



GUIDE TO PROCEDURES IN EQUAL STATUS CASES

*Investigating complaints under the Equal Status Acts
2000 to 2012*

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Equal Status Cases

Guide to procedures for investigating complaints

These procedures are set out for the general information of parties to complaints (and their representatives), as an accessible summary of the normal working practice of the Equality Tribunal. They are not intended to be exhaustive, nor to provide a legal interpretation of the Acts. A failure to comply with this document in a particular case will not invalidate the proceedings, nor the decision or settlement which has been reached, nor give rise to any legal liability. The Tribunal reserves the right to vary these procedures generally and, as appropriate, in the circumstances of the individual case.

1. The Equality Tribunal

The Equality Tribunal is an impartial, independent body, set up to investigate and decide or mediate cases brought under the equality legislation. Its decisions and mediated agreements are legally binding, and it has extensive powers. The Tribunal is a quasi-judicial body, in that it does not have to decide cases using court procedures, and can follow relatively accessible and informal procedures. It must, however, adhere to fair procedures, which means that it must act impartially in considering complaints before it and ensure fairness for both parties in its procedures. The service is free, and parties are not required to have legal or other representation. Further information is provided on the Workplace Relations website and all decisions issued by the Equality Tribunal are published on www.workplacerelations.ie.

The Equality Tribunal cannot give legal advice on any matters before it as it must remain strictly impartial in hearing and deciding cases. It is an entirely different body from the Equality Authority, which was set up under the same legislation with a range of other functions which may include the provision of advice and legal representation to those wishing to make a complaint.

2. Cases before the Equality Tribunal

The Director or Equality Officers of the Equality Tribunal investigate, decide, or mediate cases brought under the Employment Equality Acts 1998 - 2011, (see Guide to Procedures in Employment and Pension cases) the Equal Status Acts 2000 – 2012 and Part VII of the Pensions Acts 1990-2013.

Under the Equal Status Acts 2000 to 2012, the Equality Tribunal deals with complaints of discrimination based on

- **gender**
- **civil status (single, married, separated, divorced, widowed, in a civil partnership within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* or being a former civil partner in a civil partnership that has ended by death or been dissolved)**

- **family status (including pregnancy),**
- **age,**
- **disability (see definition in section 2 of the Acts),**
- **race (including nationality, colour or ethnic/national origin),**
- **religion or belief,**
- **sexual orientation,**
- **membership of the Traveller community**

The complaints may relate to the provision of goods, access to any of a wide range of services and facilities, education and accommodation subject to specific exceptions in the Acts. Complaints can be made of direct or indirect discrimination, harassment, sexual harassment, or failure to provide appropriate measures for a person with a disability.

The Acts apply to all providers of goods and services covered by the Acts, whether they are individuals, organisations, or public bodies, and to their employees. (The term “service provider” is used in this Guide to refer to any person who provides goods, services or facilities.)

Measures which are not prohibited are set out in sections 14, 15 and 16 of the Equal Status Acts.

The Equal Status Acts also specifically protect a person against being penalised in any way by the service provider because they have made a complaint about possible discrimination under the Equality legislation, represented or supported a complainant, or indicated an intention to do any of the above. Penalising a person for any of these reasons is defined as victimisation. The Acts provide for complaints about victimisation to be made to the Equality Tribunal, in the same way as for complaints of discrimination, and with the same provision for redress. It is not necessary that a victimised complainant was successful in their original complaint, only that he or she acted in good faith.

Claims of discrimination against registered clubs (i.e. clubs allowed to serve alcohol at their bars) and claims of discrimination against licensed premises, (pubs, nightclubs, hotel bars etc), must be referred to the District Court. For information on District Court procedures, contact the District Court Office.

3. Notification before referring a case to the Equality Tribunal

Any person who believes that s/he has experienced discrimination by a service provider which is contrary to the Equal Status Acts, may seek redress by making a complaint to the Equality Tribunal. **Please note that before referring a complaint to the Equality Tribunal a complainant must first notify the service provider and has the right to ask for information in that notification.**

The notification must be in writing and sent within 2 months of the incident complained of (or, in the case of repeated incidents, the most recent one), stating the nature of the allegation and the intention to seek redress under the Equal Status Acts, if not satisfied with the service provider’s response. A sample standard notification form (Form ES.1) is available from the Tribunal or can be downloaded from the website. This standard form allows for questions to

be asked of the service provider. A sample reply form is also available to the service provider (Form ES.2) and these forms can be downloaded from the website. The service provider is not obliged to reply but the Acts state that the Tribunal may draw such inferences as seem appropriate if the service provider does not reply or provides a false, misleading or unhelpful reply.

