

**LEARNING
THE LESSONS
FROM
EMPLOYMENT
TRIBUNALS**

Stakeholder logos

STAKEHOLDER COMMITMENTS

All the Police Service stakeholder organisations are committed to resolving workplace disputes at the earliest opportunity. Although sometimes perceived to be on different sides, they are all committed to working together to develop non-discriminatory workplace practices.

1. The Police Authority

The fundamental statutory duty of every police authority is to secure an efficient and effective police force for its area. Police authorities also have a statutory duty to ensure continuous improvement in the provision of local policing services (best value).

Grievance and Employment Tribunal (ET) cases provide a significant insight into the health of any organisation. So it is critical that authorities ensure that lessons are learned from all grievance and ET cases, however resolved. Authorities should look for evidence that the force considers proactively the lessons that can be identified and learned from an analysis of grievances and ETs which impact on wider force policy and practice. If such lessons are not learnt, resources — financial and staff — will continue to be expended on avoidable cases. This goes to the heart of efficiency and effectiveness.

High profile grievance and ET cases can have significant implications for both:

- confidence in policing, particularly amongst minority ethnic communities and other minority groups; and
- confidence amongst both officers and staff in the service as an employer

Accordingly, police authorities should have mechanisms in place to ensure that they are aware of all such cases and regularly scrutinise data on all grievance and ET cases to identify differences between different groups, monitor trends and tackle any discrimination.

Authorities have a legal and moral responsibility to the individual staff involved and are committed to ensuring that grievances and ETs are resolved at the earliest opportunity and that cases are settled wherever possible to avoid prolonged and damaging disputes and to minimise the impact on both staff morale and public confidence in policing.

As part of the ***People Matters*** framework, the APA has issued detailed guidance: “Tackling Discrimination: Police Authority Oversight and Scrutiny of Grievance Procedures and employment Tribunals” to help authorities exercise effective oversight of grievance and ET cases.

2. The Association of Chief Police Officers

If left unchallenged, workplace disputes can very easily become Employment Tribunal cases. Workplace disputes that are fought in the public arena can damage a Force’s external image as well as its internal culture and morale. They can destroy the working relationships within a Force, and they can damage the personal lives of the people involved. Forces can lose valuable staff and officers, and those staff and officers can lose their careers.

As Chief Officers, we are committed to ensuring equality of opportunity for all in the police service family. We are responsible for establishing a culture in each Force that allows every person to contribute to the overall effectiveness of the service in an environment of dignity, and with respect for different cultures and personal needs.

It is essential that every manager and supervisor understands the need to try hard to resolve workplace disputes fairly, speedily and (wherever possible) confidentially. All sides need to be willing to come to the table committed to resolve these disputes at the earliest possible stage. For the occasions when that proves impossible, it is essential that there are clear and transparent grievance and complaints procedures for people to use. .

We therefore believe that litigation should be a last resort, and in the interests of all concerned we are committed to attempting to resolve disputes without the need for an Employment Tribunal hearing, and to learning the lessons of earlier cases.

3. Police Superintendent's Association of England & Wales

The Superintendent's Association of England and Wales seeks to promote good employment practices that benefit a diverse workforce and enable Forces to provide an effective and efficient policing service to the community.

Disputes in the workplace can adversely affect not just personal relationships at work, but have a detrimental effect on people's lives and careers. Employment Tribunal cases can damage a Force's reputation and standing in the wider community and dissuade applicants from joining a job where people appear to receive unfair treatment.

We work with other Service stakeholders to improve the policies and practices used within the Service. We are committed to resolving workplace complaints at the earliest opportunity. We can provide support and advice to our members if they are involved in a workplace dispute either as the complainant or as a Stage Manager investigating a complaint. In appropriate circumstances we can consider funding a complainant's case to a Tribunal hearing and similarly can support officers who are named as Respondents or Witnesses.

4 The Police Federation of England and Wales

No one benefits from protracted disputes in the workplace and the Federation is committed to resolving complaints at the earliest opportunity. Officers are encouraged to identify at an early stage what they want to achieve a resolution to their grievance and to consider possible alternative resolution strategies that are both practical and achievable.

The Police Federation can fund an officer's case to an Employment Tribunal. Where appropriate, the Federation Representative can arrange for the Federation's solicitors to review the circumstances of the case and give a legal opinion on its merits, on the potential costs of taking the case and the potential award.

The Federation balance this with an analysis of the benefit of the case to the officer and the Service before deciding whether to fund the case. The Federation also assess the costs, merits and benefits of naming individual officers as Respondents when deciding whether to fund each part of an applicant's case. The Federation funding of a case is regularly reviewed and funding may be withdrawn if, for example, the circumstances of the case changes so that there is no longer a reasonable prospect of success, the member refuses a reasonable offer of settlement or otherwise acts in a manner against the advice of the instructed solicitors or detrimental to the interests of the Federation.

5 UNISON

It is acknowledged that workplace disputes are damaging to both the individual and the employer. UNISON is committed to fair and effective grievance resolution. We will work with the employers to develop clear policies that have the confidence of both sides in order to achieve this objective. We will endeavour to resolve a member's grievance at the earliest possible stage. However where this is not possible, and our advisors consider that the matter should be resolved at an Employment Tribunal, we will support our members throughout the process, provided the member adheres to the advice they are given.

6 The National Black Police Association

The NBPA is committed to providing tangible support for all black staff within the service and those dealing with race issues.

In order to improve the working environment and eradicate racism within the service it is imperative that the Police Service ensures that BME staff are seen to be assisting with the development and implementation of policies affecting both BME staff within the service and the community.

The NBPA is committed to assisting where appropriate an early resolution of grievances within the work place, this is essential if we are to reduce stress, mental and physical strain suffered by staff, not to mention the financial drain to all parties concerned, should the matter continue to Employment Tribunal.

In order to underpin our commitment to supporting the organisation in dealing with BME staff, the NBPA is developing a network of trained support workers within local Black Police Associations around the country that can be called upon to assist members at an instance notice. These members will provide a structured and professional approach in providing support and not necessarily within their own force areas.

It is essential that all the stakeholders work together in order to build confidence within the service and send out a clear message to BME staff that they are in fact valued within the organisation. The confidence and reassurance of BME staff within the service will be reflected within the community, the effects being an increase in recruitment, retention and hopefully progression of black staff within the service.

7 The Gay Police Association

The GPA can provide advice and guidance to the Force, the recognised Staff Associations and/or Trade Union and the individual officer or member of staff. Although we have been mostly involved "post-event", from December 2003 individuals who suffer discrimination or harassment at work on the grounds of sexual orientation will be able to take claims to an Employment Tribunal. We believe that it is much better to address cultural issues in a Force before anything happens and the GPA can help Forces review their policies and provide training (although we charge for this). We can also provide welfare support to individuals and act as an intermediary between a Force and an individual in an effort to resolve disputes in the workplace.

8 The British Association of Women in Policing

BAWP aims to facilitate and contribute to discussions on issues of concern to all officers, providing the women's perspective. We provide a view on policies and procedures to the Home Office, Staff Associations, Police Authorities and other agencies offering a gender perspective. BAWP believes it is important to influence the culture of the organisation in a professional way whilst encouraging constant improvement in conditions for women in the service. We also provide a network of support and advice to individuals who seek our assistance. We welcome members from all sections of the service male and female, sworn and unsworn. BAWP formed part of the executive group responsible for the Gender Agenda and we continue to promote its aims in a variety of ways including provision of two Professional Development Days each year for members and non-members. The topics covered relate to the long-term aims set out within the Gender Agenda.

9 Force Legal Advisors

Force Legal Advisers have the following roles in resolving employment disputes and matters before Employment Tribunals:

- to advise the Force on its legal liability and the likely awards and orders for compensation that Employment Tribunals or others may make. Not all employment disputes entitle an employee or officer to bring a claim to an Employment Tribunal or bring with it the prospect of any compensation should the employee's complaint be justified. The Force Lawyer can usefully identify this for the Force;
- to advise upon the range of possible resolutions to a particular dispute or issue and what might best present itself as the best solution to the Force and Police Service;
- to negotiate and draft clear practical and enforceable agreements or resolution of disputes;
- to gather, prepare and evaluate the evidence and prepare the defence by the Force of any claim before a Tribunal and represent or arrange for the representation of the Force should Tribunal proceedings result;
- to advise upon, negotiate and if necessary, represent before a Tribunal, any awards or damages that may result from unlawful conduct or an employment decision contrary to law.

It is a perception that Forces too readily adopt a defensive stance through their lawyers which inhibits reaching a fair and sensible solution to employment disputes. Employment proceedings are adversarial in nature and the tribunal process relies on each side presenting their case upon which the Tribunal reaches a just and legal decision. The Force Lawyer properly has the role to prepare and present the defence of the Force to an application for an Employment Tribunal. It is however appropriate that lawyers play a wider role in considering and achieving solutions to the employment issues beyond and around the tribunal process. Best practice suggests that is done as part of a team including personnel specialists and appropriate managers addressing the legal and practical issues to develop workable solutions in the best interests of the Force and its officers and staff.

RECOMMENDATIONS

During 2003 representatives from a number of Police Service stakeholders met to consider how the Service could learn lessons from the Employment Tribunal cases that had been taken against Forces in England and Wales. It was felt that without a positive intervention strategy, discrimination would remain institutionalised within the Service and cases would continue to be taken; the public image of the Service would continue to suffer; the personal and professional lives of officers and staff in the Service would continue to be damaged and the Service would lose the skills and experience of valuable personnel.

The Stakeholders included representatives from the Home Office, the Association of Police Authorities, Her Majesty's Inspectorate of Constabulary, the Association of Chief Police Officers, the Superintendent's Association of England and Wales, the Police Federation of England and Wales, UNISON, the National Black Police Association, the Gay Police Association, the British Association of Women in Policing and the Police Legal Advisors Association.

The Stakeholders made the following recommendations to the Service:

Resolution not Confrontation

1. By asking an Employment Tribunal to determine a workplace dispute a Force will have failed its workforce. Although people appear before an Employment Tribunal in order to get an acknowledgement that they were right, there are no real winners. Appearing at an Employment Tribunal is a traumatic experience for all concerned, and is costly in terms of money, publicity and careers. Resolution strategies should be tailored to individual needs. There should be a duty on everyone to come to the table to resolve complaints

Lawyers should advise and Managers decide

2. As soon as the Force receives notification from the Employment Tribunal that a claim has been lodged the HR Director or ACC responsible for Personnel should consider how the complaint could be resolved, or whether it should be resolved. Only when he/she is satisfied that there is no possibility of resolution should the HR Director or ACC, after receiving advice from the Force solicitor, the Force Professional Standards Unit and the Force Equality Advisor, consider the costs, merits and benefits of defending the claim at an Employment Tribunal.

Duty time for Representatives dealing with discrimination

3. Duty time for staff association representatives should be made available to representatives involved in discrimination issues in the same way that it is currently available to officers acting as a friend under the Police Misconduct Regulations 1999 and in respect of the Health and Safety (Police) Regulations. Fairness and equality issues frequently span misconduct and Forces must create an open opportunity to address all matters. This is becoming increasingly important as discrimination issues are extended to encompass not just sex and race discrimination, but also sexual orientation, religion and belief and disability.

Use of the Statutory Procedures

4. The Employment Tribunal procedures are designed to aid resolution. The statutory questionnaire procedure, the employer's answer to the allegations of discrimination known as the IT3, and the opportunities to mediate and conciliate offered by ACAS should be used in order to facilitate resolution and avoid a Tribunal hearing.

Dispute Resolution Regulations

5. Police Regulations should include similar provisions as those in the Dispute Resolution Regulations 2003 in order to ensure that, like Police Staff, police officers are required to use their Force Fairness at Work procedure and the time limit for lodging a claim at an Employment Tribunal is extended by a further 3 months in order to facilitate an in-Force resolution of the complaint.

Force Review

6. The Force Equality Officer should review each completed Fairness at Work complaint or Employment Tribunal case in order to ascertain whether the matter affected just one person or has the potential to affect other people and necessitates a change in policy or procedures. If possible, the complainant, and/or, with the complainant's agreement, their Representative, should be interviewed by the Force Equality Officer to identify any learning points from their experience of the procedure. Learning points could include a change of policy or procedure, identification of training requirements, etc. The Force Equality Officer should also, if possible, interview the other people involved in the complaint including the Stage Managers who dealt with the matter, to identify any learning points from their experience of the procedure. Any learning points and recommendations from the Force Equality Officer's review should be considered with the Chief Officer and the Force Legal Advisor. The review and its outcomes should be discussed and approved by the Police Authority.

Police Authority Review

7. Grievances and Employment Tribunal cases should be monitored and reviewed by the Police Authority in line with the APA guidance "Tackling Discrimination: Police Authority Oversight and Scrutiny of Grievance Procedures and employment Tribunals". This would include assessment of the financial impact, as well as the likely impact on trust and confidence in the Force in the wider community and on the recruitment and retention of officers and staff.

HMIC Review

8. As part of their inspection of Forces, HMIC should review the use of the Fairness at Work procedure and evaluate the decision making process of any Employment Tribunal cases.

Consultation Arrangements

9. Fairness at Work procedural issues should be a standing item on JNCC or other consultation meetings.

Networking Lessons and Good Practice

10. Any lessons that are identified and that could have a wider impact on the Service, for example, by preventing similar practices occurring, should be networked through the Home Office website,

www.homeoffice.gov.uk/crimpol/police/equality/index.html

INTRODUCTION

This document can be found on the Home Office website at <http://www.homeoffice.gov.uk/crimpol/police/equality/index.html>

It has been developed by the Learning the Lessons from Employment Tribunals working party which was set up by the ACPO Equality Sub-Committee in partnership with the Police Federation of England and Wales, with the Home Office, the Association of Police Authorities, the Superintendents' Association, UNISON, representatives from Force Legal departments, the British Association of Women in Policing, the National Black Police Association and the Gay Police Association. All the stakeholders are committed to resolving workplace disputes at the earliest opportunity.

