GUIDE TO PROCEDURES IN EMPLOYMENT EQUALITY AND PENSION CASES

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Employment Equality 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 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 website and all decisions issued by the Equality Tribunal are published on it at 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


Under the Employment Equality Acts 1998-2011, the Equality Tribunal deals with complaints of discrimination based on

- gender (including pregnancy or maternity leave),
- 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,
- 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 any aspect of employment, job advertising, or vocational training, including access to employment, equal pay cases, complaints of direct or indirect discrimination, harassment, sexual harassment, or failure to provide appropriate measures for a person with a disability. The complaints may also relate to employment agencies, partnerships, membership of professional bodies and trade union membership.

The Employment Equality Acts also specifically protect a person against being penalised in any way by their employer because they have made a complaint about possible discrimination under the Equality legislation, represented or supported a complainant, were named as a comparator 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.

There are a number of restrictions on bringing a complaint under the Employment Equality Acts if the complainant has taken (or later takes) other legal proceedings about the same events. This applies particularly to taking proceedings under common law, the Protection of Employees (Part-Time Work) Act 2001, the Employees (Fixed-Term Work) Act 2003 and the Unfair Dismissals Acts. (See sections 101 and 101A for details)

Under the Pensions Acts 1990-2013, the Tribunal can decide on complaints of discrimination on the same nine grounds in any aspect of occupational pension schemes.

3. Referring a case to the Equality Tribunal

Any person who believes that s/he has experienced discrimination which is contrary to the Employment Equality Acts may seek redress by referring a complaint to the Director of the Equality Tribunal. A complaint can be made
using the Workplace Relations Complaint Form (Workplace Relations Complaint Form) and this is available from the Tribunal or can be downloaded from the website - www.employmentrights.ie

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 employer 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 large number of complainants (for example, a union representing persons in an equal pay case), a single form signed by the representative will be accepted, provided that the names of all complainants are clearly indicated in part of the complaint (e.g. an attached list).

Any complaint of discrimination in relation to the recruitment procedures used by the Public Appointments Service, the Minister for Defence and the Garda Commissioner must first be made to the particular respondent as otherwise the Tribunal has no jurisdiction. If the complainant is not satisfied with the response or does not get a response s/he can then lodge a complaint with the Tribunal. Time limits apply (see Section 77(7)). Any complaint by a Member of the Defence Forces is the subject to special provisions (see section 104).

It is extremely important that the Complainant keep the Tribunal informed of his or her current address and contact details as failure to do so can result in the complaint being dismissed.

4. Right to information

A person who believes that s/he may have experienced discrimination is entitled under Section 76 of the Acts to write to the person they believe may have discriminated against them, asking for certain information. A statutory form of questionnaire (Form EE.2) is available from the Tribunal and can be downloaded from the website. A statutory reply form gives the person who receives the questionnaire an opportunity to set out their version of events. This form is available (Form EE.3) from the Tribunal and can be downloaded from the website.

The Acts state that the Director may draw such inferences as seem appropriate from a respondent failing to reply, or supplying false, misleading or inadequate information.

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

The Employment Equality 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. Other time limits
apply to equal pay cases (section 77(5)(c) Employment Equality Acts) and collective agreements. 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 a 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, in the interests of fairness, when a decision is made. The complainant must write to the Tribunal giving detailed reasons and including any supporting documents (e.g. medical certificates). 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 it to the Labour Court within 42 days.

### 6. When a case is referred to the 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.

It is extremely important that the Complainant and the Respondent keep the Tribunal informed of the current address and contact details.

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 77A). Where a case is dismissed under this section, the complainant may appeal to the Labour Court within 42 days.

### 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 78). 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/statement (the procedure may be different for equal pay cases). 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,
- the date of dismissal if relevant and
- 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.

Under Section 102 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.

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.

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 may be dealt with on the basis of written submissions only and can notify the parties to that effect. (See section 792A)

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 are also held outside Dublin.

**There is no automatic right to an adjournment.** Adjournments are given in exceptional circumstances and for **substantial reasons** only and requests should 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 .ie 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 Employment Equality 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 will consult with the parties whether the decision should be anonymised. The Director or the Equality Officer does not unilaterally redact the names of witnesses who attend at a hearing.

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

11. Redress which can be awarded

Under section 82 of the Employment Equality Acts, a decision in favour of a complainant will provide for one or more of the following as appropriate:

- equal pay, from the date of the referral of the claim
- arrears of the shortfall necessary to make up equal pay, for up to a maximum of three years before that date;
• compensation for the acts of discrimination or victimisation which occurred.
• an order for equal treatment in whatever respect is relevant to the case;
• an order that a person or persons take a specified course of action
• an order for re-instatement or re-engagement (in dismissal cases), with or without an order for compensation
• in cases of dismissal where the Director or the Equality Officer has found no discriminatory dismissal, that the matter be referred to the Employment Appeals Tribunal to determine if there has been an unfair dismissal
• in cases of gender discrimination, the decision can also order payment of interest under the Courts Act 1981 on all or part of the compensation or the arrears of equal pay.

