



## Chapter 1: Discrimination and other prohibited conduct

### Prohibited conduct

The Ordinance makes it unlawful for certain organisations to discriminate against service users because of a Protected Ground. It is important to understand that discrimination arises in lots of different contexts, and often it can be unintentional. However, because of the impact of discrimination on the individual, intent is generally considered irrelevant when considering whether or not there has been discrimination.

### Why do we need this legislation?

The Ordinance has been created to give organisations responsibilities to:

- eliminate discrimination, harassment, and victimisation and other prohibited conduct;
- advance equality of opportunity for everyone;
- provide reasonable adjustments to ensure that persons with disabilities are not placed at a substantial disadvantage; and
- in the case of public sector service providers, schools or education providers implement an accessibility action plan.

The Ordinance has been put in place to ensure that organisations take steps to meet different needs and to ensure equality, or a greater degree of equality, for service users, when considering any of the Protected Grounds. This guidance has been prepared to assist organisations in creating policies that make it clear what type of behaviour is unlawful. This should in turn make resolving any issues that

occur within this environment easy to resolve internally as most inappropriate behaviour, whether intentional or not, should be clear to identify. In this respect the Ordinance should assist the drafting of procedures to deal with potential complaints by service users, to ensure that there is a framework to follow. We cover such policies in [Chapter 9](#).

## **Tribunal - a place of last resort**

Naturally, the best outcome for a dispute between an organisation and a user is to be able to resolve matters without ever having to involve the Employment and Discrimination Tribunal (the Tribunal). When a party feels that they have been unfairly treated, have notified the organisation of the potential complaint and there has been no resolution, they may consider making a complaint to the Tribunal. For more information on the tribunal process please see [Chapter 10](#).

## **Intent**

It is unhelpful to consider intent when trying to address the issue of discrimination, because it leads to unhelpful stereotypes and attitudes, such as it is only “racists” that discriminate on the grounds of race, because that misses the point. In most instances indirect discrimination will arise not due to any deliberate intent to discriminate, but from a lack of understanding, sub-conscious biases or even a failure to consider the impact of a particular policy on different groups.

## **Types of discrimination**

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**There are four main forms of discrimination:**

- [Direct discrimination](#)
- [Indirect discrimination](#)
- [Discrimination by association](#)
- [Discrimination arising from a disability](#)

See Part II of

the Ordinance

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## Other types of prohibited conduct

In addition, the Ordinance sets out four main forms of prohibited conduct:

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- [Harassment](#)
  - [Victimisation](#)
  - **Advertisements indicating an intention to discriminate**
  - **Causing, pressuring or instructing someone to commit a prohibited act**

See Parts III and IV of the Ordinance

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This section of the guide therefore seeks to explain in what circumstances someone has committed an unlawful act of discrimination.

### 1.1 What is direct discrimination?

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**Under the Ordinance direct discrimination happens where:**

**A person (A) discriminates against another (B), if because of a Protected Ground, A treats B less favourably than A treats or would treat others. For these purposes the Protected Grounds at the time of the less favourable treatment may:**

- **exist**
- **have previously existed but no longer exist**
- **exist in the future; or**
- **be imputed to B by A**

See section 6 of the Ordinance

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Direct discrimination is the most commonly understood form of discrimination and arises when a person is treated worse compared to someone else because of a Protected Ground. Accordingly, in direct discrimination claims it is necessary to make a comparison with the treatment of someone else who doesn't have the

Protected Ground. That person is known as a comparator (see below). If an organisation would treat the comparator in the same way, then treatment will not be considered to be direct discrimination.

The less favourable treatment must be because of a Protected Ground. For example, it would not be unlawful to treat someone less favourably because of their socio-economic background. Conduct can amount to discrimination even if it is unintentional. Organisations need to ensure that they have appropriate checks in place to enable the swift resolution of any issues involving direct discrimination without the need for formal resolution. Ultimately, however, if the issue did go to the Tribunal, it would have to consider the reason why the person was treated less favourably.

### **Example**

It would be direct discrimination on the grounds of religion or belief for a sports club or association to refuse to admit a member because they are a Muslim. It would also be direct discrimination to refuse to admit a member because it is assumed a candidate was Muslim even if they do not have the Protected Ground (for example they may be of Asian origin.)