This document is designed to inform anyone involved in a workplace grievance of the policies and procedures of all the organisations involved.

It sets out

- Statements of Commitment from all the organisations involved in a workplace dispute as to how they seek to deal with complaints;
- Possible Resolution Strategies for dealing with a workplace dispute;
- The Fairness at Work procedure recommended to Forces by the Home Office;
- The procedures used by Employment Tribunals;
- A Flowchart of the full extent of the Fairness at Work and Employment Tribunal procedures, if workplace resolution fails;
- A template for Debriefing a workplace dispute and learning the lessons it identifies;
- Answers to some Frequently Asked Questions about workplace disputes and Employment Tribunals;
- Outlines of some Significant Cases from which lessons can be drawn; and
- Contact details of the organisations who can help in resolving a workplace dispute.

The principles set out in the document provide guidance to Forces on how to deal with workplace grievances. It draws on good practice principles and incorporates new legislative provisions. Forces should ensure that the principles are incorporated into their grievance handling procedures.

Our society is becoming increasingly litigious, and the Police Service has not escaped a rise in complaints in the workplace. All too frequently these complaints raise issues of unfair treatment and are not resolved in-Force, but add to the rising volume of Employment Tribunal applications.

There is not just a moral imperative for the Police Service to mainstream fairness and equality and welcome diversity, there is a clear business case to be made out by retaining officers and staff from minority groups, and being able to focus on frontline delivery of policing to all members of the diverse communities across England and Wales.

BENEFITS OF EQUALITY

- Increased public confidence
- Best use of human resource
- Flexible workforce to meet the operational needs of the Force and the individual needs of staff.
- Workforce representative of the local community
- Better provision of service from diverse workforce
- Supervisors confident to manage staff
- Reduction in costs of recruitment and training

COSTS OF INEQUALITY

- Loss of public confidence
- Inefficient use of human resources
- Inflexible workforce
- No connection with local communities
- Management time spent on grievances
- Losing an Employment Tribunal case

Employment Tribunal cases can be costly in terms of money and bad publicity, time consuming and destructive to all concerned. The litigation process is inevitably confrontational and often results in a complete breakdown in the employment relationship.

The emotional and psychological toll can be enormous, and is not just confined to the complainant – everyone involved, including the person expected to resolve the matter, can be affected. In many cases, staff are lost to the Service after extended periods of ill health.

These consequences are avoidable.

In order to retain the confidence of our workforce, the communities we serve and continue to attract good applicants, the Police Service must deal with and be seen to deal with workplace disputes fairly, speedily and confidentially. Everyone must come round the table with the determination to create a workplace culture that enables disputes to be resolved. The Service needs to instil confidence in managers that they can and should confront inappropriate behaviour and can and should resolve workplace disputes at the earliest opportunity.

It is often easier to settle a case at the start than towards the end. The longer it takes to resolve, the more a complainant's sense of grievance will increase; and the longer it goes on, the harder it becomes to satisfy that sense of grievance. Cases rarely start off being "about money", but they often end up that way. In time the complainant may see an Employment Tribunal as providing them with the only opportunity to satisfy their sense of grievance by making the Force "pay" for the hurt they have suffered.

There are no winners at Employment Tribunals. The single lesson to be learnt from Tribunal cases is that complaints are better resolved early, without going to the law. The Police Service as a whole needs to work harder to stop cases going forward to Tribunal and to have systems in place to recognise and disseminate the lessons that need to be learnt when things have gone wrong.

At both local and national level the Service needs to keep itself better informed by monitoring workplace disputes and addressing emerging trends and issues. Fairness at Work procedural issues should be a standing item on the agenda of joint consultative meetings. The Service must network case decisions and good practice through the Home Office website on <http://www.homeoffice.gov.uk/crimpol/police/equality/index.html>

RESOLUTION STRATEGIES

Workplace disputes can be resolved at an informal level.

All involved in a workplace dispute should be encouraged to try to identify at an early stage what they want in order to obtain a practical and achievable resolution to the problem. Resolution could take the form of one or more of the following options, or **anything else that the parties may agree**:

- **An apology:**

Although this is often hard to achieve, it is the outcome most complainants seek. There may be different perceptions about the complaint. At one level, it may be that a person was unaware that their behaviour or language caused offence and by explaining the hurt caused, they can apologise. At another level, it may be that by accepting they were wrong, the offender may believe that they may be disciplined for the behaviour. It is important to facilitate the giving and the acceptance of an apology in a spirit of conciliation.

- **Policy revision:**

A complainant may say that their objective in raising a matter is because they do not want another person to suffer the same treatment, so an amendment to Force policies and/or practices and the introduction of a procedure for monitoring to ensure that there was no reoccurrence will be regarded by many as a successful outcome to their complaint.

- **Personal Needs:**

The grievance may draw attention to the necessity for the Force to address the personal needs of the complainant or the subject of the complaint. This could be, for example, the introduction of different working hours or conditions, a revised training programme, or the provision of coaching or mentoring.

- **Compassionate Leave/Special Leave:**

If there is a need for a “cooling off” period, it may be possible to arrange for a period of leave for either or all parties involved in a workplace dispute.

- **Transfer:**

It may be possible to offer one or more of the parties a transfer to another area or department in the Force. But it is important to remember that it could be unlawful victimisation to move any of the parties against their wishes.

- **Statement:**

In some circumstances, a written undertaking that, for example, the complainant (or other party involved) will not suffer future victimisation or that all records of the complaint will be removed from the officer’s personal file may well be sufficient to resolve the matter.

- **Compromise agreement**

A signed agreement, through ACAS or other mediator, where all parties agree to a binding formal resolution. This could include an ex-gratia payment in recognition of the damage or hurt caused.

- **Restorative Justice/Mediation**

The complainant and the subject of the complaint could take part in a facilitated settlement. A mediator can sit down with all the parties, or work on their behalf to bring about an agreement.

These options are not definitive but suggest ways a complaint could be resolved quickly, confidentially and without blame being apportioned.

FAIRNESS AT WORK PROCEDURE

If it is not possible to resolve a workplace dispute at an informal level a complainant can raise the matter through their Force Fairness at Work procedure. The following guidance on developing and administering a Fairness at Work procedure has been issued by the Home Office.

FAIRNESS AT WORK PROCEDURE

PART 1 - GENERAL OPERATING PRINCIPLES

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

Purpose of the Fairness at Work Procedure

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

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

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

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

6. It is recognised that informal resolution may not always be possible so an effective Fairness at Work Procedure must be available and accessible to all police service staff, including police officers, police staff and the Special Constabulary. An effective procedure to address conflict between colleagues is essential for good management in the workplace and is aimed at delivering integrity and good standards of management conduct. It is not intended to provide a substitute for disciplinary proceedings, or to override existing or possible future legislation on discriminatory issues or the implications of the Human Rights Act 1998. Should an individual wish to pursue an issue formally through the Fairness at Work procedure then they must submit a written request to their line manager or other nominated person. (It is recommended that forms be provided for this purpose to save time and provide consistency).

7. The Fairness at Work Procedure is designed to enable members of staff who are aggrieved about the way they have been treated at work to raise issues without fear of recrimination and to explore ways of finding a solution to the problem. A “grievance” is so defined by the complainant, and Forces

should not refuse to deal with the matter. All Forces should have separate, transparent appeals procedures in place to deal with issues concerning promotion and selection or Force policy and procedures. If these appeal procedures reveal issues that should be addressed through the Fairness at Work Procedure, the matter should be referred to stage 2 of this procedure.

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

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

Employment Tribunal Time Limits

10. Currently cases of discrimination must be registered with an Employment Tribunal **within 3 calendar months less one day of the last alleged discriminatory act.** The Employment Act 2002 will introduce minimum statutory standards for internal disciplinary and grievance procedures. The standards will require complainants to use an internal grievance procedure at least 28 days before they lodge their case at an Employment Tribunal; when they do so, the time limit for lodging their case will be extended by a further 3 months to allow their employer to resolve the matter. Where they do not use the grievance procedure, or where the employer does not allow the grievance procedure to operate, any compensation awarded subsequently by the Tribunal will be adversely affected. The Government intends to implement these provisions through the Dispute Resolution Regulations, probably in the autumn of 2004. Because the Employment Act 2002 does not apply to police officers these proposed Regulations will apply only to Police Staff. However, the Police Advisory Board has agreed that police officers should be given equivalent statutory rights to minimum grievance procedures. Further information will be provided about this in due course.

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

12. The Fairness at Work procedure is not a vehicle for staff to bring malicious complaints. Once an issue is raised under the Fairness at Work procedure, any counter-complaints from the subject of the case should be reviewed by the Manager handling the case. This review will determine whether there is evidence that either the original case or counter claim is of malicious intent or whether there has been a basic misunderstanding or misinterpretation that can be resolved. In cases of malicious intent measures

up to and including disciplinary action should be considered. All actions taken by a Stage Manager during a review should be recorded. **A counter claim should extend the Stage by no more than 14 days; the grounds for any further extension must be recorded**, and should be agreed with all the parties involved.

Relationship between Fairness at Work and Discipline Procedure

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

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

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

Confidentiality

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

Representation

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

Victimisation

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

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

Stage Managers and Facilitators

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

21. As a matter of good practice, forces should provide Facilitators or Mediators to resolve complaints at the earliest opportunity. Facilitators should be volunteers, and be encouraged to be representative of the diversity of people in the Force as well as all areas of work and ranks/grades. They should be trained in conflict resolution and interpersonal skills. All parties involved in a case should be happy for a nominated facilitator to mediate wherever possible. In order to preserve impartiality further, and to allow a different perspective to be brought to any conflict, Facilitators should not be

from the same team or place of work as the parties involved except in exceptional circumstances where there are no objections. Facilitators should report any concerns they have about the handling of a case to the Stage Manager or Fairness at Work Co-ordinator in the first instance, and also record any concerns for analysis by an independent Monitor at the end of the procedure.

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

Stage Time Limits

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

24. Where it becomes obvious that a time limit cannot be achieved, all parties should be advised at the earliest possible opportunity by the Stage Manager. Consultation with all parties on revised timescales should then take

place, and they should be advised of any change to target dates. Due regard should be given by all parties to the time limit for lodging a case with Employment Tribunal, and extensions should normally only occur with the agreement of the originator, although the final decision to extend should rest with the Stage Manager at each stage. To ensure such decisions are taken only in the best interests of resolving the case, the reason, and objections raised by any of the parties, for any extension should be recorded.

PART TWO - THE STAGES OF THE PROCEDURE

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

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

Stage One

27. On receipt of a written request for the Fairness at Work procedure to be invoked the Stage Manager will arrange to meet both parties (and their representatives) in private to gather basic details. The complainant's views should be sought as to how the matter could be resolved to their satisfaction. It may be helpful to ask them to provide a "victim's personal statement" of the

way in which they have been affected and the way in which their issue could be resolved. If the matter is not straightforward and not resolvable by normal line management intervention, the manager might consider arranging a meeting of all parties involved to facilitate an agreed resolution, or they may arrange for a meeting to be conducted by an independent facilitator, provided there is agreement of the parties involved.

N.B. On receipt of a written request for Stage One of the procedure, the Stage Manager should immediately notify the independent Monitor nominated by the Force (and record the fact that they have done so) in order to ensure that the procedure and the complaints made under it are fully monitored.

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

Stage Two

29. Stage 2 should involve consideration of the issue by a nominated Fairness at Work Co-ordinator, the complainant's divisional/area commander, departmental head, senior manager, or appropriate Chief Officer. The objectives of this stage are to enable the originator to see a senior manager and to explore, where appropriate, wider options for resolution. The Stage 2 Manager should check with the originator that their feelings on the issue and the way forward are still the same, and where appropriate obtain information from third parties which might aid resolution of the situation. It may still be possible for the Stage 2 Manager to facilitate mediation between the parties and the option of mediation by an independent person should also be considered where appropriate, subject to the agreement of the parties involved. Meetings between the parties are not mandatory at this stage, but should be considered where appropriate in achieving a resolution.

Appeal Stage

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

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

PART THREE - AUDIT, MONITORING AND TRAINING

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

Independent Monitoring

33. An independent Monitor should be appointed by the Force to receive written records and feedback from all stages of an individual case, in order to evaluate how effectively that case has been operated. He/she should evaluate the handling of each case raised under the procedure within a month of its completion and make a report where necessary on any lessons learned or outstanding issues such as training needs or policy development. This would ideally be the responsibility of Equality or Diversity Officer, but in order

to perform these tasks successfully, it is important that they are carried out by someone who is independent; someone whose remit is focused on achieving true diversity and equality within their Force, rather than somebody whose duties could be perceived as being prejudicial to confidential storage of papers and independent evaluation (an example would be assisting in the preparation of the Chief Constable/Commissioner's defence during a pending Employment Tribunal).

Retention of Papers

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

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

36. It is extremely important that police authorities engage in effective monitoring and scrutiny of the Force's Fairness at Work procedure. Police Authorities will wish to satisfy themselves that the Force has adopted and promoted the Procedure within the organisation and that all officers and staff are aware of their rights and responsibilities. (For further information, see

“Tackling Discrimination: Police Authority Oversight and Scrutiny of Grievance Procedures and Employment Tribunals” published by the APA).

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

38. The independent Monitor should also note any qualitative concerns about the process including any specific concerns reported about the handling of the case, and whether these concerns resulted in disciplinary action. They should review each case after 6 months, and in appropriate cases, they should follow up the case to ensure that the agreed resolution was successfully implemented.