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 decision in writing to the Labour Court within 42 days of the date of issue marked on the decision. If no appeal is lodged after this period, the decision is legally binding and may be enforced through the Circuit Court. Parties should contact the Labour Court for information on the necessary procedure for appeals.

13. Particular types of complaint

Equal pay

In equal pay cases, the Equality Officer may decide to hold an initial inquiry. This provides an opportunity to clarify the nature and background of the complaint with both parties. In some cases, the Equality Officer can consider firstly whether any difference of pay is based on non-discriminatory grounds. S/he will ask the respondent to make a submission on why the difference is based on non-discriminatory grounds and the complainant(s) will then be asked to reply to this submission. If the respondent claims that the different rate of pay is based on grounds other than any of the discriminatory grounds, the Equality Officer may decide to hold an investigation on this point. In this case, the Equality Officer will first investigate and decide this specific issue before considering the rest of the case. The Equality Officer’s decision on this preliminary issue will give reasons for the conclusion reached. It will also be published in the same way as other decisions. If the decision upholds the
respondent’s claim, then the difference in pay is not contrary to the Act and there will therefore be no further investigation. If the decision does not uphold the respondent’s claim, the Equality Officer will then proceed to investigate the rest of the case and will issue a decision on the substantive matter.

If the complainant(s) and the respondent disagree on whether the complainant was doing “like work” with the selected comparator, the Equality Officer may arrange with both parties to conduct a work inspection.

The Equality Officer will also ask the complainant(s) to set out in their submission why they consider that they are doing equal work, or work of equal value, to the comparator(s) they have named. S/he will also ask the complainant to include a job description for their own work and one for the named comparator’s work.

The Equality Officer will ask the respondent to set out why the complainant(s) are not doing equal work, or work of equal value, to the named comparator(s). S/he will also ask the respondent to include a job description for the complainant’(s) work and the named comparator's work.

**Occupational pensions**

Discrimination in occupational pensions are dealt with under the Pensions Acts 1990-2013 and are specifically excluded from the Employment Equality Acts. Occupational pensions are, broadly speaking, the group of occupational benefits provided by an employer (or to self-employed persons) which deal with termination of service, retirement, old age or death (retirement pensions, lump sums payable on retirement, widow(er)’s pensions, etc.) The Pensions Acts were substantially amended by the Social Welfare (Miscellaneous Provisions) Act 2004. With effect from 5th April 2004, it is unlawful (with specified exceptions) to discriminate based on any of the nine protected grounds (gender, civil status, family status, age, disability, race, religion, sexual orientation, membership of the Traveller community) in the rules of an occupational pension scheme. Any person who considers that they have been discriminated against or victimised in this respect may refer a complaint to the Equality Tribunal. It should be noted that the “levelling up” date in relation to the race ground is July 2003 and the gender ground is 1990.

The Social Welfare (Miscellaneous Provisions) Act 2004 changed the procedures and simplified the process for making claims. The procedures are similar to those under the Employment Equality Acts, as described in the rest of this Guide.

- The workplace relations form may be used in referring these cases.
- Claims must be referred within six months of the date of termination of the relevant employment (extendable to a maximum 12 months for reasonable cause).
- The right to information procedure applies.
• The Pensions Board may also refer a complaint under the Acts, in specified circumstances
• Mediation is available for these claims
• The complainant does not need to show like work (as under the Employment Equality Acts), but may need to show that their situation is comparable with that of any employee they claim is more favourably treated
• The Tribunal can refer questions to the Pensions Board for technical advice where it considers appropriate
• The decision of the Tribunal is legally binding
• The redress available may include a declaration that any discriminatory rule is invalid from one of a range of dates, an order for equal treatment from a specified date, and an order for levelling-up of benefits payable. In dismissal cases under the Pensions Acts, compensation (up to the same maximum ceiling as under the Employment Equality Acts), and/or reinstatement or re-engagement may also be ordered. Decisions may be appealed as under the Employment Equality Acts.

See also www.pensionsboard.ie for further information.

**Collective agreements**

Under the Employment Equality Acts, a case may be referred to the Director concerning a collective agreement if it contains any provision which bases differences in pay or treatment on any of the discriminatory grounds. The complainant may be either an employee affected by the collective agreement, or the Equality Authority. These complaints are dealt with under specific procedures laid down in sections 86-87 of the Acts, and may therefore differ from procedures in other types of cases. In particular, all the parties to the collective agreements are respondents; mediation is available under the conditions set out in section 86. The only form of redress available under the Acts is a decision declaring that the discriminatory provision is null and void.