### **Exceptions**

In addition, direct discrimination cannot be objectively justified. However, it is important to remember that there are a number of exceptions under the Ordinance. For example, there is an exception that means a religious organisation can require its members to be of a particular religion. The purpose of an exception is to permit directly discriminatory treatment that would otherwise be unlawful. For further details on the exceptions to the Ordinance see [Chapter 8](#).

### **Example**

It would be lawful for a Catholic club or association which falls within the definition of a “religious organisation” (which is an organisation with an ethos based on religion) to require its members to be Catholic.

## **What is meant by a “comparator”?**

As mentioned above if you want to show that you have suffered direct discrimination, you need to compare your treatment with the treatment of a comparator. This is someone who doesn't have the same Protected Ground as you, but is otherwise in the same situation as you, or a similar situation. The term comparator isn't defined by the Ordinance but it may be a real person or if one does not exist, it is possible to use a hypothetical comparator who has all of the same characteristics apart from the Protected Ground in order to make the assessment.

### **Example**

A student who is from an ethnic minority received a fixed term exclusion from school owing to what the education provider claims are concerns around behaviour. Another student with a different racial background who had similar behavioural issues did not receive a fixed term exclusion. If the first student brought a claim for direct discrimination, a comparator could be the second student who was not excluded.

## **What is meant by someone in a similar situation?**

It is not necessary for you to be in an identical situation as the comparator. But there must be sufficient similarities between the two of you to show that the reason for the worse treatment is the Protected Ground and not something else.

### **Example**

A school refuses to allow a Muslim student time off for Friday prayers. One of their fellow students is a Christian and attends a bible study group on Wednesday afternoons. They asked for permission to leave their last lesson 30 minutes early to attend these groups.

The Muslim student could compare their situation with the Christian student as they also need time off from lessons for religious reasons in a similar situation. The comparison can be made because the religions are different but there are similarities between the two requests.

### **What is a “hypothetical comparator”?**

When it's not possible to find a real person who's in the same or similar enough situation to you to make a comparison, perhaps because the situation you're in has never happened before, then in this case you can use a hypothetical comparator. This involves considering how an organisation would have treated a hypothetical person without the Protected Ground in the similar circumstances. It can sometimes be useful to consider how an organisation has treated other people in different circumstances in order to make the comparison.

### **Example**

A bisexual person rents a property from an accommodation provider. One day they have an accident carrying a large piece of furniture into the property, which is dropped and causes some small physical damage to the property. Because of this damage, the accommodation provider evicts the tenant. This situation has never happened before so there's no actual person to be compared with. Six months earlier, the accommodation provider gave a written warning to another tenant and required them to cover the cost of water damage due to leaving their bath running but did not evict them.

Because this was a similar situation, involving damage to the property, the treatment of this service user can be used to try to show that the service provider would not have evicted someone who is not bisexual.

### **Finding a comparator in disability discrimination cases**

If you're directly discriminated against because of disability, the comparator is someone who doesn't share your particular disability but who has the same abilities and skills as you. The comparator can be someone who's not disabled or someone with a different disability.

### **Example**

A student applying for admission to a school has carpal tunnel syndrome and can type 50 words per minute using an adapted keyboard, but only 30 words per minute on a normal keyboard. The admission process used by the school requires students to write an essay on a computer. If the student feels they were discriminated against when applying for admission because of their disability, their comparator would be someone who doesn't share their disability but who can type 50 words per minute using a normal keyboard.

## 1.2 What is indirect discrimination?

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**Under the Ordinance indirect discrimination happens where:**

**A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which has a discriminatory effect on B in relation to a Protected Ground.**

- **A provision, criterion or practice has a discriminatory effect on B in relation to a Protected Ground if:**
- **A applies, or would apply, it to persons with whom B does not share the ground;**
- **it puts, or would put, persons with whom B shares the ground at a particular disadvantage when compared with persons with whom B does not share it;**
- **it puts, or would put, B at that disadvantage; and**
- **A cannot show it to be a proportionate means of achieving a legitimate aim.**

See section 8 of the Ordinance

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Indirect discrimination happens when there is a policy that applies in the same way for everybody but disadvantages a group of people who share a Protected Ground, and a person is disadvantaged because they are part of this group. If this happens, the person or organisation applying the policy must show that there is a good reason for it – this is known as objective justification.