Annex A**Statement of Commitment to Fair Treatment**

A recommended example of a statement of commitment to fair treatment is as follows:

The Force is firmly committed to providing equality of opportunity for all police officers, police staff and special constables. To achieve this, the Force will strive to create and maintain an environment in which there is respect for each individual and recognition of their needs, aspirations and feelings, regardless of their race, ethnic origin, colour, nationality, gender, sexual orientation, religion or belief, marital or family status, trade union or staff association or support group activity, disability, age or any other factor which cannot be justified. It is the responsibility of all police officers, police staff and special constables to ensure this happens, irrespective of rank or grade. It has to be recognised that failure to observe the provisions in this policy without justification, could result in disciplinary action being taken.

Annex B

Police Support Groups

Forces should maintain links with their local Force Support Groups. The following national groups can give details of local networks:

British Association of Women in Policing www.bawp.org
PO Box 999, Rossendale, Lancs. BB4 8GE
Tel & Fax 01706 216331

National Black Police Association www.nationalbpa.com
Room GO4, Allington Towers, 19 Allington St; London. SW1E 5EB
Tel 0207 035 5153 Fax 0207 035 5155

Gay Police Association www.gay.police.uk
BM GPA, London. WC1N 3XX
Action line (24 hrs) 07092 700 000 Fax 07092 700 100

All Police Forces are members of the Employers Forum on Disability, which supports a police network run by a seconded police officer.

Employers Forum on Disability www.employers-forum.co.uk
Nutmeg House
60 Gainsford Street
London
SE1 2NY
Tel 020 7403 3020

The Metropolitan Police Service and some other Forces also support a range of local Force faith groups.

ANNEX C

Employment Tribunals

Police Staff can take action under the following employment statutes:

Employment Rights Act 1996

Employment Relations Act 1999

Fixed Term Employees (Prevention of Less Favourable Treatment) Regs 2002

National Minimum Wage Act 1998

Paternity and Adoption Leave Regulations 2002

Public Interest Disclosure Act 1998

Trade Union and Labour Relations (Consolidation) Act 1992

Transfer of Undertakings (Protection of Employment) Regulations 1981

Trade Union Reform and Employment Rights Act 1993

In addition Police Officers and Police Staff can take action under the following statutes:

Disability Discrimination Act 1995 (Police Officers from Oct 2004)

Employment Equality (Sexual Orientation) Regulations 2003 (from Dec 2003)

Employment Equality (Religion and Belief) Regulations 2003 (from Dec 2003).

Equal Pay Act 1970

Health and Safety at Work Act 1974

Maternity and Parental Leave Regulations 1999

Part Time Worker (Prevention of Less Favourable Treatment) Regs 2000

Public Interest Disclosure Act 1998 (from 1st April 2004)

Race Relations Act 1976

Sex Discrimination Act 1975

Sex Discrimination (Gender Reassignment) Regulations 1999

Working Time Regulations 1998

Codes of Practice

The Equal Opportunities Commission (EOC) and Commission for Racial Equality (CRE), the Disability Rights Commission (DRC) and ACAS have produced Codes of Practice, giving guidance on good practice in respect of discrimination in the workplace. Infringements of the Codes are not in themselves unlawful, however they can be given as evidence to support claims of unlawful discrimination.

Annex D**Discrimination Terms and Definitions**

Direct Discrimination is defined as treating someone less favourably on the ground of their sex or race or disability or sexual orientation or religion or belief. Direct discrimination cannot be justified.

Indirect Discrimination is not included in the DDA, and is currently defined slightly differently between the different pieces of discrimination legislation, but the government has stated that it will amend all the definitions in the various Acts and Regulations to make them consistent with the new definition: ie

“Indirect discrimination occurs when the employer imposes an apparently neutral provision, condition or practice as a condition of employment, that would put persons of one group at a particular disadvantage compared to persons of another group (in respect of their sex, race, disabled status, sexual orientation or religion or belief), unless the employer could show that the provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary”.

Victimisation is defined as treating a person less favourably because they have brought proceedings against the discriminator or any other person under the law, given evidence or information or anything else in relation to their or another’s proceedings, or made an allegation of discrimination in good faith.

Harassment was not defined in the original discrimination legislation, however the Courts decided that it could be unlawful direct sex, race or disability discrimination. In 1986 the EU issued a Code of Practice which defined sexual harassment as: “unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work”. In 2000 the EU issued a new Directive requiring member states to define and legislate against harassment at work. This definition is: “A person subjects another to harassment where, on the grounds of another’s (sex, race, disability, sexual orientation, religion or belief), he engages in unwanted conduct which has the purpose or effect of (a) violating the other’s dignity, or

(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for that other. Conduct shall be regarded as having the effect specified in paragraphs (a) and (b) if, and only if, having regard to all the circumstances, including, in particular, the perception of the other, it should be reasonably considered as having that effect". This definition will sit alongside and extend the existing definition of harassment as direct discrimination.

Bullying is harassment and would constitute unlawful discrimination if the person suffered the less favourable treatment on the grounds of sex, race, disability, sexual orientation, religion or belief. If the treatment constitutes harassment on any other grounds then claims cannot be pursued within discrimination law at an Employment Tribunal. Consideration could be given to dealing with the treatment within Health & Safety legislation.

Equal Pay is the concept of paying men and women the same money for

- work that is the same or broadly similar ("like work")
- work rated as equivalent under a job evaluation scheme
- work which is different but which is of equal value in terms of the demands of the job.

Where there is disproportionate pay between a woman and a man, or groups of men and women, the Chief Officer must show that the difference is genuinely due to a material factor unconnected with sex. He or she would need to demonstrate that the practice represents a real need on the part of the Force and is appropriate and necessary for achieving that need.

Disability is defined by the DDA as: "any child or adult with a physical or mental impairment that affects their ability to carry out normal day to day activities which are substantial, adverse and long term". The DDA requires employers to make **reasonable adjustments** where working arrangements or physical features place a disabled employee or job applicant at a substantial disadvantage to persons who are not disabled. The Chief Officer must show that any failure to make reasonable adjustments is justifiable.

ET PROCEDURES

If it is not possible to resolve a complaint through the Fairness at Work procedure, and the complainant believes they have been treated unlawfully under one or more of the following statutes, they may take their case to an Employment Tribunal.

Police Staff can take action under the following statutes:

Employment Rights Act 1996

Employment Relations Act 1999

Fixed Term Employees (Prevention of Less Favourable Treatment) Regs 2002

Maternity and Parental Leave Regulations 1999

National Minimum Wage Act 1998

Paternity and Adoption Leave Regulations 2002

Public Interest Disclosure Act 1998

Trade Union and Labour Relations (Consolidation) Act 1992

Transfer of Undertakings (Protection of Employment) Regulations 1981

Trade Union Reform and Employment Rights Act 1993

Police Officers & Staff can take action under the following statutes:

Disability Discrimination Act 1995 (Police Officers from Oct 2004)

Employment Equality (Sexual Orientation) Regulations 2003 (from Dec 2003)

Employment Equality (Religion and Belief) Regulations 2003 (from Dec 2003).

Equal Pay Act 1970

Health and Safety at Work Act 1974

Part Time Worker (Prevention of Less Favourable Treatment) Regs 2000

Race Relations Act 1976

Sex Discrimination Act 1975

Sex Discrimination (Gender Reassignment) Regulations 1999

Working Time Regulations 1998

Employment Tribunals operate under statutory rules and procedures.**PART 1 – GENERAL PRINCIPLES****Purpose of the Employment Tribunals**

1. Employment Tribunals were first set up in 1965 with the intention that they would be informal 'industrial courts' before which parties could obtain a cheap, informal and speedy solution to their workplace disputes without the need for legal or formal representation. Although Tribunals do still operate relatively cheaply and informally, there has been an increased degree of formality and legalism within the system. The law is now complex and case law plays a substantial part in the interpretation of the various statutes applied by the Employment Tribunals, and so increasingly solicitors and barristers are now usually instructed on behalf of both employers and employees.
2. The procedure can become very confrontational. Both sides defend their position and try to undermine and embarrass the other side by whatever means they can. This can have a devastating effect on individuals caught up in the process. The trauma of appearing at a Tribunal cannot be over emphasised. No party ever finds it an easy experience. Inevitably the process can result in the complete breakdown of the employee/employer relationship with people leaving the Service before their time, in circumstances where they are disillusioned and disappointed. It is always preferable to resolve differences before they get to a Tribunal.
3. Tribunals are subject to a duty to comply with the so-called "over riding objective" to deal with cases "justly". In practice, this means that they must ensure that the parties are on an equal footing, seek to save expenses, deal with the case in ways that are proportionate to the complexity of the case, and handle the case "expeditiously and fairly". However, everyone connected with Employment Tribunals recognise that it is better to resolve a workplace dispute amicably rather than judicially. The government has introduced a range of legislative options that facilitate settlement of a case before a Tribunal hearing. At every stage in the procedure there are opportunities to resolve.

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

Tribunal Constitution

5. Tribunal administration is carried out by the Employment Tribunal Service, an executive agency set up by the Department of Trade and Industry (DTI). Each region has a Regional Chairman and a Regional Secretary. All correspondence to the Tribunal is usually addressed to the Regional Secretary. Within each Region, there are a number of Chairmen who sit full time and a larger number of others who may sit for only a small number of weeks each year. The title "Chairman" is held by both men and women.

6. There are three members of an Employment Tribunal all with an equal part in the decision making process. The Chairman is appointed by the Lord Chancellor and must have a legal qualification. The lay members (or 'wing members') are selected from two panels consisting of representatives of employers and the other of representatives of employees. Their appointments are made by the Secretary of State for Trade and Industry. The lay members take a full part in the hearing and can ask questions of the witnesses. Because the vast majority of Tribunal decisions are unanimous, it follows that lay members will not necessarily be sympathetic to the employer or employee "side" from which they are drawn.

7. In some circumstances when consent has been given by agreement of the individual parties, the Chairman may conduct a Tribunal with only one lay member, or may sit alone. A Tribunal Chairman will usually use his or her powers to sit alone to deal with preliminary issues, such as issues relating to jurisdiction.

8. The Tribunal office will usually, though not always, copy correspondence received from one party to another party. The Tribunal should not be used as a 'post box' and any important communication to the Tribunal should be copied to the other party.

Procedural Powers

9. Each side generally bears its own costs at an Employment Tribunal, regardless of the outcome, subject to paragraph 10 below. This has an obvious impact on the cost-effectiveness of bringing or defending meritorious cases that have little financial value.

10. An Employment Tribunal can strike out weak cases, or an application or notice of appearance on the grounds that it has no real prospect of success; require a deposit of up to £500 as a condition for continuing with a weak case or order costs of up to £10,000, where a party or its representative has behaved vexatiously, abusively, disruptively or otherwise unreasonably in conducting the case.

The Tribunal Office

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

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

13. Witnesses are normally allowed to be present throughout the hearing usually seated behind the representatives, regardless of whether or not they have given their evidence. The public and press sit at the back.

Hearings In Private

14. In most cases, hearings are heard in public notwithstanding that some of the evidence presented can be of a highly personal nature and can involve medical and other personal reports. The proceedings may be reported in the media. The Tribunal has particular powers to make restricted reporting orders in relation to cases involving allegations of sexual misconduct or disability discrimination cases where evidence of a personal nature is likely to be given. The Tribunal may also sit in private for reasons of national security.

15. Restricted reporting orders remain in force until the promulgation of the decision of the case.

PART 2 – THE STAGES OF THE PROCEEDINGS**Time limits**

16. All applications to an Employment Tribunal must be brought within specified time limits depending on the nature of the claim. Claims for discrimination should be lodged within three months less one day of the last alleged act of discrimination, unless the Tribunal decides to extend time on the grounds it would be just and equitable to do so.

17. Support staff only: The proposed Employment Act 2002 (Dispute Resolution) Regulations 2003 provide that from October 2004 a complainant has to go through an internal grievance procedure at least 28 days before they can lodge a claim at an Employment Tribunal. The act of first raising a complaint with the Employment Tribunal or with their employer in writing, will automatically extend the complainant's time limit by another 3 months.

The Statutory Questionnaire Procedure

18. The discrimination legislation enables a prospective Applicant to ask questions about the circumstances of their treatment by the employer on a statutory questionnaire form. There are no prescribed questions, but the questions must be reasonable, both in scope and number, and should address the circumstances of the complaint. Statutory questionnaires must be

sent within 3 months of the act complained of; however, where an IT1 has been lodged with the Tribunal, the questionnaire must be served within 21 days thereafter.

19. The Questionnaire and the reply form are designed to assist both the complainant and the respondent to identify information that is relevant to the complaint. It is not obligatory for the questionnaire to be used, or for the respondent(s) to reply. A failure to respond however can be taken into account by the Tribunal when coming to their decision. They may conclude that the respondent(s) were evasive or vague and were seeking to hide the fact that unlawful discrimination had occurred.

The Originating Application (IT1)

20. Proceedings in an Employment Tribunal are commenced by presenting an originating application (known as an IT1) to the Tribunal office. The IT1 must contain the name and address of the applicant, the name and address of the person(s) against whom relief is sought and the legal grounds of the claim. The applicant must set out the law that they allege has been broken; e.g. direct or indirect discrimination, victimisation, or unfair dismissal etc. (NB. Unfair dismissal claims can be progressed by Support Staff only).

Stayed proceedings

21. If an applicant raises a complaint on their IT1 under an area of the law that is unclear, and if there is already a case going through the Employment Tribunal system that is testing that area of the law, the Applicant's case may be "stayed" by the Tribunal until the first case has been heard in its entirety. This means that the Applicant's case goes into abeyance, and does not progress until the first/test case has completed all its possible stages of Appeal. This can mean that a case is stayed for months or even years.

