Employment and Equal Opportunities Service

Chapter 10: The complaints process

In this chapter we will cover the following:

Wherever possible, it is good practice – as well as being in the interests of both the provider/organisation (who is the duty bearer) and the individual – to seek to resolve any potential complaints under the Ordinance as they arise in order to avoid discrimination occurring in the first place. It is recognised that this will not always take place or that sometimes an organisation may not immediately recognise that there is a potential issue. Where this is the case, a written complaint should always be made to the provider/organisation to give them an opportunity to address the issue. In most cases, the written complaint **must be made within 6 weeks** of the discrimination occurring or the individual will be precluded from bringing a claim to the Employment Tribunal (see section 10.1). Whilst there is no legal obligation on organisations to have a complaints policy in place, it will be in everyone's interest to provide an open and fair way for individuals to make their concerns known, and for their issues to be resolved quickly, without having to bring legal proceedings.

The Ordinance recognises that it will not always be possible for complaints to be resolved between the parties. In such cases, the individual has a right to make a complaint to the Employment & Discrimination Tribunal. This section provides an overview of the process for making a complaint, conciliation and the role of the Employment & Discrimination Tribunal, although it is not intended to be a procedural guide as to how to go about presenting a claim. There are strict time limits for making a formal complaint to the Tribunal.

10.1 Notification of potential complaint

One of the differences between complaints relating to work, and those relating to the provision of services, education, accommodation and clubs and associations is that, the individual will in most cases have to inform the provider / organisation of any **non-work complaints in writing (within six weeks)** and give them a month to resolve the issue, before the individual can proceed with making a formal, legal complaint. The purpose of this notification step is to ensure that the provider / organisation is aware of the potential claim and given an opportunity to resolve it before legal proceedings are commenced.

This notification requirement applies to any form of discrimination or harassment or victimisation or the proactive duty to make reasonable adjustments.

It does not apply to the sections of the Ordinance relating to:

- reasonable adjustments (other than proactive reasonable adjustments made not in consultation with a disabled individual);
- minor improvements; and
- the duties on landlords not to unreasonably refuse a request for a tenant to make a reasonable adjustment.

A person ("A") who considers that another person ("B") has committed an act by which A's rights under this Ordinance are infringed must before making a complaint to the Tribunal:

- **within six weeks of the act occurring notify B in writing of the potential complaint; and**
- **inform B that, if the potential complaint is not resolved within one month of the notification to B, A may exercise their right to make a complaint under this Ordinance.**

A may not make a complaint to the Tribunal until the one month period referred to above has elapsed.

See section 40 of the Ordinance

The Ordinance indicates the complaint must be in writing, this could include email or other forms of electronic communication. It is advised that a copy of this letter is retained. It is recommended that the notification should ideally identify the following:

- The person making the notification of intent to complain, and if it is submitted on behalf of someone else (for example a child) it should clarify the basis upon which it is made;
- The nature of the potential complaint/s, providing as much detail as possible about any issue or incident;
- The relevant Protected Ground or Grounds;
- The nature of the discrimination complained about, if possible (i.e. direct or indirect discrimination, discrimination arising from a disability, discrimination by association, harassment or victimisation);
- The date on which the potential complaint/s arose;
- If known, the identify of any individuals in respect of which the potential complaint or complaints are against;
- How the person complaining would like to be contacted, whether that be a meeting, a phone call or in writing
- What resolution the person complaining is seeking – this may simply be an apology, or even a commitment from the organisation to ensure internal training is provided to avoid similar issues arising again in the future; and
- The fact that if the potential complaint is not resolved within one month of the notification, then the person may exercise their right to make a complaint to the Employment & Discrimination Tribunal (the Tribunal) under the Ordinance.

The person making the notification of intent to complain, and if it is submitted on behalf of someone else (for example a child) it should clarify the basis upon which it is made.

Notification of an intent to complain must take place within **six weeks of the act occurring**, therefore it is important that any notification is made as soon as possible. Where a notification is not made within this period, the Tribunal does not have the discretion to extend the time period and the ability to pursue a complaint through the Employment & Discrimination Tribunal will be lost. In addition, as part of making a complaint to the Tribunal, a complainant will be required to confirm that they have complied with the notification requirements,

therefore it is important that a copy of any correspondence is retained.

A person is not allowed to make a formal complaint to the Tribunal until at least a month after their notification. This allows the service provider the opportunity to resolve the matter first.

However, the complainant may contact the Employment and Equal Opportunities Service (EEOS) for advice during this time and/or submit notification of intent to complain to the EEOS. Please follow the link to the complaints form page.

For more information on bring a claim before the Tribunal and the relevant time limits, please see Chapter 10 - the Complaints process.

10.2 Conciliation

When parties are unable to resolve the issues between themselves through notification of a potential complaint, early resolution of any complaint is encouraged through the Employment and Equal Opportunities Service (EEOS) and a pre-complaint conciliation process, the details of which are set out below.