To prove that indirect discrimination is happening or has happened there are four distinct steps:

- there must be a policy which an organisation is applying equally to everyone (or to everyone in a group that includes the person claiming the discrimination);
- the policy must disadvantage people with a particular Protected Ground when compared with people without it;
- the individual must be able to show that it has, or will, disadvantage them personally; and



- there is no objective justification for the policy, that is to say that the organisation cannot show that there is a good reason for applying the policy despite the level of disadvantage to people with the same Protected Ground.

### **Provision, criterion or practice**

A policy for these purposes may include any provision, criterion or practice, such as:

- an admission policy for an education provider or a club or association;
- opening hours for a service provider; or
- a housing allocation policy for an accommodation provider.

It is immaterial whether the organisation intended the policy to discriminate or not. The issue is whether people have been disadvantaged by the policy. Care needs to be taken when creating or changing policies to ensure that indirect discrimination does not happen.

It should be noted that there does not need to be a formal policy in place in order for a service user to challenge a decision affecting them. However, generally, a provision, criterion or practice cannot be a one-off action unless there is some form of continuation in the sense of how things are done by the organisation in the future.

#### **Example**

A contract for the provision of services to a person with a disability was terminated, but the service provider failed to give proper notice as required under the terms of the contract due to human error. There was no indication the error had anything to do with the service user's disability (i.e. it was not direct discrimination), and as there was no chance of future repetition, in these circumstances this would not amount to a provision, criterion or practice, even if it did place the person with the Protected Ground at a disadvantage.

## Objective justification

If a policy causes a disadvantage, then the onus is on the organisation to objectively justify it. First, they must show their policy is designed to achieve a “legitimate aim”. This must be a non-discriminatory reason such as economic efficiency or health and safety. However, a legitimate aim shouldn’t solely be about cost, but it could be about cost and something else. An organisation cannot simply argue that to discriminate is cheaper than avoiding discrimination.

### Example

A wood-work evening class has a policy of banning necklaces as there is cutting machinery used and there is a risk that this could get caught up. This policy would be considered to be a provision, criterion or practice.

This might place an attendee who wears necklaces to show their faith at a disadvantage. However, if the course provider can show there’s a good health and safety reason, this would be considered to be a legitimate aim, and if it is proportionate (i.e. there is no other way to achieve the health and safety objective), then it would still be lawful.

To show that its actions were proportionate, an organisation does not need to show that it had no alternative course of action; rather, it must demonstrate that the measures taken were reasonably necessary. The actions will not be considered proportionate if the organisation could have achieved the same objective through less discriminatory means.

### Example

A college that offers catering lessons has a rule that beards are forbidden for people in those lessons. This rule may amount to indirect religion or belief discrimination against the Sikh and Muslim students unless it could be objectively justified.

If the aim of the rule is to meet food hygiene or health and safety requirements, this would be legitimate. However, the college would need to show that the ban on beards is a proportionate means of achieving this aim. In this regard the college would need to be able to demonstrate why the same aim could not be achieved by less discriminatory means, such as providing a beard mask.

### **1.3 What is discrimination by association?**

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**Under the Ordinance discrimination by association happens where:**

**A person (A) discriminates against another (B) who is associated with another person (C) if:**

- **A treats B, by virtue of that association, less favourably than a person who is not so associated is, has been or would be treated; and**
- **Similar treatment of C would constitute direct discrimination.**

See section 7 of the Ordinance

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Discrimination by association occurs when a person is treated less favourably because they are linked or associated with person with a Protected Ground. There is no actual definition of what an “association” is in the Ordinance. An “association” might include a relationship with a friend, spouse, partner, parent, child, grandchild or another person with whom they are associated.

#### **Example**

It would be discrimination by association if an accommodation provider chose not to rent a property to a parent because they had a disabled child with Tourette’s syndrome and was concerned that this might annoy the other residents.

As with direct discrimination, discrimination by association cannot be justified on any level. It is irrelevant if it is unintentional. However, in order to show discrimination by association, there must be a comparator. That comparator can

either be real or hypothetical, but it is necessary to consider how an organisation would have treated a person who was associated with someone who did not have the Protected Ground.