22. If the facts and law are not sufficiently explained on the IT1 the respondent can make a request for further particulars of the claim. If a party wishes to add a new legal argument or facts once the original form is submitted, it will need the leave of the Tribunal to do so. This will not be

automatically granted. If an Applicant wishes to add a new legal argument or facts once the original form is submitted, they can either lodge a further IT1 (and ask the Tribunal to combine the cases) or seek leave to amend the existing IT1 (which will usually be granted if the new points are added within 3 months of act complained of). However, where an Applicant wishes to add a new legal argument or facts after the 3 month time limit has expired, the Tribunal will be much more reluctant to permit the amendment and may want to hear argument on the reason for the delay before making a decision.

23. Once received, the Regional Secretary is obliged to enter the application in the register and to send a copy of it to the named respondent together with a notice of appearance (Form IT3).

The Notice Of Appearance (IT3)

24. In order to defend any application, the respondent must complete and return a notice of appearance (IT3) within 21 days of receiving a copy of the originating application. The notice must set out the respondent's full name and address, whether or not he or she intends to resist the application and if so, on what grounds.

25. It is open to the respondent to request an extension of time for filing the notice of appearance. If the Notice of Appearance is not entered in time, in general the Respondent is not entitled to take any further part in the proceedings. He may, however, apply to the Tribunal, either before or after the expiry of the time limit, for an extension of time for filing the Notice. However, the Tribunal is not obliged to grant an extension and it is unlikely to do so without good reason, especially if the Respondent fails to reply within the initial 21 days.

Orders For Further Particulars

26. The Tribunal has power to order further particulars of an originating application or notice of appearance where the legal or factual grounds relied upon are not sufficiently clearly set out already. The Tribunal will not normally make an order for further particulars unless a written request to comply

voluntarily has been made of the other party and they have either refused or failed to comply fully with the request made.

27. The Tribunal would take into account the fact that the parties should not be taken by surprise at the last minute by the other side's case when granting of an order for further particulars. An order should not be oppressive and the Tribunal may discourage complicated pleadings battles.

PART 3 – THE TRIBUNAL'S CASE MANAGEMENT POWERS

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

29. However, the eagerness of Tribunals to take a pro-active role in case management differs from region to region. Some Tribunal regions regularly hold "Case Management Conferences" for cases involving allegations of discrimination cases; in complex cases, there may be two or three CMCs before the case reaches a hearing. CMCs often take place by telephone. Parties who attend a CMC should come prepared to discuss the central issues of the case, the number of witnesses they require, the likely length of the hearing, and so on. In some regions, the Tribunal even asks the parties to come with a schedule of loss or, at the least, an estimate of the financial value of the case. The complexity of the issues, the number of witnesses required and the financial value of the case are all matters that the Tribunal will take into account when fixing the length of the hearing.

30. Other Tribunal regions, by contrast, are less pro-active. They may hold "directions hearings", which the parties' representatives attend in person, although some regions still only hold a direction hearing if the parties have requested one. This may result in cases going part-heard (i.e. not finishing within the allocated time) or cases being adjourned at the last minute because the parties are not properly prepared.

31. Sometimes the Tribunal will hold a hearing to consider a particular factual or (more frequently) legal issue that may affect the conduct of the case as a whole. This might include a preliminary hearing to determine a point relating to the Tribunal's jurisdiction, such as whether a claim has been lodged within the three-month time limit and, if not, whether it would be "just and equitable" for the Tribunal to extend the time limit to allow the submission of a late IT1. In discrimination cases, this can be a complex issue in itself, as the alleged discrimination may extend over a period of time which goes back many months before the IT1 was lodged at the Tribunal, and it may be part of a continue act or a continuing failure to act. When the Tribunal would need to hear a lot of evidence to decide whether a continuing act is in place, or whether it would be "just and equitable" to extend time, it often makes sense for the "time limit" point to be considered at the full hearing.

32. Standard directions for the preparation of a case usually include provisions for further particulars, answers to written questions, disclosure of documents, exchange of witness statements and preparation of a trial bundle of documents. Some of these are mentioned further below. In more complex cases, the Tribunal may also require parties to provide a statement of agreed facts, a chronology, witness statements in rebuttal, and a trial bundle split between "core documents" (i.e. the most important ones) and the remaining documents. If the parties fail to comply with the directions, the Tribunal may make an order for costs against the defaulting party or, in serious cases, strike out the party's case.

33. The Tribunal also has power to issue certain orders upon the request of a party. Usually, these orders will not be granted unless a party has failed to

comply with the relevant direction of the Tribunal, or if the party has applied first to the other side for the information to be supplied voluntarily and the request has been refused, ignored or not fully complied with. The same sanctions apply for failing to comply with an order, save that a party may also be fined up to £1,000. The Tribunal may also hold a pre-hearing review (see below).

Orders For Written Answers to Questions

34. The Tribunal has power to order a party to provide written answers to questions. Sometimes a party wishes to ask a question – relating, for example, to implementation of an equal opportunities policy – that cannot properly be described as a request for further particulars of the case itself. An answer to such a question may assist in revealing information that is helpful to the issues that the Tribunal must consider at the hearing. However, Tribunals will not want to grant orders that are oppressive.

Orders For Disclosure of Documents

35. The Tribunal has the power to require one party to disclose documents to the other and/or allow an inspection of the original documents (including taking photocopies). This can include police notebooks, tapes and photographs. The key question is whether or not discovery of the documents sought is necessary for disposing fairly of the proceedings or for saving costs. An application for a large quantity of documents, of very marginal relevance, would probably be refused on the grounds of excessive burden on the other party.

36. A party may allege that it is unable to disclose certain documents due to confidentiality. The documents may be anonymised, or alternatively, it is open to a Tribunal to inspect the documents to assess how far, if at all, any duty of confidentiality should prevent disclosure.

37. Documents that are legally privileged, ie communications to or from professional legal advisers, are immune from discovery. Also, 'without prejudice' correspondence between the parties and/or ACAS are not

admissible to the Tribunal unless both parties agree or unless a party's case would be otherwise dishonest. This is correspondence for the purpose of reaching a settlement (ie 'without prejudice' correspondence). Documents may also be withheld if privileged on grounds of "public interest". An example of a document that might attract public interest immunity (PII) is one that sets out the outcome of an investigation by the Police Complaints Authority/Commission. A Tribunal may examine the document itself to determine whether the Force's claim that a document has PII is sound.

Witness Orders

38. Witnesses may be reluctant to appear at a Tribunal Hearing. However, the Tribunal can issue a Witness Order requiring a witness to attend to give evidence, and, if necessary to produce relevant documentation in his or her possession.

Witness Statements

39. Before the case hearings begin it is usual to exchange witness statements and other documentation that will be relied upon by each side. It is not usually possible to introduce additional evidence at the Tribunal hearing. Each side should know the other's case and it should be for the Tribunal to decide on the lawfulness of the disputed actions. The documents should be arranged into an agreed bundle of documents.

40. A bundle of documents is necessary for the Tribunal hearing. All the documents that will be relied upon by the parties should be in the bundle. Both parties are encouraged and sometimes required to agree a bundle of documents. If a bundle is agreed, this does not mean that the relevance or accuracy of any particular document is conceded, but merely that it is agreed that it will be referred to at the hearing.

41. This is the final formal opportunity to resolve the case before the hearing. At this point each side should be able to form an opinion of the other's case and it may therefore be possible to settle at this stage

Pre-Hearing Reviews

42. At any time before the hearing, the Tribunal may hear and determine any issue relating to the entitlement of a party to bring or contest proceedings; e.g. where a claim is outside the time limits and the Applicant is claiming that it would be just and equitable to allow their case to proceed.

43. If the Tribunal considers that the claim has no reasonable prospect of success, the Tribunal may order the party to pay a deposit. If the party chooses to continue with a case after an order for a deposit has been made, they risk an award of costs being made against them.

44. At any stage of the proceedings a Tribunal may order that an originating application or notice of appearance be struck out in whole or in part, or amended, if there has been a failure to comply with an order; that the application is scandalous, misconceived, unreasonable or vexatious or where there has been a delay that is intentional or otherwise inexcusable. In such circumstances, a Tribunal may also consider an award of costs against the offending party. The government proposes that awards may also be made against an offending party's representative.

PART 4 - THE TRIBUNAL HEARING

45. Tribunal hearings are open to the public and it is possible, and indeed advisable, to go into a hearing to assess the procedures and the nature of the process at any time before one's own case is heard. It is especially valuable for someone to attend if they are expecting to give evidence.

Representation

46. An applicant or respondent can present their own case. Or, it is open to anyone to act as a representative in Tribunal proceedings. Representation may be provided for applicants and named respondents by a staff association if funding conditions are met. Legal aid is not available for representation at the Employment Tribunal in England and Wales although it is available for the

provision of advice and assistance prior to the Hearing and to pay for representation before the Employment Appeal Tribunal.

The Hearing

47. Although the applicant usually starts the case, the Tribunal has discretion to decide itself which order of proceedings it finds most appropriate to deal with the case.

48. Before giving evidence, each witness is required to swear an oath or make an affirmation that he or she will tell the truth. Once a witness has given evidence in chief, it is open for them to be cross-examined by the other side.

49. The standard of proof is that of the civil burden on the balance of probabilities.

Decisions

50. A Tribunal may give its decision and reasons on the day of the hearing itself. However, it has a right to reserve its decision or reasons and send them in writing to the parties in due course.

Review of a Tribunal Decision

51. A Tribunal can decide to review its own decision if it considers the decision was wrongly made as the result of an error or new evidence becomes available or the interests of justice require such a review. A review can also be prompted by the request of one of the parties. In both cases, a review must be considered within 14 days of the decision being sent to the parties.

Appeals Against a Tribunal Decision

52. A party has 42 days from the date on which the reasons were sent to that party within which to appeal.

53. Employment Appeal Tribunal (EAT) hearings consist of a High Court or Circuit judge and two lay members sitting (usually) in London. There is a division of the EAT in Cardiff.

54. An appeal may be brought only if there has been an error of law or the Tribunal's decision is perverse. In essence, "perverse" means that no reasonable Tribunal, properly directed on the law, could have reached the decision that was reached in the case. It is not sufficient for an appellant to allege that the Tribunal simply got the facts wrong or that the decision was contrary to the evidence. If an appeal is successful, the EAT may remit the matter to the original or a new Tribunal or, if only one possible decision could be reached, the EAT may substitute its own decision in the case.

55. Thereafter, appeals can be heard at the Court of Appeal, the House of Lords and, in some circumstances, where there is enabling European legislation (for example, under the Equal Treatment Directive, the Race Directive or the Employment Directive), to the European Court of Justice in Luxembourg.

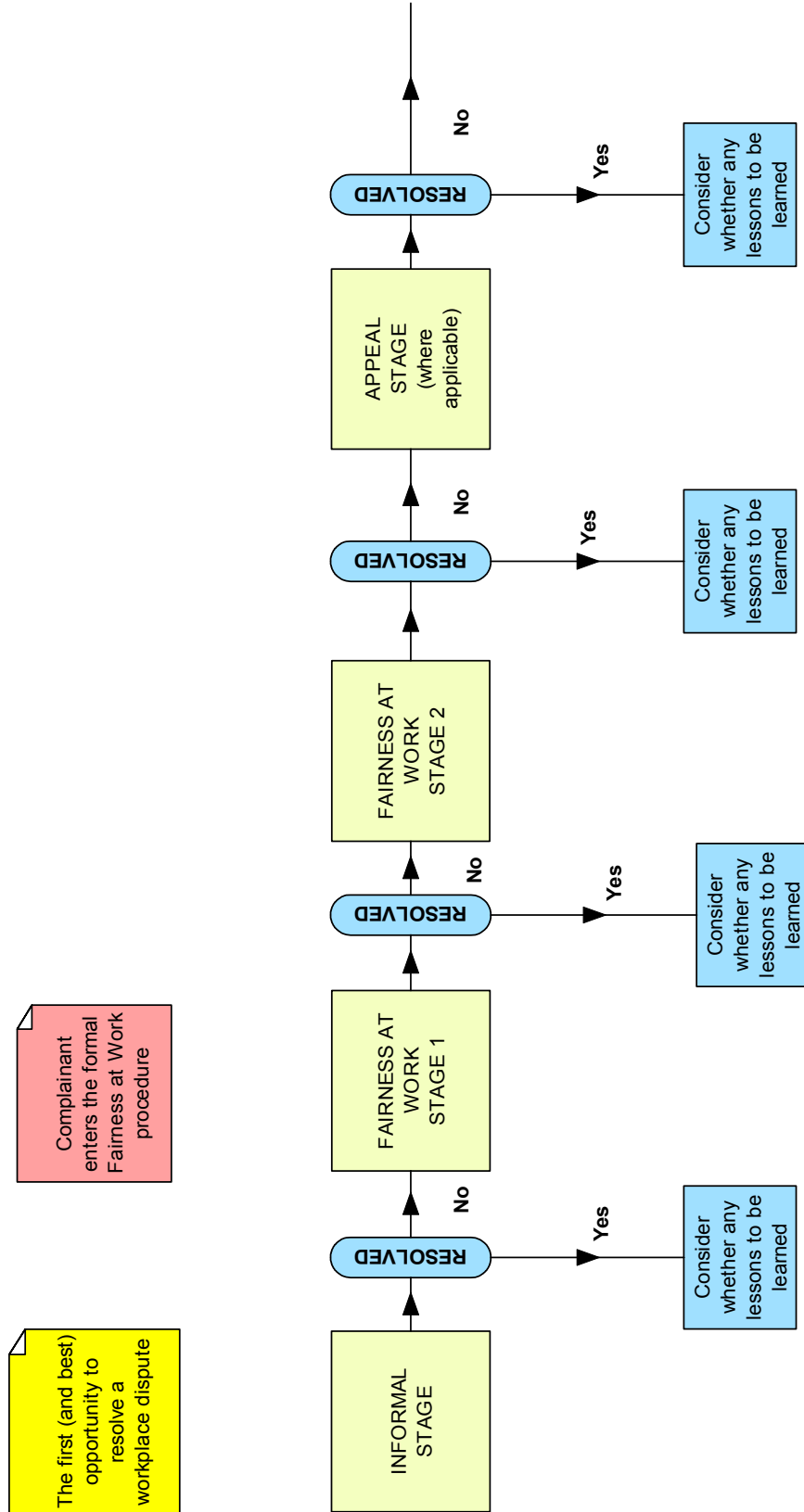
After the Tribunal

After an Employment Tribunal is complete it is advisable to debrief the lessons to be learned from the experience. Each party can learn lessons even if the Tribunal has upheld their case. If possible, the lessons should be promulgated within Force and to other Forces via the Home Office website (www.homeoffice.gov.uk/crimpol/police/equality/index.html) to ensure that any mistakes are not repeated and good practices are mainstreamed.

