

LIABILITY

Action under equality legislation in Employment Tribunal proceedings is taken against an Officer's employer (the Chief Constable or Commissioner) for subjecting the Officer to unlawful discrimination. In some circumstances, it may also be appropriate to bring proceedings against the individual officers responsible. The Chief Constable or Commissioner has a defence to liability if they can prove that they took such steps as were reasonably practicable to prevent the officers responsible from subjecting the complaining Officer to unlawful discrimination.

successful Applicants receive less than this and only a small minority receive substantial sums of money. Tribunal awards against individuals named as Respondents are made only rarely, and when they are, they are usually only in the hundreds, not thousands of pounds.

The Federation operates a procedure enabling members to appeal against legal funding decisions and has encouraged all local Joint Branch Boards to introduce a Grievance Procedure, for members who wish to raise issues of concern about their treatment or representation.

EMPLOYMENT TRIBUNAL AWARDS

Officers may have an expectation that they will obtain compensation by taking their complaint to an Employment Tribunal. A Tribunal can award compensation for injury to feelings, loss of earnings and (infrequently) aggravated damages. They can make a declaration that unlawful discrimination has taken place and recommendations as to future actions, but they cannot, for example, recommend that someone be promoted or given a specific posting.

Previous annual reports of the Employment Tribunal Service identify that awards at a Tribunal can be difficult to obtain and even then can be relatively small. The majority of discrimination cases which go to hearing are not successful. Of those claims which were successful in 2008-2009, the median award for race, gender and disability discrimination was between about £5000-£7000. Many

FUNDING PRINCIPLES

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. They also give an opinion on the potential costs of taking the case and the potential award. The Federation will 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 will 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 will regularly review the funding of a case and may withdraw funding at any stage 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.

Remember - The personal costs of taking a claim should not be underestimated. The litigation process can be lengthy and is inevitably confrontational, often resulting in a breakdown of the relationship between the Officer and the force, with Officers being lost to the Service through extended periods of sickness and ill health.

There are no real winners at an Employment Tribunal; identifying what the member wants and achieving an early internal resolution is the best example of success.



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POLICE FEDERATION
of England and Wales

Internet: www.polfed.org
Intranet: <http://pfnet>
(access limited to JBB staff)

Equality & Diversity

AUGUST 2010

Representation Advice

The Police Federation of England and Wales is the representative body for all Constables, Sergeants and Inspector ranks in the Police Forces of England and Wales. We are fully committed to the elimination of unfair discrimination on the grounds of gender, family status, age, race, ethnic origin, sexual orientation, religion, disabled status, or any other unjustified condition, and the promotion of equality and diversity for all, in our own practices and arrangements and throughout the Police Service in England and Wales.

Your local rep is:

SUPPORT BY THE FEDERATION REPRESENTATIVE

The Police Federation trains Representatives to help Police Officers who may have a grievance about the lack of equality or diversity in their treatment at work, who may be the subject of a grievance, who may be a witness to acts that form a complaint or who may be otherwise involved.

Police Federation Representatives can help Officers to resolve their complaint within the workplace.

They will:

- be objective and independent;
- maintain confidentiality;
- help Officers to clarify matters and identify relevant information;
- explore the options available to resolve their complaint;
- seek to manage the Officers expectations;
- assist Officers to achieve a resolution through their Force procedures;
- advise on how and when to use their Force Grievance Procedure; and,
- in appropriate circumstances, they can arrange for a solicitor to advise on the possibility of taking a case to an Employment Tribunal.

Both the Member and the Representative should keep a detailed diary of events relating to the grievance and should ensure that they keep each other informed of any developments.

The main purpose of any Grievance or Fairness at Work Procedure is to ensure that Officers who feel they have been unfairly treated either by management or their

colleagues are given every opportunity to have their issue(s) resolved in a fair and just manner.

The procedure is intended to resolve Officer's grievances quickly, but it is important to remember that there is no guarantee of obtaining a resolution and that these procedures are not for establishing blame or providing punishment.

RESOLUTION STRATEGIES

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

In Force resolutions could take the form of:

- **Apology:** This is often hard to achieve as it means that someone has to accept that his or her behaviour caused offence.
- **Policy revision:** The Force would undertake to amend their policies and/or practices and introduce a procedure for monitoring to ensure that there was no reoccurrence.
- **Compensation:** The Force pay a sum in recognition of the damage or hurt caused.
- **Personal Needs:** It may be possible to address the personal needs of the individual complainant or the person complained of, by for example, a revised

training programme, or the provision of coaching or mentoring.

- **Compassionate Leave/Special Leave:** It may be possible to arrange for a period of leave for either or all parties.
- **Transfer:** One or other party could be offered a transfer to another post, but it is important to remember that it could be unlawful victimisation to move the complainant against his or her wishes.
- **Statement:** The organisation gives an undertaking in writing that, for example the Officer will not suffer future victimisation or that all records of the complaint will be removed from the Officer's personal file.
- **Reasonable Adjustment:** The force makes changes to the working environment, hours or duties of a disabled Officer.

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

THE LEGISLATION

Police Officers are Officers of the Crown, not "employees" in the legal sense and are not covered by all employment laws. In matters of equality and diversity they are covered, and can take claims under:

- The Equal Pay Act 1970 (as amended);
- The Sex Discrimination Act 1975 (as amended);
- The Race Relations Act 1976 (as amended);

- The Sex Discrimination (Gender Reassignment) Regulations 1999;
- The Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000;
- The Employment Equality (Sexual Orientation) Regulations 2003;
- The Employment Equality (Religion and Belief) Regulations 2003;
- The Disability Discrimination Act 1995 (as amended);
- The Employment Equality (Age) Regulations 2006.

TIME LIMITS

From April 2009 Police Forces will be expected to "act reasonably" when dealing with grievance issues, under the Dispute Resolution Framework. Members should consider time limits contained within their force Grievance or Fairness at Work procedures. If you have a claim that could give rise to an Employment Tribunal complaint you must present your claim to the Tribunal within 3 months less 1 day from the date of the last alleged act of discrimination (equal pay - these can be taken at any time during employment and no later than 6 months less 1 day from date you leave employment).

Employment Tribunals will take the ACAS Codes of Practice into account when considering relevant cases. The Code can be found on the ACAS website: WWW.ACAS.ORG.UK