### **Example**

A member of a club does not attend any club events for 12 months as they have been unable to do so as they were caring for their disabled sister. The club has a rule that if members do not attend club events for 12 months, then their membership is terminated as they have a long waiting list. Individuals can reapply, but they must go to the bottom of the waiting list. If the club can show that another member (as a comparator), failed to attend club events for 12 months also had their membership terminated, then the claim for discrimination by association would fail. The two members had been treated in a similar way.

## **1.4 What is discrimination arising from a disability?**

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**Under the Ordinance Discrimination arising from a disability occurs where:**

**A person (A) discriminates against a disabled person (B) if:**

- **A treats B unfavourably because of something arising in consequence of B's disability; and**
- **A cannot show that the treatment is a proportionate means of achieving a legitimate aim.**

**It is not discrimination if A did not know, and could not reasonably have been expected to know, that B had the disability.**

See section 9 of the Ordinance

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Discrimination arising from disability occurs when an organisation treats a person unfavourably because of something that arises as a consequence of their

disability (and which cannot be objectively justified). However, an organisation will not be liable if they didn't know the person was disabled and could not reasonably be expected to have known.

This protection prevents someone from being treated badly because of something connected to their disability, such as needing time off for medical appointments, or side effects from drugs that alter someone's behaviour.

Discrimination arising from disability is unlawful unless the organisation is able to show that there is a good reason for the treatment of the person and it is proportionate. This is known as objective justification.

### **Example**

A student with a disability is not included within a school trip because of the medical equipment that they would need to take with them. This would constitute unfavourable treatment because of something arising from their disability. It will therefore be necessary for the education provider to demonstrate its treatment was objectively justified.

### **Objective justification**

If the treatment of a service user is because of something arising from their disability, then the onus is on the organisation to objectively justify it. First, they must show their treatment is designed to achieve a "legitimate aim". This must be a non-discriminatory reason such as economic efficiency or health and safety. However, whilst a legitimate aim shouldn't solely be about cost, it could be about cost and something else. An organisation cannot simply argue that to discriminate is cheaper than avoiding discrimination.

To show that its actions were proportionate, an organisation does not need to show that it had no alternative course of action; rather, it must demonstrate that the measures taken were reasonably necessary. The actions will not be considered proportionate if the organisation could have achieved the same objective through less discriminatory means.

This does not mean it is unlawful to take any detrimental steps against a person with a disability that relate to that disability if the reason for doing so relates to

their disability, only that any steps taken must be objectively justifiable. For further information and examples of objective justification see [Chapter 1.2](#).

### **Example**

Following an accident an existing tenant of a property becomes blind and needs an assistance dog. The accommodation provider has a strict no dogs policy in that particular property, because one of the other residents has asthma and is particularly allergic to dogs, to the extent they would pose a serious health risk.

In these circumstances where the landlord is unable to allow the assistance dog, the landlord should first consider the possibility of relocating the tenant to another property. If there were no relocation opportunities available, ultimately the landlord may be able to refuse to allow the assistance dog, which would ultimately lead to the vacation of the property by the tenant, because even though the less favourable treatment arose because of a disability, it would likely be objectively justified.

### **Knowledge of the disability**

It is not discrimination if an organisation is able to show that they did not know and could not reasonably have been expected to know, that the person had the disability. In this context whilst the Ordinance does not require an organisation to be a medical specialist, equally it is not possible for them to ignore obvious signs that there is a potential issue, and they should do all they can reasonably be expected to do to find out information about potential disabilities in the context of the relationship. Obviously, what will be expected will differ significantly between different types of organisations. It is recommended when making enquiries about disability, organisations should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.

### **Example**

A student who has a good attendance and performance record, has recently become emotional and upset during lessons, for no apparent reason, and has started having regular absences. They have also been repeatedly late for school and made some mistakes in their work. The sudden deterioration in the student's time keeping and performance and the change in their behaviour should have alerted the school to the possibility that something is wrong, including that they may have a disability. As such, any action the school may take in relation to these issues would need to be objectively justified, even though they have never been specifically told the student has a long-term impairment.