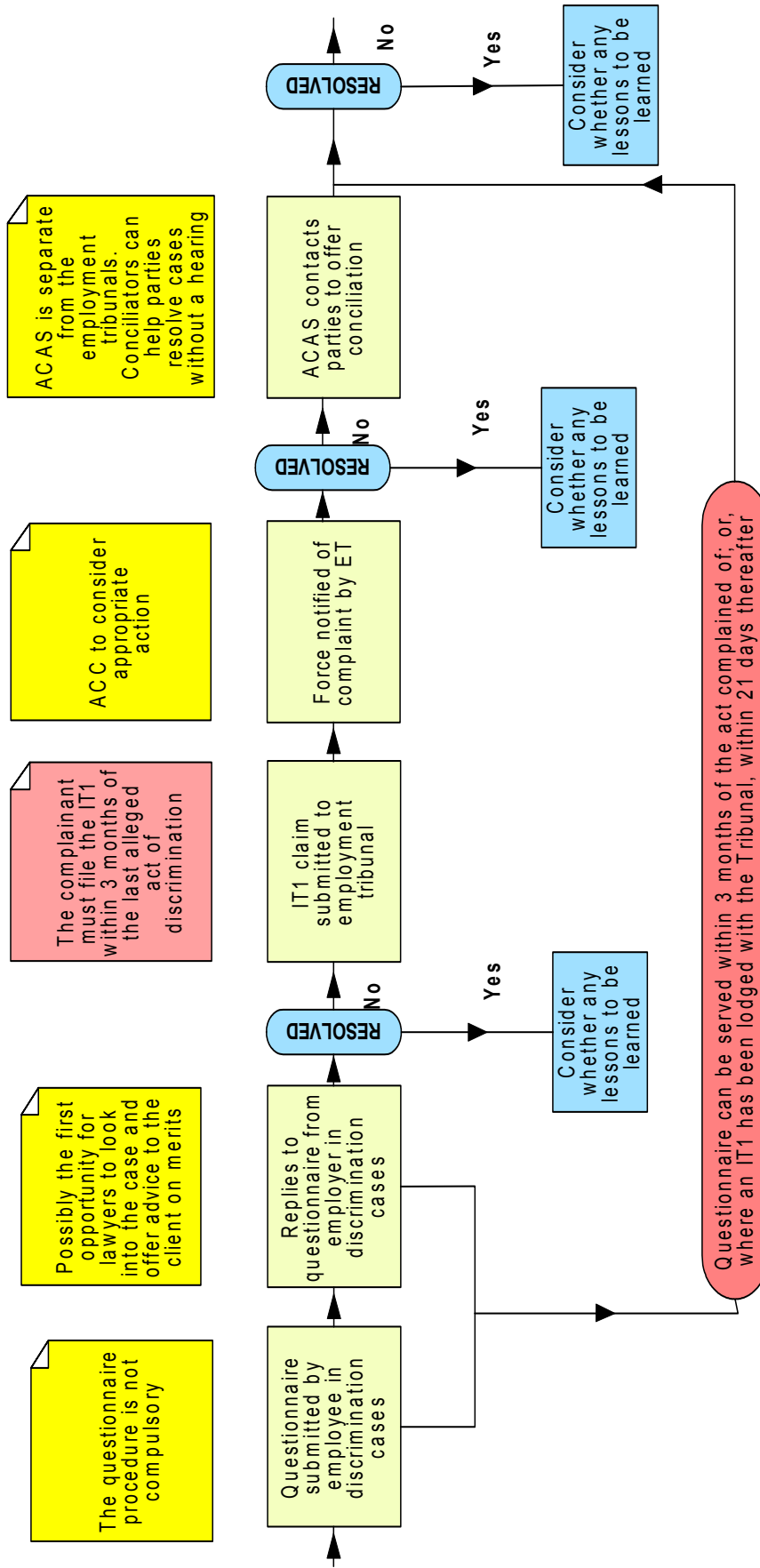
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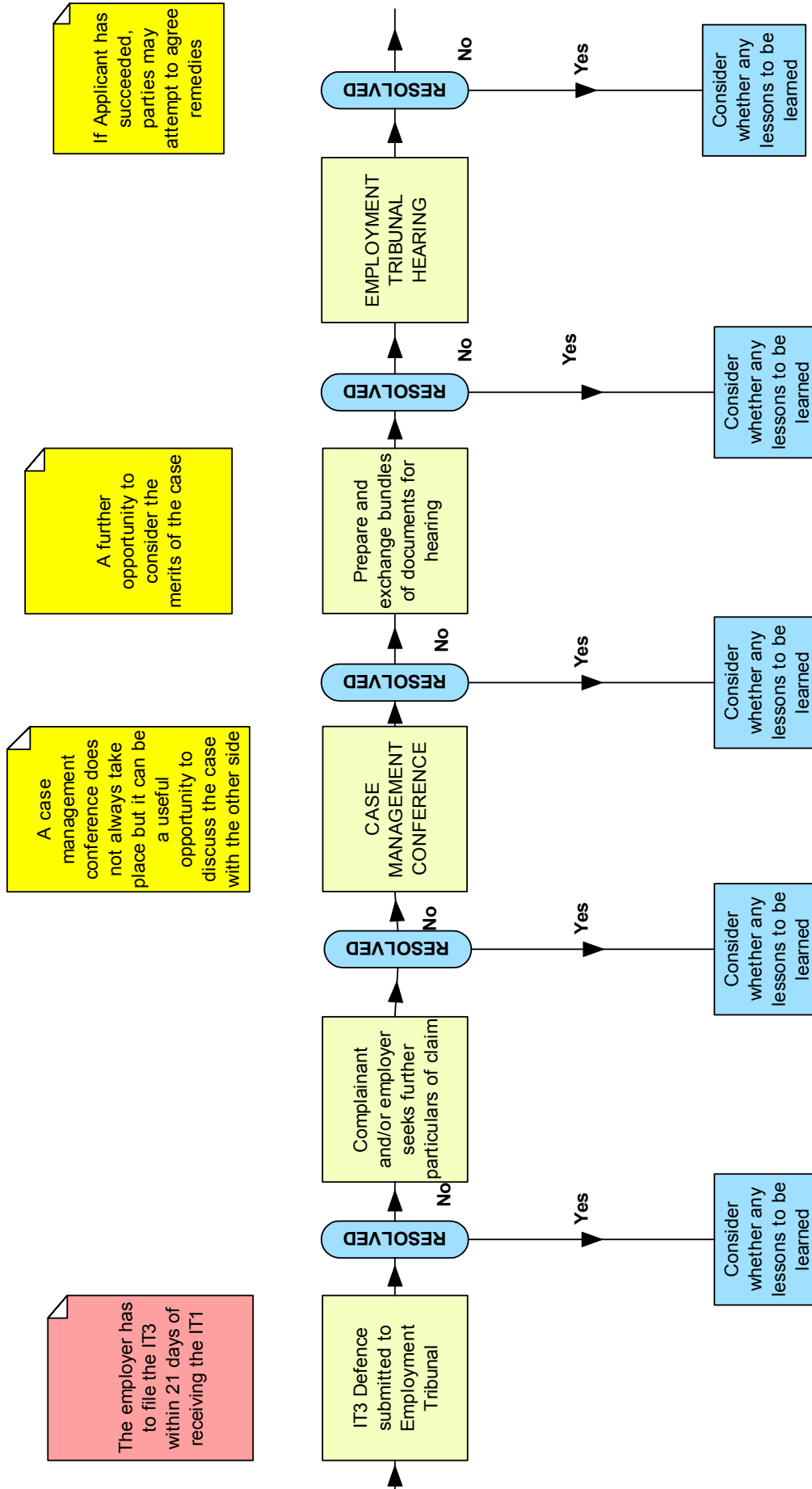
The stages of a complaint through the Fairness at Work and Employment Tribunal System

INTERNAL STAGES

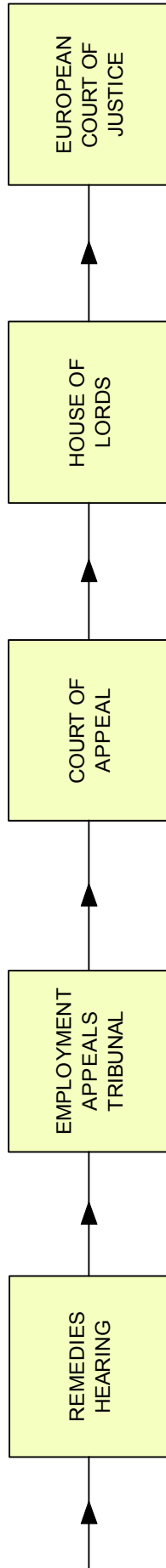


EXTERNAL STAGES





Up to this point each side bears its own costs; from now on, the loser pays all



DEBRIEFING

If a claim progresses to an Employment Tribunal, all parties should debrief the case and identify the lessons to be learned from the Tribunal.

1. Each completed Fairness at Work complaint or Employment Tribunal case should be reviewed by the Force Equality or Diversity Officer in order to ascertain whether the matter affected just one person or has the potential to affect other people and necessitates a change in policy or procedures;
2. If possible, the complainant, and/or, with the complainant's agreement, their Representative, should be interviewed by the Force Equality or Diversity Officer to identify any learning points from their experience. Learning points could include a change of policy or procedure, training needs, etc;
3. The Force Equality or Diversity Officer should also, if possible, interview the other people involved in the complaint including the Stage Managers who dealt with the matter, to identify any learning points from their experience;
4. Any learning points and recommendations from the Force Equality or Diversity Officer's review should be considered with the Chief Officer and the Force Legal Advisor;
5. The review and its outcomes should be discussed and approved by the Police Authority;
6. All Employment Tribunal cases should be monitored and reviewed by the Police Authority including an assessment of the financial impact, as well as the likely impact on trust and confidence in the Force in the wider community and on the recruitment and retention of officers and staff;
7. Any lessons that are identified and that could have a wider impact on the Service, for example, by preventing similar practices occurring, should be networked through the Home Office website, (www.homeoffice.gov.uk/crimpol/police/equality/index.html)

FAQs

1. All cases have different circumstances, so how can you learn any lessons from Employment Tribunals?

Employment Tribunals hear cases of disputes in the workplace. The disputes are often concerned with the impact of a policy on an individual, or the failure to implement a policy appropriately, or at all. All Forces have a comprehensive range of personnel policies – many follow good practice models issued by ACPO or the Home Office – so the failure of a policy is usually down to conflicting understandings of a person’s needs or wants in the workplace by either the individual, the manager, or both.

Many cases heard at Employment Tribunals revolve around whether a particular decision was “reasonable” in all the circumstances. Tribunals may look at whether actions were necessary to the effective and efficient operation of the Force or whether they were an appropriate response in all the circumstances. The indirect discrimination provisions of the discrimination legislation require that any difference in treatment is a “proportionate means of achieving a legitimate aim”. So, although the circumstances may vary, cases raise the same issues of reasonable decision-making time and time again.

*“Sometimes it is better to ask what can we learn rather than who is to blame”
Mrs Jan Berry, Chairman Police Federation of England and Wales*

2. Is there a difference between “unfair” and “unlawful” treatment?

Many things in life are unfair, but not all of them are unlawful. Bad management or offensive behaviour is only potentially unlawful if it done by reason of a characteristic that is made unlawful by a particular statute.

Discrimination is unlawful only on specific grounds and in specific circumstances. The anti-discrimination legislation makes it potentially unlawful to discriminate against someone on the grounds of their sex, married status, race, ethnic origin, nationality, colour, disability (police officers are protected

from October 2004), sexual orientation (from December 2003) and religion or belief (from December 2003). Legislation will be enacted to make it unlawful to discriminate on the grounds of age before the end of 2006. Discrimination on one or more of these grounds can be unlawful in employment and vocational training. On some, but not all of the grounds, discrimination can be unlawful in education or the provision of goods, facilities or services.

“Bad management is not necessarily discrimination”
John Kilbey, Solicitor, West Midlands Police

3. Where can I get help with my complaint?

The Police Service Staff Associations and Trade Unions are able to provide expert help and advice with any workplace dispute. They can provide assistance in resolving the matter, can, if necessary, advise on Employment Tribunal procedures and may be able to obtain legal advice on the merits of taking a case. They can also work with Forces, through the JNCC and on an individual basis, to improve equality and diversity in the workplace.

The Police Federation of England and Wales and the Superintendent's Association of England and Wales, UNISON and, in the Metropolitan Police, the PSA have funding rules for providing legal assistance and these are available from them on request.

The Police Service has a number of national and local support groups who can provide help and advice on dealing with a complaint. The British Association of Women in Policing (BAWP), the National Black Police Association (NBPA) and the Gay Police Association (GPA) all have representatives in Force who can provide help and support to individuals.

There are also a number of national agencies including ACAS, the Equal Opportunities Commission, and the Commission for Racial Equality, the Disability Rights Commission, and the Employers Forum on Disability who can

give advice on specific problems. See the section on [contact details](#) for all these, and other relevant organisations.