The date of notification is the date on which it was sent to the service provider. A complaint may not be valid unless this notification is properly made. Proof of delivery (whether by e mail or post) should be kept. If the 2 month time limit has been missed an extension of time may be requested. That application must be made as promptly as possible after a complaint has been lodged as failure to do so may be taken into account, in the interests of fairness, when a decision on the time limit is made. The complainant must give **detailed reasons** and send any supporting documents (e.g. medical certificates) to the Tribunal. A copy will be sent to the respondent for their comments together with a copy of the complaint. The Director or Equality Officer will consider the material presented by both sides in deciding whether or not to grant an extension for reasonable cause. **Note that the Tribunal has no power to extend the time limit for notification beyond 4 months after the last incident of discrimination.**

In **exceptional circumstances** and where the Director is satisfied that it is fair and reasonable in all the circumstances s/he can dispense with the requirement for notification.

If either party disagrees with the Director's decision on an extension of time or to dispense with notification it may be appealed to the Circuit Court within 42 days. It should be noted that the correct Respondent in such an appeal is not the Tribunal but the service provider.

4. Referring a case to the Equality Tribunal

Any person who believes that s/he has experienced discrimination based on **gender, civil status, family status (including pregnancy), age, disability, race (including nationality, colour or ethnic/national origin), religion or belief, sexual orientation, or membership of the Traveller community** which is contrary to the Equal Status Acts may, after notifying the service provider, seek redress by referring a complaint to the Equality Tribunal. The complaint form (Form ES.3) should be used and this is available from the Tribunal or can be downloaded from the website. A copy of the notification and the reply, if any, together with proof of delivery should be sent with the complaint form.

The complaint should be signed either by the complainant him/herself, or by his or her representative. Even where a number of individuals are taking a case against the same service provider each complaint should be on a separate form, as there may be differences in individual cases. However, where a representative is authorised to represent a number of complainants, a single form signed by the representative will be accepted, provided that the names of all the complainants are clearly indicated in part of the complaint (e.g. an attached list). It is also important to give the correct legal name of the service provider (i.e. the correct name of the individual or the company)

It is extremely important that the Complainant and the Respondent keep the Tribunal informed of the current address and contact details as correspondence including notification of dates for hearing will be sent to the address on file.

5. Time limits for referring a case to the Equality Tribunal

The Equal Status Acts provide that a claim may not be referred to the Tribunal after six months from the date when the discrimination or victimisation occurred (or, in the case of a repeated act, last occurred) unless the complainant applies for an extension of time. If the delay was caused by the respondent misrepresenting the facts to the complainant, the time limit runs from the date when the complainant discovered the misrepresentation.

The date on which a claim is referred is the date on which the Equality Tribunal receives the complaint. If the complainant has missed the six month time limit an extension of time is required. That application must be made as promptly as possible, as failure to do so can be taken into account, when a decision is made. The complainant must give **detailed reasons** and send any supporting documents (e.g. medical certificates) to the Tribunal. A copy will be sent to the respondent for their comments together with a copy of the complaint. The Director will consider the material presented by both sides in deciding whether or not to grant an extension for reasonable cause. **Note that the Tribunal has no power to extend the time limit beyond 12 months after the last incident of discrimination.**

If either party disagrees with the Director's decision on an extension of time it may be appealed to the Circuit Court within 42 days. It should be noted that the correct Respondent in such an appeal is not the Tribunal but the service provider.

6. When a case is referred to the Equality Tribunal

The complaint will be acknowledged and a copy sent to the respondent. **It is important to note that as the Tribunal is impartial as between the complainant and respondent, material received from one party will be copied to the other, so that both parties are fully aware of all the material received by the Tribunal.**

The Acts allow the Tribunal to dismiss a complaint without a hearing **at any stage** if, in the opinion of the Director, it has been made in bad faith or is frivolous, vexatious, misconceived or relates to a trivial matter (Section 22). Where a case is dismissed under this section, the complainant may appeal to the Circuit Court within 42 days. The correct Respondent in such an appeal is not the Tribunal but the other party.

7. Mediation

If the Director considers that a case could be resolved by mediation the Tribunal will arrange a mutually convenient appointment with both parties as soon as practicable and it will be referred to a Mediator.

Either party may withdraw from mediation at any stage in the process, or the Mediator may decide that the case cannot be resolved through mediation. In either case the Mediator will send a notice known as a non-resolution notice to both parties, indicating that the case cannot be resolved by mediation.

The Acts allow for the investigation to be resumed **provided that within 42 days of the date of the non-resolution** notice the Director receives in writing an application for the investigation to resume (see Section 24). A more detailed information guide to mediation (**Guide MED**) is also available on request from the Equality Tribunal or on the website.

8. Statement/Submission

If the complaint does not go to mediation or mediation is unsuccessful then, the complainant is asked for a submission. The complainant's submission/statement will form an important part of the investigation and should contain a clear and comprehensive written account of the complaint. It should set out the following:

- details of the link between the ground and the alleged discrimination,
- the facts of the complaint such as the dates of the alleged discrimination,
- details of the specific allegations,
- the parties involved,
- any other information that is needed to set out the full facts of the complaint.
- It should include all relevant support documentation such as copies of letters etc.
- The submission/statement should also include any legal arguments the complainant wants to make.

Submissions/statements can be posted or sent electronically to info@equalitytribunal.ie. If the complainant is satisfied all relevant information has been set out in the initial documentation and there is no need for a further submission/statement then he or she should inform the Tribunal.