## **1.5 What is harassment?**

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**Under the Ordinance, a person (A) harasses another (B) if:**

- **A engages in unwanted conduct related to a Protected Ground; and**
- **Such conduct has the purpose or effect of violating B's dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.**

**OR**

- **A engages in unwanted conduct of a sexual nature;**
- **Such conduct has the purpose or effect of violating B's dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment for B.**

**OR**

- **A engages in unwanted conduct of a sexual nature or that is related to a Protected Ground;**
- **Such conduct has the purpose or effect of violating B’s dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment for B; and**
- **Because of B's rejection of, or submission to, the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.**

See section 11 of the Ordinance

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The Ordinance recognises three different forms of harassment, these are:

- Harassment related to a protected ground;
- Sexual harassment; and
- Harassment related to the rejection or submission to unwanted conduct.

Whilst there are similarities between the three types, including the fact that they all relate to unwanted conduct, and require that conduct to have the purpose or effect of violating a person’s dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment, they do subtly differ around the reason for that conduct.

### **Unwanted conduct**

There is no definition of what is considered as “unwanted conduct” for the purposes of the Ordinance, but this can range from a one-off incident to a campaign of harassment, it can include actions such as spoken or written words, banter, posts on social media, physical gestures, jokes or pranks. However, for “unwanted conduct” to amount to harassment it must first either be related to a Protected Ground or of a sexual nature.



**Example: Unwanted behaviour could include:**

- offensive emails;
- spoken or written abuse;
- tweets or comments on websites and social media;
- images and graffiti;
- physical gestures;
- facial expressions; and/ or
- banter that is offensive to you

**Violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.**

All forms of harassment require that the conduct must have either the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. For these purposes it is irrelevant whether or not the conduct was intentional or that the victim did not make the perpetrator aware that the conduct was unwanted.

**Example**

A group of members at a club download and share offensive images amongst themselves that make fun of the Islamic women who wear hijabs. A Muslim member then inadvertently observes this taking place. They could make a claim for harassment if the behaviour creates a hostile and humiliating environment for them.

In this situation, it does not matter that the members never intended for their fellow member to know this was taking place, and it was only intended as "banter".

**The perception of the recipient**

In making the assessment as to whether the conduct constitutes harassment, consideration must be given to the perception of the recipient of the conduct in question. Attention should be given in the circumstances to whether it is reasonable for the conduct to have that effect. In considering whether such conduct would be expected to have the effect it did, an objective test is required. If offence is caused unintentionally, there may be no harassment where it can be shown that the person is being oversensitive. Care should be taken however, about rejecting a complaint of harassment as what one person finds is acceptable and not offensive may not be the case for a different person.

### **The need for a comparator or to have the Protected Ground yourself**

It should also be noted that there is no need for a comparator for harassment related to a protected ground or sexual harassment. This means the individual does not have to show that they were, or would have been, treated less favourably than another person. The introduction of a comparator is however a requirement in cases of harassment related to the rejection or submission to unwanted conduct.

In addition, for an individual to be the victim of harassment, they do not necessarily have to have the Protected Ground themselves.

#### **Example**

If a landlord racially abuses an African tenant during a tenants meeting, whilst the African tenant would have a clear claim for harassment related to race, equally other tenants offended by the comments, even if they themselves are not African, could also bring a claim of harassment related to race.

### **Sexual harassment and conduct of sexual nature**

Even though sex is not currently one of the Protected Grounds in the Prevention of Discrimination Ordinance, the Prevention of Discrimination Ordinance does specifically make sexual harassment unlawful. As with harassment related to a Protected Ground, there must be conduct of an unwanted nature and it must also have the required purpose or effect, but in order to constitute sexual harassment the unwanted conduct must be of a sexual nature.

There is no definition of what conduct will be considered to be of a sexual nature, but this is likely to include sexual comments or jokes, displaying sexually graphic pictures, suggestive looks, staring or leering or propositions and sexual advances.

Where there is conduct of a sexual nature which then goes on to violate a person's dignity or create an intimidating, hostile, degrading, humiliating or offensive environment, then that will constitute harassment.

### **Example**

A private tutor starts making sexual comments about a student's body, getting very close to them and resting a hand on their arm. It makes the student feel very uncomfortable and intimidated. This is conduct of a sexual nature and has the effect of creating a degrading, humiliating or offensive environment, and so constitutes harassment.

Guernsey has a separate [Sex Discrimination Ordinance \(Employment\) \(Guernsey\) Ordinance, 2005](#) which makes sex discrimination in employment unlawful, but which does not cover sexual harassment.