“Chief Officers must trust and work with the staff associations, the trade unions and the support groups” Fionualla Gill. APA

4. How much will it all cost?

If you are a member of a Staff Association or a Trade Union, any help or advice obtained in respect of a workplace dispute is free. The support groups and the national advice agencies also provide free advice.

If a complaint is not resolved and legal advice is sought this will be part of the service for subscribing members of a Staff Association or Trade Union. Any subsequent Employment Tribunal case will depend on the organisation’s analysis of the case’s prospects at an Employment Tribunal. The financial costs of taking an Employment Tribunal case are substantial and each side must normally bear its own costs. A staff association or trade union will not normally support a case that has no reasonable prospect of success, however important the case may seem to the applicant. The association or union may also consider whether the case raises important issues of wider benefit to its membership, or whether the potential costs of supporting the case are in proportion to the likely remedy the applicant will receive in the event of success

The personal costs of taking a claim should not be underestimated. Any litigation process is lengthy and confrontational and can result in the complete breakdown of the relationship between employee and Force.

5. What does success look like?

The single most important thing to establish from a complainant is what will resolve their complaint. As long as a complainant's idea of success is reasonable it may well be achievable.

Most complainants simply want the offending behaviour to stop. At the other extreme, some complainants may want to exact retribution for the treatment they have suffered. The longer a complaint remains unresolved the more a complainant's sense of grievance can increase, until eventually the grievance can take over their life and there is nothing that can assuage the harm that has been done to them. The sooner a complaint can be resolved, the easier it is to resolve.

In all cases, the job of the manager and the Representative is to try to manage the expectations of the complainant and obtain a resolution for them that allows for compromise and gets everyone back to work quickly.

"There are no winners at Employment Tribunal, identifying what the complainant wants and achieving an early resolution is the best example of success." Ian Rennie.

Secretary Equality Sub-Committee. Police Federation of England and Wales.

6. Why is the Chief Officer always named as "the Respondent"?

Employment Tribunal hearings normally focus on workplace disputes between an employer and employee. Primarily liability for unlawful action rests with the employer. For civilian employees, the correct employer will be the Police Authority. For police officers, the correct employer will be the chief officer of police, i.e. the Chief Constable or the Commissioner.

However, in some discrimination cases (usually where an allegation of harassment been made), the subject of the complaint may in fact be a work colleague. This is a complex area. In such cases, the primary liability still rests with the employer, unless it can successfully rely on the so-called "statutory defence".

To establish the statutory defence, the employer must show that it took all reasonable steps to prevent the harassment from occurring. This will usually require something more than simply pointing to the existing of an equal opportunities policy; there must be evidence that the policy has been applied consistently and fairly, that staff have been properly trained in its operation, that it has been effectively monitored and evaluated, and so on. In reality this is quite a difficult test to meet. If the employer cannot establish the statutory defence, it is "deemed" to have carried out the harassment itself, even if it knew nothing about it. This is sometimes called "constructive liability".

The work colleague - the alleged harasser - may also be named as a respondent in such cases. In a rather tortuous way, the law "deems" the work colleague to have "aided" the employer's constructive liability, whether or not the employer has made out the statutory defence. This means that the work colleague may end up with a finding of unlawful discrimination against them personally.

In practice, there is usually only merit in naming a work colleague as an individual respondent if there is a reasonable chance that the employer will be able to make out the statutory defence. This is because it is only in such cases that legal action against the work colleague offers the only chance of financial redress. For reasons set out further below, it is rarely cost-effective for individual respondents to become embroiled in discrimination cases and, more importantly, it often makes it difficult to promote an effective workplace resolution.

The Tribunal first considers whether the employer can claim to have made out a statutory defence, the Tribunal would then consider whether the perpetrators of the acts were liable to pay compensation.

The Employment Tribunal decides whether discrimination has taken place on the balance of probabilities. It is not a court where civil or criminal cases between two individuals are considered.

“An allegation of unlawful treatment is not a personal insult against the Chief Officer” Jayne Monkhouse, Equality Advisor

7. How much can I get?

Complainants may believe that they can get hundreds of thousands of pounds compensation for the hurt they have suffered. Whilst this may be true in one or two high profile cases, awards by Employment Tribunals are carefully controlled and come under two main headings – loss of earnings and injury to feelings (including awards for personal injury). An Applicant cannot raise the same circumstances in more than one case in order to obtain compensation. A Tribunal must consider both injury to feelings and personal injury when assessing compensation. Very occasionally an injury to feelings award may also include assessment of aggravated damages if an employer has behaved particularly badly prosecuted their case maliciously.

Awards for loss of earnings are made net of any benefits or payments received when out of work or on half pay. They can also include pension loss. A Tribunal will not compensate for loss of earnings indefinitely; applicants must show that they have attempted to mitigate their loss, for example by seeking other employment if they have lost their job. Awards for injury to feelings start at around £750. Cases where high awards have been made are invariably compensation high earning individuals who lost their job.

Compensation for successful claims of discrimination against an employer at an Employment Tribunal average as little as £5000; findings of unlawful discrimination made against individuals, in circumstances where the statutory defence has been made out are usually in the hundreds, not thousands, of pounds.

8. I can't just change the rules for one person – how would this look to everyone else?

There may be a concern that if a policy is changed to benefit one individual it will have a negative impact on other people, or else all the other people may want the same thing. Each person has different needs and wants at different times in their lives and their circumstances must be looked at individually. One size does not fit all. Forces need to welcome diversity and be flexible in considering applications for different working arrangements.

“Minor incidents, if not dealt with, can turn out to have major implications”.
Julia Hodson. ACC Lancashire Constabulary

9. I don't understand why the Applicant went to the Tribunal before we had a chance to resolve the matter?

A complaint must be lodged at an Employment Tribunal within 3 calendar months less 1 day from the date of the last alleged act of discrimination. Although this time limit can be extended if the Tribunal consider it is just and equitable, this only happens in very exceptional circumstances. If an applicant fails to register their claim within the time limit – even if they were caught up in an extended grievance procedure or they were off sick - they could lose their right to proceed to a hearing.

If, as often happens, an internal grievance is not completed before the time limit expires, it is advisable for the complainant to comply with the Employment Tribunal time limits. But this can start a chain of events that it is

hard to stop. The Tribunal will action the case by informing the Force that there is a case lodged against them. The Force will send the Tribunal forms to their Legal Section who will begin to collect evidence to defend the claim. And the battle lines are drawn.

*“If a case settles on the door of the Tribunal, it could have been settled earlier”
Shirley Worrall, Barrister. Lancashire Constabulary*

10. I was served with a “statutory questionnaire”. Why should I answer such intrusive questions?

The anti-discrimination legislation allows for the applicant to ask questions of their employer. It is designed to give **both parties** the opportunity to decide whether the facts could support a claim of discrimination. The questionnaire must be sent within 3 months of the date of the act complained of; or, where an IT1 has been lodged with a Tribunal, the questionnaire must be served within 21 days thereafter. The employer does not have to answer the questions, but providing answers could go some way to explaining the rationale that gave rise to the complaint and may facilitate a resolution. Failure to answer the questions, or answers which are incomplete or evasive, can be taken into account by a Tribunal when deciding the merits of a claim.

11. How can it have been wrong to move the complainant out of harm’s way?

The Chief Officer is responsible for the effective and efficient running of his/her Force. They can post people whenever to wherever they are required. They must do this though without unlawful discrimination, with regard to a proper assessment of risk to the individual, and without unlawful victimisation.

Sometimes it is an easy option to move someone who has raised a complaint, or who is the subject of a complaint. Sometimes they may want to move, but more often than not, they don’t. Moving either of them, or anyone who has been involved in the complaint, could be unlawful victimisation. It is always

best to deal with the complaint and to ask the people involved how they want it dealt with and how best it can be resolved.

Selecting someone on the grounds of their sex, race, sexual orientation or religion or belief could be unlawful discrimination – either of that person, or of another person denied the opportunity to work in that area. Although it may seem to be most appropriate to have women in the Child Support Unit or a gay officer to investigate homophobic attacks, it can be tokenism and reconfirm traditional stereotypes. Officers from all groups must have an equal opportunity to apply for posts and should be selected because they are the best person for the job.

12. What can I do if the complainant is determined to have their “day in court”?

At the start of a complaint an applicant is most likely to want the treatment they are complaining about to stop. As time goes on, their sense of injustice will increase if the treatment is not dealt with. In the end, the employment relationship may break down completely, with officers taking sick leave as a result of stress and eventually being lost to the Service completely. An applicant may end up feeling that they have nothing further to lose and decide to embarrass their Force in the public arena of a Tribunal to make up for the hurt and embarrassment they have suffered.

Some cases, notably those involving sexual harassment, can be heard in private. A case may be heard, but the decision not given for some weeks. So if a case is reported in the press, the public may be treated to any sordid details but rarely know which side, if any, is vindicated in the end. And in some cases, an applicant’s name can become synonymous with a case precedent so it gets a life of its own in legal circles.

A Tribunal will evaluate the circumstances of the case against the requirements of the law. There is no guarantee of justice. There is no guarantee of vindication for either party; in fact, it is more usual for all sides to

look somewhat less than perfect when their words and actions are scrutinized in the cold light of the Tribunal. One thing is certain - there are no winners in an Employment Tribunal.

12. What is the point of using the Fairness at Work procedure?

The Fairness at Work procedure can address issues of dispute between fellow officers or Police staff. It is important to remember that it is not a vehicle for apportioning blame or punishing anyone. There are other procedures designed for discipline or misconduct which it may be appropriate to use, but the Fairness at Work procedure is designed to obtain a swift resolution to a complaint. No one “wins” or “loses”.

The success of the Fairness at Work procedure depends upon the manner of its operation in Forces. Everyone concerned in the process needs to adhere to the principles of compromise and confidentiality to bring about a swift resolution.

The Employment Act 2002 (Dispute Resolution) Regulations 2004, which currently apply only to support staff, will require a complainant who lodges a complaint at an Employment Tribunal to have used their in-Force Fairness at Work procedure at least 28 days before they lodge their claim. This is in order to give an employer the opportunity to resolve the complaint. The act of using an internal grievance procedure will automatically extend the applicant’s time limit by a further 3 months. A complainant will be expected to try to get their complaint resolved by their employer unless there is a complete breakdown of trust between them or they suffered from such harassment or violent treatment that they could not use the procedure. If a complainant simply chooses not to use their Fairness at Work procedure their eventual compensation could be adversely affected; similarly, a Force who does not have or does not allow the complainant to use the procedure can expect any eventual award to be increased.

SOME SIGNIFICANT CASES

The following case summaries do not give a detailed resume of the law and are for general guidance and information only.

1 Sheikh v Chief Constable of Greater Manchester Police CA 1989

Special Constables can take claims of discrimination to an Employment Tribunal in the same way as other Police Officers.

The applicant was appointed as a special constable in April 1986. In November 1986 he attended an assessment course with a view to joining the regular service but failed to pass. In June 1987 his appointment as a special constable was terminated. He alleged at an IT that the refusal to appoint him to the regular service and the decision to terminate his appointment as a special constable were unlawful discrimination on the ground of his race. The IT rejected his claim on the ground that he was not “employed” under the terms of his contract so they could not hear his case. He appealed this decision. The Court of Appeal decided that he was not employed under a contract to execute work or labour (the definition of employment in the Act) but was a holder of the office of constable, and so came under the same jurisdiction as a regular officer. His case was sent back to the IT to be decided on its merits.

2 Webster v Chief Constable of Hertfordshire Constabulary ET 2000

The requirement to have perfect colour vision could unlawfully discriminate against men (who are affected by colour blindness more than women)

The Applicant was removed from operational police duties after 10 years service because he suffered from a particular type of colour blindness (“a moderate deuteranomalous loss of colour vision”), which meant that he could not distinguish between different shades of green. He had declared the deficiency when he applied to the Force. 7% of men and 0.5% of women have hereditary defective colour vision. He alleged the need to have perfect colour

vision was not justifiable. The ET balanced the needs of the Force against the effects on Mr Webster and concluded that he had been indirectly discriminated against on the ground of his sex.

3 Chief Constable of Lincolnshire Constabulary v Stubbs EAT 1999

Even though an officer is off-duty or off-site, their Chief Constable may still be liable for their discriminatory actions. The circumstances of the unlawful treatment need just to be related to the workplace.

DC Deborah Stubbs was on secondment to the NE branch of the Regional Crime Squad from Lincolnshire Police. She alleged that a male colleague sexually harassed her on two occasions in a public house. The Tribunal found that drinks after work and an organised leaving party were sufficiently work related to be treated as “extensions of work”. Further they found that the Chief Constable remained liable for the actions of his officers even when they were seconded out of his Force.

4 Graham v Bedfordshire Constabulary EAT 2002

It can be unlawful to refuse to select someone because their spouse would be in a supervisory position over them.

Ms Graham was an Inspector with the Bedfordshire Police. In 1988 she married a Chief Superintendent of the same Force. He was the Divisional Commander of D Division and in May 1999 Ms Graham applied for and was appointed to the post of Area Inspector in D Division. However, the Chief Constable rescinded the appointment on the grounds that as a spouse of a serving Officer she should not work in the same Division because she would not be a competent and compellable witness against her spouse in any criminal proceedings. He was also concerned that it would be difficult for Officers under her supervision to make a complaint or take a grievance

knowing of her relationship with the Divisional Commander and that it would be more difficult to deal with problems relating to under-performance.

The EAT upheld Ms Graham complaints on indirect sex discrimination and both direct and indirect discrimination on the grounds of married status. The EAT also held that the Chief Constable had not discharged the burden of justifying the policy under the indirect sex discrimination legislation and commented that it regarded his concerns as speculative. They concluded that the discriminatory effect was disproportionate to the reasonable needs of the Service. The EAT found that the major reason for the decision to rescind the Applicant's appointment was based on the fact of marriage and that the Chief Constable treated her less favourably on the grounds of her married status.