The Tribunal will send a copy of the complainant's submission/statement to the respondents and ask for a replying submission. This should also contain the following:

- a clear and comprehensive written account setting out the specific facts,
- the parties involved
- any legal arguments to be made
- and relevant supporting documentation.

This submission will also form an important part of the investigation. A copy is sent to the complainant for information.

Under Section 38 of the Acts the Tribunal can dismiss the complaint and close the file after a year, if it appears that a complainant has not pursued, or has ceased to pursue, the complaint. A dismissal notice will be sent to the parties. There is no appeal from this decision.

9. Investigating a complaint

The role of the Director and an Equality Officer is to investigate and decide complaints referred to the Tribunal. This can be different from the role of a Court, Extensive powers have been conferred on the Director and Equality Officers by the Equality Acts and these

powers may be directed to either or both parties, or to third parties including an order that a person attend before the Director and provide information which is considered relevant.

In certain circumstances, the Director or the Equality Officer may consider the case can be dealt with on the basis of written submissions only and can notify the parties to that effect. (See section 25 as amended)

The Equality Tribunal will contact the parties with a time and date for the hearing of the complaint. Reasonable notice will be given. If any special requirements are needed by the parties, their representatives or their witnesses, as much notice as possible should be given in order to facilitate any such requirements. Each party may be asked to provide a list of persons they propose to bring as witnesses and the purpose of a particular witness.

Many hearings are held at the Tribunal's own office at Davitt House, 65A Adelaide Road, Dublin 2 but hearings may also be held outside Dublin.

There is no automatic right to an adjournment. Adjournments are given in exceptional circumstances and for **substantial reasons** only and requests must be made in writing as soon as possible to the Tribunal. Any party requesting an adjournment must give details of the reasons along with all relevant documentation i.e. medical certificates.

10. The hearing and decision

It should be noted that the Tribunal is not a Court and is not subject to all the attendant formality. The final discretion as to the conduct of the hearing and the presence of any person rests with the Director or an Equality Officer subject to fair procedures.

The investigation generally concludes with the hearing of the case. In exceptional circumstances only **and** if the Director or an Equality Officer considers it necessary, s/he may decide to seek further information, after the hearing.

If the Complainant does not attend at the Hearing, the Director or the Equality Officer can find that no prima facie evidence of discrimination has been adduced and the case fails. If the Respondent does not attend the Director or the Equality Officer can proceed with the Hearing and make a decision based on the information and evidence available.

The Director or the Equality Officer will direct the hearing and may look for formal identification of either party or any witnesses. It is the responsibility of the parties and their representatives to ensure that all information is available on the day of the hearing including any documents or witnesses relevant to the case. The Director or the Equality Officer can ask questions of each party and of any witnesses attending. S/he will also give each party the opportunity to give evidence, make legal points, cross-examine and the opportunity to respond to the other side. The witnesses may be allowed to remain or may be asked to come in only for their own evidence. The Director or the Equality Officer will decide what is appropriate, taking into account fair procedures, arrangements which will best support the effective and accurate giving of evidence.

The Equal Status Acts specifically provide that an investigation into a claim of discrimination must be held "in private". Therefore, the Director or the Equality Officer cannot allow

members of the general public, the press, or observers to attend hearings. Recording of the hearing is not allowed without the specific consent of the Director or the Equality Officer. All parties and representatives are requested to contribute to the objective of a calm, efficient hearing, and to avoid being unnecessarily confrontational or formalistic.

Any evidence which either party wishes to present in support of its case which has not been set out in the complaint, submissions or any other documentation should be provided in advance of the hearing, in order to provide an opportunity to the other party to prepare its response.

As soon as practicable after completing the investigation, a written decision will issue. In certain limited circumstances e.g. in cases involving particularly sensitive issues, the Director or the Equality Officer may decide to anonymise the parties in a decision. It is the practise of the Tribunal to anonymise witnesses as the Hearings are in private.

All decisions will be published (including publication on the Workplace Relations website on www.workplacerelations.ie).

11. Redress which can be awarded

Under section 27 of the Equal Status Acts, a decision in favour of a complainant will provide for compensation for the acts of discrimination or victimisation which occurred, currently €15,000 (the maximum being the same as that which can be awarded by the District Court in civil cases) and/ or an order that a person or persons take a specified course of action.

Under the Acts there is no power to award legal costs to any person. However, if the Director or the Equality Officer considers that a person is obstructing the investigation, s/he can order that a person pay travelling or other expenses reasonably incurred by another person in connection with the investigation.

12. Appeals and enforcement

Either party may appeal the Equality Officer's decision in writing to the Circuit Court within **42 days** of the date of issue marked on the decision. If no appeal is lodged during this period, the decision is legally binding and may be enforced through the Circuit Court. If the decision is appealed a copy of the notice of appeal must be sent to the Tribunal. It should be noted that the correct Respondent in such an appeal is not the Tribunal but the other party. Parties should contact the Circuit Court for information on the necessary procedure for appeals.