumstances where the costs of legal assistance will almost certainly fall on the Federation, the concern will be that the costs involved will not be disproportionate to the potential benefit to the member and/or the membership as a whole.

BENEFIT TO THE MEMBER

Consideration will be given not only to the potential financial benefit to the member in providing legal assistance but also to the potential detriment that the member may suffer if legal representation is not provided, other benefits that the member may achieve on the resolution of the issue the subject of the request for legal assistance and (in the case of discrimination matters) the potential risk of repetition of harassment of the member.

BENEFITS TO MEMBERSHIP AS A WHOLE

Although the potential financial benefit to the member may be at times nominal, in certain circumstances it is recognised the impact on the membership as a whole may be substantial or raise a significant policy issue.

Account may be taken of the extent to which the issue raised in the request for legal assistance is of particular concern within the Force of the member(s) concerned.

ALTERNATIVE PROCEDURES

The extent to which, if at all, the matter subject of the request for legal assistance may be better resolved by negotiation through the Police Negotiating Board or by the Joint Branch Board through the JNCC or other in Force Forums or the grievance procedures or otherwise, will also be taken into account.

PROTOCOLS & GUIDELINES

1. INSTRUCTION AND ACKNOWLEDGEMENT

1.1 The Central Committee instructs solicitors by sending papers to the firm's Head Office. These are to be immediately acknowledged; this acknowledgement stating to which office and department the papers are being allocated and will therefore bear the responsibility for the progress of the case. The papers are then distributed to the individual who handles the case. During the course of actions in the case, all correspondence from the firm should identify the individual who write the letter by name.

1.2 On receipt of the papers it will be the responsibility of the firm to identify any limitation period applicable and, where necessary, act or advise urgently.

2. APPLICATION

This protocol applies to the following requests:

(a) advice and assistance in High Court and County Court claims and judicial review proceedings concerning the terms and conditions of members and the statutory framework in which they perform duties;

(b) advice and assistance arising in respect of the constitution of the Police Federation;

(c) advice and assistance for Applicant and Respondent Members in race/sex discrimination matters;

(d) advice and assistance on matters of concern to the Police Federation as a whole, a Joint or Separate Branch Board or a group of members;

(e) advice and assistance in High and/or County Court claims concerning malicious prosecution, wrongful arrest and other civil actions (except claims in respect of personal injury);

(f) advice and assistance on defamation.

3. INITIAL ACTION ON RECEIPT OF PAPERS

The instructed solicitors will, within 28 days of receipt of the instructions from the Committee (unless, because the matter is urgent, a shorter timescale is specified):-

(a) provide the advice sought or, in the event that further information is required, seek that information [through the Committee]; or

(b) in the event that, for whatever reason, it proves not possible to do so, notify the Committee in good time and of the reason(s) why and provide notification as to when the advice will be received.

4. EXTENT OF AUTHORITY

4.1 In the event that on receipt of the paper the solicitors consider that in order to provide the advice it is necessary to see the member or a representative of the Branch Board seeking the advice, then prior authority so to do is required from the Committee. If the information required to provide the advice can be obtained by way of a telephone call or through correspondence, then no prior authority is necessary.

4.2 For the avoidance of doubt, when a file has been closed by a Committee, all further approaches to the solicitors on the matter from the member and/or the Branch Board should be redirected by the solicitors to the Instructing Committee and the solicitors must not deal direct with either the member or the Board until authority is provided.

4.3 All requests for advice will be sought for and on behalf of the Committee with a view, where the request is both for advice and assistance, to the Committee considering whether or not to provide legal assistance (by way of representation or otherwise).

4.4 The solicitors are requested, in providing their advice, where appropriate, to advise on, amongst other things:-

(a) the merits of the case;

(b) the potential benefits to the member (including the likely remedies available to the member or if a claim has been made against a member the remedies that may be available against the member in question);

(c) the likely costs of providing representation (or other assistance) to the member (or Branch Board) including the cost of pursuing the matter through to a full hearing (including the potential unrecoverable costs);

(d) matters which may be of concern to the Committee generally;

(e) to provide (unless inappropriate) a summary of the advice and recommended action at the end of the letter.