5 Allcock v the Chief Constable of Hampshire Constabulary IT 1997

A lower pass mark for women on a selection test discriminates against men.

Hampshire Constabulary operated a fitness test for applicants to their dog section, which included the completion of a 2-mile multi-terrain course in 16 minutes for men, and 17 minutes for women. The Applicant completed the course in 16 minutes, 46 seconds. If he had been a woman, he would have passed the test. The IT decided that this constituted unlawful direct sex discrimination, which cannot be justified under the terms of the Act.

6 Dougan v the Chief Constable of the RUC NI IT 2002

The same pass mark for both men and women on a selection test can discriminate against women. The employer may be able to justify the test however if the test standards are an essential requirement of the job.

Jo-Anne Dougan became a full time member of the RUC Reserve in 1992. In 1997 and 1998 she applied to become a full time member of the Regular RUC but on both occasions she failed the physical competence assessment. She

alleged that her failure to pass the fitness test was unlawful indirect sex discrimination: the RUC had applied a requirement (that applicants must pass a fitness test) with which a considerably smaller proportion of women than men could comply, with which she could not comply, and which the RUC could not show to be objectively justifiable.

During the relevant years that she applied, 100% of the men who took the fitness test passed but just 54% and 68% of the women applicants passed. The case revolved around whether the fitness test was justifiable. Under the terms of the legislation justification requires an objective balance to be struck between the discriminating effect of the requirement or condition and the reasonable need of the person applying it. When looking at the question of justification, the Tribunal looked carefully at the work of the RUC working party that had developed the fitness test, and considered in detail the two parts of the test – the push/pull device and a circuit run - to judge whether the RUC could justify the discriminatory impact of the test on women applicants.

The Tribunal was fully satisfied that the introduction of a job related fitness test was justified and accepted that the push/pull machine replicated that aspect of the beat and patrol officer's work and the relative strengths required. They recognised that officers considered that the circuit run properly reflected the core activities and competencies of beat and patrol work, but they were not convinced that the time set for the circuit run properly reflected the performance of existing women officers who had been part of the initial validation exercise. The setting of the standard at 3.45 minutes was 9 seconds faster than the average time taken by the women RUC officers which was 3.54 minutes. This, they considered, was not properly justifiable and resulted in unlawful indirect sex discrimination against Ms Dougan.

7 Moore & Bottrill v British Airways EAT 2000

Any reduction in pay or benefits because a woman is pregnant or on maternity leave or because she has taken maternity leave is unlawful.

The Applicants were flight attendants with British Airways and when they became pregnant they were not able to continue to fly because of considerations for the health and safety of their unborn babies. They were allocated to ground duties at the airport, and lost their flight allowance. The ET ruled that this loss of remuneration was unlawful direct discrimination on the ground of their sex, because they should not have suffered a detriment as a result of their pregnancies.

8 Tapp v the Chief Constable of Suffolk Constabulary IT 1998

The Training Centre sent Ms Tapp back to her Force when they learnt that she was (just) pregnant. They should have undertaken a proper risk assessment and discussed any alteration to her work with her.

The Applicant was a probationer constable on module 2 of her initial training course at Shotley Training Centre when she discovered that she was 10 weeks pregnant. She discussed the physical requirements of the course with her GP who decided that at that time in her pregnancy, she could continue with the course. She therefore informed the training centre, but despite her protestations, she was sent back to her Force to undertake routine office duties. She had to restart her probationer training on her return from maternity leave and was consequently delayed being confirmed as a constable and missed out on her pay increment. No risk assessment was undertaken on her work.

Whilst recognising that the Respondent's officers acted for the best possible motives, the IT found that the Applicant had been directly discriminated against on the ground of her sex. They commented that employers following the Health and Safety Regulations are not discriminating on the ground of sex, but that an employer cannot raise a successful defence simply by quoting the relevant codes, they must comply with their terms. Her work should have been evaluated in conjunction with her stage of pregnancy, she had to be informed of the concerns and given the opportunity to discuss the issues with

her doctors. In the absence of a proper risk assessment the IT found that she had been directly discriminated against on the ground of her sex.

9 Chew v Avon & Somerset Constabulary EAT 2001

Ms Chew was discriminated against because the Force would not let her work a part time work pattern that suited her domestic requirements. They wanted her to work a pattern to fit in with the shifts of full timers.

The Applicant joined Avon and Somerset Police in 1989 as a full time police officer and in 1994 the Force adopted a part time policy permitting part time working only in the same cycle of duty as full timers in the same department/district. After she had her child she worked part time, in accordance with the policy, in the child protection team. Her tenure was coming to an end when her partner left her with sole responsibility for her child, and so she applied for a part time post in 1998, working set day shifts in CID. The Inspector approved her shift pattern, but it was rejected by the Superintendent on the grounds that “the hours selected do not match any approved rest days in my district”. He also rejected her application to do the same hours on uniformed patrol for the same reason.

The EAT decided that the requirement to work the fixed work pattern was unjustified, and rejected the Force’s contention that having an officer working atypical hours would adversely affect morale in the rest of the Force and would lead to many others wanting the same benefit.

10 Butt v The Home Office, ET 2000.

Mr Butt was victimised when threatened with relocation because the requirement for him to move was related to and caused by a previous ET application alleging race discrimination (which he had actually withdrawn).

The applicant, who is of Asian origin, was employed on a fixed-term contract as a senior development officer at the Bradford office of the Home Office's Drug Prevention Initiative (DPI). This was due to run from 1991 until the end of March 1999. Early in 1998 he brought a race discrimination case against the DPI, which was dismissed by the Tribunal at the end of that year. He had been absent on sick leave during the course of the proceedings and did not return to work prior to the expiry of his contract. In January 1999 his solicitor wrote asking as to Mr Butt's future working arrangements and was informed that once Mr Butt was fit there would be a job for him, but at the DPI's Manchester office. Mr Butt contended that this was an act of victimisation consequent on his having instituted race discrimination proceedings in 1998.

The ET upheld his complaint. The applicant was not consulted as to his place of work and the Tribunal concluded that the DPI wished to avoid Mr Butt working with the people in the Bradford office even for the period of 3 or 4 weeks that remained of his contract. They considered that the act of redeployment was directly connected with and caused by the applicant's recent tribunal proceedings and was an act of unlawful discrimination.

11 Edwards v London Underground Ltd CA 1998

Ms Edwards was prevented from working a fixed (full time) shift pattern rather than 3 rotating shifts. This was sex discrimination because she could not work the shift pattern with her child care responsibilities.

The Applicant was a single parent who managed to combine her work and family commitments by working a fixed 8am to 4pm shift as a London Underground Tube Train Driver.

In 1991 London Underground announced the introduction of a new shift system, which would be more economical, but did not allow for anyone to swap shifts as they had done before. She complained that she would not be able to work these shifts and, when a plan to introduce special arrangements for single parents collapsed, she resigned. She claimed indirect sex

discrimination arguing the new shift pattern would have a disparate impact on women and was not justifiable.

The statistics showed that, at that time, 100% of men employed as tube train drivers by London Underground could comply with the new shift patterns and 95.2% of women - only a 4.8% point difference. The employer argued that the difference was not significant and it was not permissible to look at any factors other than the actual workforce. The Court of Appeal said that it was significant that all the men in what was a large group (2023) could comply and only one woman out of a very small group (21) could not, and found that Ms Edwards had been the subject of unlawful indirect discrimination on the ground of her sex.

12 Goodwin v UK. ECHR 2002

Guidance on treating someone in ALL respects as a member of their new sex after they have undergone gender reassignment.

In a case before the European Court of Human Rights in 2002, *Goodwin v UK*, a post operative transsexual person was ruled to have been denied her rights under the Human Rights Act because her gender reassignment was not recognised by the UK laws. She wanted her marriage to be legally recognised, but this was not possible as UK law continued to assert that she was a man – the sex of her birth – although she had undergone a sex change operation. She won her case, thus ensuring that the UK government must amend all relevant legislation so that post operative transsexuals can be treated as belonging to their “new” sex, unless there are significant factors of public interest present in a particular case to weigh against the interests of the individual.

In *A v the Chief Constable of West Yorkshire Police* the Chief Constable refused to employ A, a male to female transsexual, on the grounds that she could not conduct intimate searches of prisoners. A was still legally a man and therefore a strip-search of a woman would technically be an assault. As A

lived and worked as a woman, she was not able to search men either. The Chief Constable claimed that this prevented him from employing A as an operational police officer. The Court of Appeal decided that this was unlawful sex discrimination against A – other means of allocating duties could and should have been employed and it was disproportionate to refuse A a job.

13 Croft v Consignia plc EAT 2002

Guidance on the provision of toilet facilities for people undergoing gender reassignment

Ms Croft was a pre-operative male to female transsexual who was refused access to the ladies toilet at her place of work by her employer, Consignia. She wanted to be treated as a member of the female sex during “the life test” period of her gender reassignment – when she was expected to prove that she could live as a member of her “new” sex. However her women work colleagues had indicated that they would not be happy to allow someone whom they had known for many years as a man, and who was an anatomical male to use their toilet. Ms Croft claimed that this was unlawful sex discrimination. The EAT ruled that “ordinary good practice” requires that an employer is to be expected to require those who are, or who are believed to be, at law, males, to use only the male facilities. The situation would be different when and if Ms Croft became a post operative transsexual in the light of Goodwin (above).

14 Hill & Stapleton v Irish Revenue Commissioners ECJ 1998

Pay increments for part time workers should be made on a calendar year basis not a time served basis

Ms Hill and Ms Stapleton were recruited to the Irish Civil Service to the Grade of Clerical Assistant and were assigned to the office of the Revenue Commissioners. Ms Hill was recruited in July 1981 and began job-sharing in

May 1988. Ms Stapleton was recruited in a job-sharing capacity in April 1986. Ms Hill and Ms Stapleton were employed in a job-sharing capacity for two years. They worked exactly half the time which a full-time employee would have worked, on a one week on/one week off basis. During their respective job-sharing periods of employment, each moved one point up the incremental scale with each year of service and was paid at the rate of 50% of the salary for clerical assistants, according to the point each had reached on the scale.

Ms Hill returned to full-time employment in June 1990. At that time she had reached the ninth point on the incremental job-sharing scale, however she was subsequently placed on the eighth point, on the ground that two years' job-sharing were equivalent to one year's full-time service. Ms Stapleton secured a full-time post in April 1988. She had at that time reached the third point on the incremental job-sharing scale. She was informed that her two years' job-sharing service was to be counted as one year's full-time service.

The employer had applied the criterion of service calculated by the actual length of time worked in a post. Evidence before the Court showed that almost all job-sharing workers in the Irish public sector were women. The ECJ decided that the denial of incremental progression inline with their length of service was indirect discrimination against women as a much higher percentage of female workers than male workers were engaged in job-sharing, and the employer could not justify the practice on objective grounds.

15 Hyman v Chief Constable of South Wales Police EAT 2003

Guidance on the position of Police Officers under the Working Time Regulations.

Mr Hyman retired from South Wales Police on the grounds of ill health in 2002 after 16 years service. He sought the proper amount of outstanding holiday pay due to him under Police Regulations which state that an officer's leave year runs from 1 October each year. South Wales Police contended that the

leave year ran from 1 April as a consequence of a varying South Wales Police Standing Order (1/23).

South Wales Police contended that Mr Hyman was not employed under a contract of employment but under Orders and Regulations and therefore was not able to claim that he had been treated unlawfully under the terms of the Working Time Regulations. The EAT found however that Mr Hyman was “a worker” under the terms of the Working Time Regulations and that the leave year specified by Police Regulations, together with the relevant standing order was to be treated as a “contractual term” and constituted a “relevant agreement” for the purposes of Regulation 13 of the Regulations. He was awarded his outstanding pay in lieu of holidays.

16 Jones v Chief Constable of Northamptonshire Police ET 1999

Reserving career development opportunities in Special Branch to women was unlawful positive discrimination against a male officer

Northamptonshire Police offered a number of temporary posts in the Special Branch of the Crime Support Department to women only. The Force contended that the positive action provisions of s48 of the Sex Discrimination Act allowed them to offer training opportunities to persons who were under represented in particular area of employment. Throughout 1997 there had been no women employed in Special Branch in Northamptonshire and HMIC had commented on the need to use positive action to address the gender imbalance. The Force wrote to all eligible women Sergeants inviting them to apply for the 6 month temporary posting. Mr Jones was not able to apply.

However, the ET found that the Force had not indicated that the postings were for the purposes of training to fit applicants for work in the Special Branch (as required by the legislation), but that they were advertised as “career development opportunities” and as such constituted positive discrimination against Mr Jones. They awarded him £750 compensation.

17 King v the Great Britain China Centre CA 1992

Guidance on how to infer discrimination from the facts and reach a conclusion on the balance of probabilities.

Ms King, a British woman of Chinese ethnic background, applied for the post of Deputy Director with the Great Britain China Centre. The organisation promoted cultural links between Great Britain and China. Ms King fitted the job requirements, including being fluent in Chinese, but was not shortlisted. No ethnic Chinese person had ever worked for the organisation and none were shortlisted for the post of Deputy Director.

The Court of Appeal decided that she had made out her case of race discrimination despite there being no hard evidence. They concluded that discrimination can be inferred on the balance of probabilities from the facts, including an inference of discrimination from a failure to reply to a statutory questionnaire or an evasive or equivocal reply. The Court held that when there is a finding of less favourable treatment and there is a racial difference, this will point to a possible finding of race discrimination. It is then for the employer to provide a satisfactory explanation, in the absence of which it will be legitimate to infer discrimination.

18 AM v (1) WC and (2) SPV EAT 1999

A police officer can be personally liable for acts of discrimination

A woman police officer AM, working for a Constabulary referred to as WC claimed that a fellow officer, known as SPV, sexually harassed her. Because of the nature of the case the Tribunal allowed it to be heard in private.