Pre-complaint conciliation

Before anyone makes a formal complaint to the Employment & Discrimination Tribunal (Tribunal), providing they have complied with any obligation to notify the organisation/provider they wish to complain about, they must notify the EEOS of their intended complaint. This requirement to inform the EEOS about an intent to complain applies to all complaints of discrimination, victimisation, harassment or a failure to comply with the duty to make reasonable adjustments. Upon receiving a notification, the EEOS will ask the person who wishes to make the complaint and the service provider if they wish to engage in pre-complaint conciliation. If they do, the EEOS will then facilitate the conciliation to see if it is possible to reach a settlement. Any settlement agreement concluded by the EEOS will be legally binding and the complainant will then be unable to bring a claim before the Tribunal.

In order to make it easier to help parties reach an amicable resolution, any settlement discussions between the parties conducted through the EEOS will take place on a without prejudice basis. This means that nothing that is said, or any offers made, can be used as evidence as part of any subsequent Tribunal claim, unless both parties agree.

If either party does not wish to engage in pre-complaint conciliation, or the EEOS believes that it is not possible to settle the matter, then a certificate will be issued to the person who wishes to bring the claim. A person is not entitled to progress with their claim to make a formal complaint to the Tribunal until they receive a certificate from the EEOS. If they attempt to do so, then their claim will be rejected by the Tribunal. It is important to note that the period for bringing a complaint will be extended by pre-complaint conciliation – for further details see below.

Ongoing conciliation following a formal complaint

When pre-complaint conciliation is unsuccessful, a person can then decide if they wish to proceed with a formal claim. The complaint would be submitted to the Secretary of the Tribunal. The matter will again be referred to the EEOS. The parties will be given a further period to attempt to settle the matter through conciliation. Normally, six-weeks will be allowed for the parties to settle the complaint before the matter is referred to the Tribunal. If the complaint is not settled, then the claim may proceed to a hearing. The time period for conciliation can be extended where negotiations are in progress. The parties can engage in discussion to settle the complaint at any stage up to the conclusion of the final hearing.

Compromise agreements

Alternatively, it is open to the parties to settle complaints between themselves without referring the matter to the EEOS through a compromise agreement. In order for a compromise agreement to be valid:

- the agreement must be in writing;
- it must relate to the particular complaint;
- the person must have received advice from an independent adviser (being a lawyer or a trade union representative) as to the terms and effect of the proposed agreement;
- the agreement must identify the adviser; and
- the agreement must include a statement that the above conditions are satisfied.

10.3 Tribunal claims

Following conclusion of the pre-complaint conciliation process, and provided they have complied with the requirement to make a notification to the provider/organisation (the duty bearer) of the potential complaint, if a person is still dissatisfied then they can bring a claim before the Employment & Discrimination Tribunal (the Tribunal).

Responding to a claim

Responses by the organisation/provider are also submitted using a prescribed form. The appropriate forms are available here or upon request from the Tribunal.

Time limits

There are strict time limits for bringing claims. The formal complaint to the Tribunal should be made within a period of three months, beginning on the day when the act complained of was done. However, the period of time between the person notifying the EEOS of the intended complaint, in order to initiate pre-complaint conciliation, and the date on which they receive a certificate at the end of any pre-conciliation, will not count towards the time limit for bringing a claim before the Tribunal. In addition, if the time limit is due to expire within one month of the end of conciliation, it will also be extended so that a person would always have at least a full month in order to present their claim.

Example

A service user wishes to bring a claim of discrimination for an event which took place on 10 January, and so three months from that date would be 9 April.

The service user notifies the provider of the potential complaint on 17 January, so they are unable to make a claim to the Tribunal until 16 February.

The service user completed the intent to complain form and submitted it to the EEOS on 1 March. Following a period of pre-complaint conciliation, the parties were unable to resolve the matter, so the EEOS issued a certificate to the employee on 8 March. The period of time from the day after the notification was made to the day on which the certificate was issued was a total of 7 days. So, the final day for bringing a claim would be 16 April.

Alternatively, if the service user contacted the EEOS on 1 April and then received a certificate on 8 April, because even with the extra 7 days the final day for bringing a claim would normally be less than a month* after the end of pre-complaint conciliation, the final day would be extended to be 7 May.

*A month is defined as a calendar month according to the Interpretation and Standards Provision (Bailiwick of Guernsey) Law, 2016

The period of time can sometimes be extended, where the Tribunal is satisfied that it was not reasonably practicable for the complaint to have been made within the 3-month time frame, or that it would be just and equitable in the circumstances of the case to allow the further time.

When does the period for bringing the claim start?

The time for bringing a claim will run from the date on which the act complained of was performed. Where the act extends over a period of time, or relates to the term of a contract, then the act is treated as being done either at the end of the

conduct or the contract as the case may be.

Example

If on 1 March 2026 a student were to bring a claim for discrimination and victimisation about a series of related acts taking place over the last 6 months leading to their eventual temporary exclusion from the school. Even though the first of these acts would have taken place more than three months ago, the period of time for bringing a claim will run from the final act, which was their exclusion.