### **Harassment due to rejection or submission of unwanted conduct**

The final form of harassment occurs, where there has been conduct of a sexual nature or that is related to a Protected Ground which has violated a person's dignity or created an intimidating, hostile, degrading, humiliating or offensive environment, and either because of the rejection of, or submission to the conduct, the recipient is subject to less favourable treatment, compared to if they had not rejected or submitted to the conduct. Unlike the other two forms of harassment, this requires the use of a comparator to establish if less favourable treatment has taken place.

### **Example**

Using the example above, if the student rejects the tutor's advances and the tutor then treats the student less favourably as a result of them rejecting the advances, this would be harassment (e.g. by giving poor marks for assignments or by giving a poor reference compared to other students of similar standing). If the student makes an official complaint about the advances and is then treated unfavourably as a result, this would be victimisation.

### **Freedom of speech**

The Ordinance contains an exception relating to freedom of expression of an opinion, political view, religion or belief or other implied or actual view. However, the exception cannot apply where there has been deliberate or intentional harassment, or, where the conduct occurred in circumstances where it would appear to a reasonable person that the conduct would create an intimidating, hostile, degrading or offensive environment.

### **Example**

A landlord puts up a sign in a block of flats with an anti-gay marriage slogan. The landlord concerned is a devout Christian and strongly believes gay marriage is wrong.

Despite the fact that the landlord is expressing their religious belief, and even if it was not the purpose of putting up the sign to cause offence, if it has the effect of causing offence to a tenant (whether or not they are homosexual), this would not fall under the exception, because viewed objectively the putting up of the sign in this way would likely have the effect of causing offence.

### **Protection of Harassment (Bailiwick of Guernsey) Law, 2005**

It should be remembered that in addition to rights under the Ordinance individuals may have rights under the Protection of Harassment (Bailiwick of Guernsey) Law, 2005 [see Legislation page number 14](#), which creates a criminal offence of harassment as well as providing for civil remedies.

## **1.6 What is victimisation?**

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**Under the Ordinance, victimisation occurs where:**

- **A person (A) victimises another person (B), if A subjects B to a detriment because B has:**
- **made a complaint under the Ordinance;**
- **brought proceedings against A or any other person under the Ordinance;**
- **given evidence or information in connection with proceedings brought by any person against A or any other person under the Ordinance;**
- **otherwise done anything under or by reference to the Ordinance in relation to A or any other person (including, for the avoidance of doubt, opposed acts which contravene the Ordinance);**
- **alleged that A or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of the Ordinance; or**

**because A knows that B intends to do any of these things, or suspects that B has done, or intends to do, any of them.**

See section 10 of the Ordinance

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Victimisation arises when a person subjected to a detriment because they complained of discrimination or supported another person's complaint of discrimination. This is sometimes known as a protected act.

In claims of victimisation there is no need for a comparator.

### **What's meant by detriment?**

Detriment means you've suffered a disadvantage of some sort or been put in a worse position than you were before.

**Example:**

A Christian club member raises a complaint that they have been the subject of harassment related to their religion. The raising of a complaint in these circumstances constitutes a protected act.

If the club then terminates their membership as a result of them raising the complaint, this would be victimisation because the member has suffered a disadvantage as a result of raising a complaint.

**Complaint can be against a different person and does not have to be successful**

Victimisation is often carried out by the same person that has been the subject of a discrimination complaint, but this does not have to be the case.

It does not matter if the original complaint that is the subject of the protected act is upheld or rejected. Indeed, victimisation can still occur as a result of someone making or stating they intend to make a complaint, even if they ultimately never raise one.

However, the Ordinance does state that victimisation cannot be claimed where the victim gives false evidence or information, or makes a false complaint or allegation, or where the evidence or information is given, or the complaint or allegation is made, in bad faith.

**Example**

A person brings an unsuccessful Tribunal claim against their former employer for discrimination on the grounds of sexual orientation. The case is widely reported in the local media.

The person then makes an offer to rent a flat, but during the process the landlord recalls the previous press coverage and rejects the offer because they believe that the person is a troublemaker. This would amount to unlawful victimisation, even though the original complaint was against someone else, and it was unsuccessful.