Before considering the substantive case, the EAT were asked to rule on a preliminary issue. AM alleged that under s42 of the Sex Discrimination Act, the Chief Constable was responsible for the acts of SPV; but if the Tribunal

deemed that the Chief had taken such actions as were reasonably practical to prevent the unlawful acts, then SPV would be personally liable for his actions. SPV contended that as he was not an “employee” in the legal sense, he did not come under the provisions of s42, and so no action could be taken against him. The EAT ruled that s42 should be read in conjunction with s17 of the Sex Discrimination Act, which states that police officers are to be regarded as employees for the purposes of the legislation. This applied to SPV as a Respondent in the same way that it applied to AM as an Applicant. They therefore decided that SPV came under the provisions of s42 and was potentially liable for the acts of discrimination.

The EAT confirmed SPV as a Respondent to the action and remitted the case to an ET for a hearing on the substantive case.

19 Kigass Aero Components Ltd v Brown EAT2000

Entitlement to holiday pay when on long term sick or maternity leave under the Working Time Regulations

Following a road accident, Mr Brown remained on long-term sick leave from October 1998. Kigass, his employer, refused to pay for annual leave whilst he was on sick leave. However, the EAT held that a worker on long-term sick leave was still entitled to holiday pay pursuant to the Working Time Regulations 1998. It held that a person is entitled to annual leave if they are or have been a worker during the whole or part of a leave year and have given their employer proper notice to take leave under the Regulations. There is no requirement for the worker to perform work during that period. And nothing in the Regulations required that the right to one type of leave (such as sick leave) diminished or extinguished the right to another type (such as annual leave) for the same period of employment. The EAT's reasoning in Kigass applies also to workers on additional maternity leave and parental leave.

20 Lowrey-Nesbitt v the Commissioner of the Metropolis EAT 1998

Police officers are Officers of the Crown and cannot claim constructive dismissal or any other disadvantage under provisions covering employees

Mr Lowrey-Nesbitt's case is one of a considerable number of cases taken by police officers seeking to argue that they can claim for unfair treatment under legal provisions that cover "employees" or those in "Crown employment". None of these cases have been successful because police officers are classed under the law as "Officers of the Crown" not "employees" nor "civil servants employed by the Crown".

The discrimination legislation specifically identifies police officers as being covered by that legislation, but the Employment Rights Act 1996 specifically excludes police service. S200(2) of the Employment Rights Act states that police service means

- (a) service as a member of a constabulary maintained by virtue of an enactment, or
- (b) service in any other capacity by virtue of which a person has the powers or privileges of a constable.

Mr Lowrey-Nesbitt's claim that the Force had made unlawful deductions from his wages was dismissed. Other recent cases include *Sweeney v Ministry of Defence Police* (EAT 2001) who was not able to claim that he was unfairly dismissed and *Spence v British Railways Board* (EAT 2000) whose claim against British Transport Police was also dismissed.

21 Liversidge v the Chief Constable of Bedfordshire Police CA 2002

The question of liability of Chief Officers for the sexually discriminatory acts of their officers caused by the Liversidge case was finally resolved in July 2003 by the introduction of the Sex Discrimination Act (Amendment) Regulations.

A clause in the Race Relations (Amendment) Act 2000 enacted on 1 April 2001, clarified that Chief Officers were legally liable for the actions of their officers in race discrimination cases. However the government did not draft a similar amendment to the Sex Discrimination Act. Because both pieces of legislation are drafted in the same terms, the result was that Chief Officers became potentially liable for the discriminatory acts of their officers in race discrimination cases, but not their acts in sex discrimination cases.

The Employment Tribunal in the case of *Liversidge v Chief Constable of Bedfordshire*, first drew attention to this anomaly. The Tribunal decided that because of the amendment to the Race Relations Act, Chief Officers were liable for the racially discriminatory actions of their officers only from April 2001. This left Ms Liversidge unable to claim against her Chief Officer for racial harassment before that date. In addition, the lack of a similar amendment to the Sex Discrimination Act meant that police officers could not claim that their Chief Officer was liable for acts of sex discrimination perpetrated by one officer against another – and because of the way the law on liability works, they did not have a direct claim against the officer alleged to have done the discriminatory act either.

To remedy this situation the government enacted the Sex Discrimination Act 1975 (Amendment) Regulations 2003 on 19 July 2003, so that from that date, Chief Officers became liable for unlawful acts of sex discrimination done, with or without their knowledge or approval, by officers of their Force in the course of their work, unless the Chief could show that he or she took such steps as were reasonably practical to prevent the officer from committing the unlawful act(s). Unfortunately the amendment was not retrospective, so several cases were “stayed pending *Liversidge*” in the legal process as appeals were heard.

Decisions in a number of other cases limited the extent of the *Liversidge* decision. The cases of *McGlennon v Chief Constable of Cumbria*, *Baskerville v the Chief Constable of Kent Constabulary* and *Hands v the Commissioner of Police for the Metropolis* indicated (1) that Chief Officers were liable for acts perpetrated on their authority as part of normal management action; (2) that

sex discrimination cases could be distinguished from race discrimination cases at the relevant dates because the EU Equal Treatment Directive provided protection from sex discrimination in circumstances where domestic legislation did not provide a remedy; and (3) that Employment Tribunals could directly enforce the provisions of the Equal Treatment Directive. These decisions resolved the situation for some of the people caught up in the legal confusion.

The law now provides the same legal framework for police officers as for all other workers bringing claims of sex or race discrimination in the workplace. The wording in the Employment Equality Sexual Orientation and Religion and Belief Regulations 2003 also ensures that Chief Officers are potentially liable for the discriminatory acts of their officers at work on those grounds from December 2003.

22. Meek v London Borough of Hillingdon ET 2003

A man dismissed for email abuse was sexually discriminated against because a woman guilty of the same offence was given only a final written warning.

Mr Meek and Ms Gordon had been exchanging emails at work almost daily. Some of these were of a hardcore pornographic nature. The employer had an ICT Usage policy incorporated in employees' contracts of employment. The employer found Ms Gordon guilty of gross misconduct and gave her a final written warning. Mr Meek however, was dismissed for gross misconduct.

Mr Meek appealed, but his appeal was dismissed. The appeals officer, Ms Lockley, said that Ms Gordon had shown regret, while Mr Meek's expression of regret was not credible, and that there was a difference in the content of the emails sent. The tribunal concluded that these were invented reasons to justify the serious blunder made at the dismissal stage. They commented that the decision to dismiss Mr Meek was totally justified, but that Ms Gordon should also have been dismissed. Mr Meek was treated less favourably than Ms Gordon and the respondent had failed to establish that the less favourable

treatment was not on the grounds of Mr Meek's sex. The tribunal rejected a claim of race discrimination since the dismissing officer was not aware that Ms Gordon was black.

The tribunal awarded Mr Meek £3,000 compensation for injury to feelings, £2,899.50 for loss of earnings, and his legal costs.

23. Shamoon v Chief Constable of the RUC HL 2003

A Chief Inspector relieved of the duty to do appraisals was not discriminated against on the ground of her sex.

Chief Inspector Shamoon worked in the Traffic Department of the Police Service of Northern Ireland (the RUC, as it then was). She was responsible for appraisals on the police constables who worked under her command. A number of officers made complaints about their appraisal and took their complaints to the Police Federation. Federation representatives met with Chief Superintendent Laing, the Head of the Traffic Division, to discuss the appraisals with the result that Chief Inspector Shamoon was relieved of her responsibility to complete appraisals. She complained of sex discrimination, because other (male) traffic inspectors were allowed to conduct appraisals.

The case revolved around the correct interpretation of whether Chief Inspector Shamoon had suffered a “detriment” under the terms of the NI Sex Discrimination Order, and whether the treatment was “less favourable treatment on the ground of her sex”.

The House of Lords decided that the definition of “detriment” was that set down in the case of *Jeremiah v MOD* in 1980 – “a detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to his detriment”. They decided that Chief Inspector Shamoon had suffered a detriment. However, the House of Lords found that the detriment was not on the ground of her sex. A proper comparator was not an actual male Chief Inspector in Traffic, but rather, the Tribunal should

consider how a male Chief Inspector in the same circumstances, who had had complaints raised against him, would have been treated (a hypothetical male).

24 Anya v University of Oxford CA 2001

The correct interpretation of the “awful to everyone” defence.

Dr Anya, a black man of Nigerian origin, applied unsuccessfully for a post-doctoral research assistant's post. He alleged that his non-selection was direct race discrimination. He alleged that his supervisor was predisposed to reject him and that the interview process did not accord with the University's stated policy. In the absence of a reasonable explanation for the selection of a white male candidate, the Tribunal found race discrimination. The University appealed.

The Court of Appeal decided that where an employer behaves unreasonably towards a black employee, it is an error of law for a tribunal to direct itself that, in the absence of further evidence, an inference of race discrimination is not to be drawn because the employer might well behave equally unreasonably to a white employee. It is for the employer to establish that it behaves unreasonably regardless of race, and not for the applicant to disprove this proposition.

24. Sheriff v Klyne Tugs (Lowestoft) Ltd CA 1999

The Court of Appeal hold that employment tribunals have jurisdiction to award compensation for personal injury, both physical and psychiatric, caused by unlawful discrimination.

Mr Sheriff, a Muslim of Somali origin, was employed by Klyne Tugs (Lowestoft) Ltd as a second engineer on one of their vessels. During his employment, he alleged that he suffered racial harassment, abuse and bullying from the master of the vessel. He was made to work longer hours than his white colleagues, was made to eat meat forbidden by his religion,

and was refused permission to go ashore to obtain medical treatment. In January 1995 Mr Sheriff had a nervous breakdown. On presenting the medical certificate to his employers, he was dismissed.

Mr Sheriff brought a claim of racial discrimination, which was eventually settled for £4,000. He then brought a personal injury claim in the county court. The county court struck out his claim as an abuse of process on the grounds that his personal injury claim was one which the employment tribunal had jurisdiction and his claim had already been settled. He appealed.

The Court of Appeal held that employment tribunals do have jurisdiction to award damages for personal injury in cases of discrimination and the county court has jurisdiction to award damages for personal injury caused by discrimination. The issue for the court or tribunal was simply one of establishing the necessary causal link between the discrimination and the personal injury.

The Race Relations Act, along with the Sex Discrimination Act and Disability Discrimination Act, all provide that a tribunal may award damages which may include damages for psychiatric injury over and above any damage for injury to feelings.

If you consider that a particular case would illustrate a practice that could be adopted or avoided by the police service and would like to add it to this database please use this pro forma and email to mark.stephenson@homeoffice.gsi.gov.uk for attachment to the website.

Case name.....Court and date.....

Headline details

Case synopsis.....

CONTACT DETAILS

Police Federation of England and Wales www.polfed.org.uk
15/17 Langley Road
Surbiton
Surrey
KT6 6LP
Tel 020 8399 2224

Police Officers should contact their Force Joint Branch Board for advice.

Superintendent's Association of England and Wales www.policesupers.com
67A Reading Road
Pangebourne
Berkshire
RG6 7JD
Tel 0118 984 4005

Police Officers should contact their Force Superintendent's Association office

UNISON www.unison.org.uk
Head Office
1 Mabledon Place
London WC1H 9AJ
Telephone: 0845 355 0845
See website for regional offices

Association of Police Authorities
Local Government House
Smith Square
London
SW1P 3HZ
Tel Fionnuala Gill or Clare Cooper on 020 7664 3167/3088
Fax 020 7664 3191
Email Fionnuala.gill@lga.gov.uk or Claire.cooper@lga.gov.uk

Equal Opportunities Commission www.eoc.org.uk
Head Office
Arndale House
Arndale Centre
Manchester
M3 4EQ
Tel 0845 601 5901

The EOC also has offices in London and Cardiff - See website for details.

Commission for Racial Equality www.cre.gov.uk
Head Office
St. Dunstan's House
201/211 Borough High Street
London
SE1 1GZ
Tel 020 7939 0000

The CRE also has offices in Birmingham, Leeds, Manchester and Cardiff, and funds over 100 Racial Equality Councils - See website for details.

Disability Rights Commission www.drc.org.uk
Head Office
Arndale House
Arndale Centre
Manchester
M3 4EQ
Tel 08457 622 633

The DRC also has offices in London and Stratford upon Avon - See website for details.

British Association of Women in Policing www.bawp.org
PO Box 999, Rossendale, Lancs. BB4 8GE
Tel & Fax 01706 216331

National Black Police Association www.nationalbpa.com
Room GO4, Allington Towers, 19 Allington St; London. SW1E 5EB
Tel 0207 035 5153 Fax 0207 035 5155

Gay Police Association www.gay.police.uk
BM GPA, London. WC1N 3XX
Action line (24 hrs) 07092 700 000 Fax 07092 700 100

All Police Forces are members of the Employers Forum on Disability, which supports a police network run by a seconded police officer.

Employers Forum on Disability www.employers-forum.co.uk
Nutmeg House
60 Gainsford Street
London
SE1 2NY
Tel 020 7403 3020

The Metropolitan Police Service and some other Forces also support a range of local Force faith groups.

Employers Forum on Age www.efa.org.uk
2nd floor
The Tower Building
11 York Road
London
SE1 7NX
Tel 020 7981 0341

Stonewall deal with issues concerning lesbians, gay men and bisexuals

Stonewall www.stonewall.org.uk

46 Grosvenor Gardens

London

SW1W 0GB

Tel 020 7881 9440

The Gender Trust deal with issues concerning adults who are Transsexual,
Gender Dysphoric or Trangenderist

The Gender Trust www.gendertrust.org.uk

PO Box 3192

Brighton

BN1 3WR

Tel 01273 234024

ACAS www.acas.org.uk

Employment Tribunals www.employmenttribunals.gov.uk

Employment Appeal Tribunal www.employmentappeals.gov.uk