Where the complaint is about a failure to do something, then the Ordinance has specific rules for the purposes of time limits. If the duty bearer (i.e. the person who is deemed to be liable for the acts of their agents) explicitly decides not to take the step, such as making a reasonable adjustment, then the time for bringing a claim will run from that point. Where there is not an express decision, then time will begin to run either from the point at which the provider acts inconsistently, or after the passage of what would be considered to be a reasonable period of time.

Example

A tenant with a disability asks their landlord to make a reasonable adjustment to one of their policies. The landlord initially agrees to the request, but never actually makes the adjustment. After a period in which it would have been reasonable for the landlord to make the adjustment, they will be treated as having failed to do so.

Liability of principal and agent

Claims for discrimination can often be brought against both the organisation/provider (the principal), who is also deemed to be liable for the acts of their agents (where another person or entity takes action on their behalf), as well as the individuals themselves who commit the act.

An organisation will still be liable for the acts of their agents, even if they were done without their knowledge or approval, unless the organisation can demonstrate that they took all such steps as were reasonably practicable to prevent the agent from doing that act. This is sometimes referred to as the “statutory defence”.

As a minimum this would require organisations to:

- have an equal opportunities policy;
- provided equality training to staff; and
- seek to address issues when they became aware of them.

Example

A club member makes a notification of a potential complaint of harassment on the grounds of race by a member of the club’s committee. The club has an equal opportunities policy in place. The club provided adequate equality training to all committee members and the individual in question attended all of the sessions. The club has a strong record of dealing with any examples of harassment when they arise, as well as promoting equality and diversity in their membership and activities, and in this instance removes the individual from the committee and fully deals with the complaint.

In this scenario the club may be able to rely on the statutory defence that it did everything it should have, but the committee member may be personally liable for their actions.

Burden of proof

Where an individual brings a claim, they must prove that there are facts from which the Tribunal could decide or draw an inference that there has been discrimination. This is sometimes referred to as demonstrating a prima facie case.

If an individual has satisfied the Tribunal that there are facts from which it could conclude that there has been discrimination, then the burden of proof shifts to the organisation/individual responsible under the Ordinance (the duty bearer). In order to be able to defend a claim, the duty bearer will have to prove, on the balance of probabilities, that they did not act unlawfully. If the duty bearer's explanation is inadequate or unsatisfactory, the Tribunal may decide that the act was unlawful.

Awards

Where the Tribunal upholds a complaint of discrimination, it can either make an award of compensation, a non-financial award or both.

With respect to the landlord duties a) to make minor improvements and b) not to unreasonably refuse a tenant's request to make reasonable adjustments to physical features in the event of a complaint, only a non-financial award can be made. For further detail of the specific landlords duties see Chapter 7.4. These duties will not come into effect until a later date, and in relation to (b) this will not be until at least 1 October 2028.

A non-financial award is an order for the provider to undertake such steps that the Tribunal is satisfied:

- are practical;
- will not impose a disproportionate burden;
- relate to the discriminatory act; and
- will reduce the impact of that discrimination on the individual.

These steps must be undertaken within a specified period of time.

Example

The Tribunal upholds a claim for harassment on the grounds of sexual orientation due to a series of inappropriate comments made by a number of different members of staff towards a service user. None of the staff have ever received and equality training, therefore the Tribunal makes an order requiring this training to take place.

Compensation

The basic compensation for claims of discrimination against a provider of goods, services, facilities, education, accommodation or a club or association is that a person is entitled to an award consisting of:

- An amount for any financial loss up to a maximum of £10,000; and
- An amount payable for injury to feelings up to £10,000.

Compensation for injury to feelings will be awarded using a series on payment bands depending upon the seriousness of the discrimination and impact on the individual. For further details please see Prevention of Discrimination (Compensation) Regulations, 2023. See Legislation page Number 4 and number 5.

In addition, the Tribunal has a further discretion to reduce any award if it determines the person has unreasonably refused an offer by the provider of the service, which if it had been accepted would have had the effect of putting the person in the position in which they would have been, had the act of discrimination not occurred.

Joined complaints

Where a person makes more than one complaint against the same provider/organisation, or against a number of connected persons, for example the service provider and a number of individuals who all work for them, then the Tribunal may decide to hear those complaints together (known as joined complaints).

Where there are joined complaints against connected respondents then the maximum award the Tribunal can make is:

- An amount for any financial loss up to a maximum of £10,000; and
- An amount payable for injury to feelings up to £10,000.

The exception to this is where there is a claim or multiple claims of victimisation in addition to other complaints. In that scenario, the Tribunal may make a further award of:

- An amount for any financial loss up to a maximum of £10,000; and
- An amount payable for injury to feelings up to £10,000.

Example

A tenant successfully brings a claim for direct discrimination and harassment on the grounds of race and religious belief, and victimisation in relation to a complaint they raised which led to their eviction. The maximum the Tribunal could award the person would be financial loss of up to £20,000 and a further award of injury to feelings of up to £20,000.