4.5 The solicitors will not be funded to represent (or otherwise act for) the member to Branch Board seeking assistance on behalf of whom advice is sought until authorised to do so by the Committee. In the event the Committee determine not to fund, or to withdraw funding of a member, the solicitors may only act for the member privately with the Committee's consent in view of potential future conflicts and on condition that the member is informed that s/he is personally responsible for all the solicitor's costs thereafter in addition to any costs that may be awarded against the member.

4.6 If and to the extent that the Committee agree to provide legal assistance (by way of representation or otherwise) then prior authority should be sought before instructing Counsel, a Medical Practitioner or other expert.

5. GENERAL UPDATING

5.1 The Committee are to be updated as to the progress of all cases on a regular basis at such frequency as it dictates. In the event of any update otherwise being requested, a response will be sent by the solicitors within two weeks (unless an earlier response is requested).

5.2 The solicitors will report to the Committee, throughout the duration of any proceedings, any material change to previous advice given and/or which gives rise to potential risks to the Committee as to costs.

6. CASE CONCLUSION AND COST RECOVERY

Immediately a case is concluded a report of the result should be sent to the Committee by the solicitors. The solicitors will seek to recover from the Defendants any legal costs incurred by the Committee on behalf of the member (wherever practicable). In the event of any shortfall of any costs offered by the Defendant, the solicitors will advise the Committee as to the merits and costs involved in the taxation therein.

EQUALITY AND DIVERSITY ADDRESSES AND WEBSITES

NATIONAL EQUALITY AGENCIES

Sex discrimination
Equal Opportunities Commission
Head Office
Arndale House
Arndale Centre
Manchester
M3 4EQ
Tel 0845 601 5901
www.eoc.org.uk
The EOC also has offices in London and Cardiff – see website.

Race discrimination
Commission for Racial Equality
Head Office
St. Dunstan's House
201/211 Borough High Street
London
SE1 1GZ
Tel 020 7939 0000
www.cre.gov.uk
The CRE also has offices in Birmingham, Leeds, Manchester and Cardiff, and funds over 100 Racial Equality Councils – see website.

Disability discrimination
Disability Rights Commission
Head Office
Arndale House
Arndale Centre
Manchester
M3 4EQ
Tel 08457 622 633
www.drc.org.uk
The DRC also has offices in London and Stratford upon Avon – see website

NATIONAL POLICE SINGLE ISSUE SUPPORT GROUPS

British Association of Women in Policing *www.bawp.org*

National Black Police Association *www.nationalbpa.com*

Gay Police Association *www.gay.police.uk*

The Metropolitan Police Service and some other Forces also support a range of local Force faith groups.

SINGLE-ISSUE PRESSURE GROUPS

Disability
Employers Forum on Disability
Nutmeg House
60 Gainsford Street
London
SE1 2NY
Tel 020 7403 3020
www.employers-forum.co.uk

All Police Forces are members of the Employers Forum on Disability, which supports a police network run by a seconded police officer. Officers can access the member's website by using their Force password, which is usually kept by their Force Equal Opportunities Officer. If you have difficulty obtaining your Force password, ring the Employers Forum and ask for the Police Network Co-ordinator.

Age
Employers Forum on Age
2nd floor
The Tower Building
11 York Road
London
SE1 7NX
Tel 020 7981 0341
www.efa.org.uk

Sexuality
Stonewall
46 Grosvenor Gardens
London
SW1W 0GB
Tel 020 7881 9440
www.stonewall.org.uk

Gender re-assignment
The Gender Trust
PO Box 3192
Brighton
BN1 3WR
Tel 01273 234024
www.gendertrust.org.uk

Maternity
Maternity Alliance
3rd floor West
2-6 Northburgh Street
London
EC1V 0AY
Tel 020 490 7639
www.maternityalliance.org.uk

Single Parents
National Council of One Parent Families
255 Kentish Town Road
London
NW5 2LX
Tel 020 7428 5400
www.oneparentfamilies.org.uk

Flexibility at Work
New Ways to Work
26 Shacklewell Lane
Dalston
London
E8 2EZ
Tel 020 7503 3283
www.new-ways.co.uk

GOVERNMENT AGENCY WEBSITES

ACAS *www.acas.org.uk*

Employment Tribunals *www.employmenttribunals.gov.uk*

Employment Appeal Tribunal *www.employmentappeals.gov.uk*

Health & Safety Executive *www.hse.gov.uk*

HMSO *www.hmso.gov*

TUC *www.tuc.org.uk*