

**ADVICE AND
ASSISTANCE FROM
THE COMMISSION**



COMMISSION FOR
RACIAL EQUALITY
FOR NORTHERN IRELAND

The Commission for Racial Equality for Northern Ireland was set up by the Race Relations (Northern Ireland) Order 1997 with the duties of:

- Working towards the elimination of discrimination;
- Promoting equality of opportunity and good relations between persons of different racial groups; and
- Keeping the working of the Order under review and, when required by the Department of Economic Development or when it otherwise thinks it necessary, drawing up and submitting, to the Department, proposals for amending it.

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The Commission for Racial Equality for Northern Ireland wishes to record its appreciation for the assistance it has received from the Commission for Racial Equality in the preparation of this Booklet.

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INTRODUCTION

The Race Relations (Northern Ireland) Order 1997 (the 'Order') gives anyone who thinks they have been discriminated against because of race, colour, nationality or ethnic or national origin the right to seek justice in the courts or industrial tribunals. Unfortunately this is not as easy as it sounds.

First of all, it is the person who is claiming racial discrimination who has to make the case for such discrimination having occurred. It is difficult to find direct evidence of racial discrimination - for example, few employers will say straight out that you did not get the job because of your race or colour. The indirect evidence which a court or tribunal could use to deduce racial discrimination is nearly always in the hands of the person or organisation accused of discriminating - for example, if you were told that you did not get the job because there were a lot of very well qualified applicants, you would need to know what these qualifications were and how they compared with yours.

The second problem is that the law on racial discrimination is very complex. As the Chairman of an industrial tribunal in Great Britain said, the only way a case can be properly presented is by a skilled advocate because so much depends on close cross-examination of the witnesses called by the other side. Yet Legal Aid is not available for cases heard in industrial tribunals where the vast majority of complaints of racial discrimination are heard.

This brings us to the last difficulty. Although complainants can apply to the Commission for Racial Equality for Northern Ireland (the "Commission") for assistance - the Order says that the Commission must consider all applications - the Commission is unable to support every case. The Order sets out criteria for the kinds of cases the Commission can support but allows the Commission the freedom to decide finally which cases to support and how to support them. In the present economic climate resources get tighter every year and the Commission has to consider carefully the merits of each case.

This booklet is a guide for complainants who want to apply for assistance from the Commission. It explains briefly what racial discrimination means and outlines the rights which people have under the Order. It then describes how the Commission deals with applications for assistance and the basis on which it decides which cases to support. As most of the applications are from people claiming racial discrimination at work, or when they applied for a job, the booklet focuses on the procedures for industrial tribunals where all employment cases are heard.

This booklet gives a layman's outline of the working of the Order - it does not offer a definitive or comprehensive description of the law. Nor is it a detailed, do-it-yourself guide to self-representation. Although people can, and have successfully represented themselves at industrial tribunals which are intended to be more informal than county court hearings, you should bear in mind that the other side is likely to have a lawyer representing them.

If the Commission is unable to offer you legal representation, it will give you the names of solicitors and other agencies that might be able to help. The Commission tries to encourage trade unions, minority ethnic associations, law centres and citizens advice bureaux to take up cases of racial discrimination.

The examples quoted in this booklet are all from the application of the Race Relations Act in Great Britain. The Race Relations Act 1976 and the Race Relations (Northern Ireland) Order 1997 are substantially the same. As casework experience is gained in Northern Ireland, future editions of this booklet will contain relevant local examples.

WHAT IS DISCRIMINATION?

Discrimination has a special legal meaning. It is not the same as racism or prejudice. Obviously discrimination can take place as a result of racial prejudice but people don't have to be prejudiced to discriminate. The Order deals with people's actions and the effects of their actions, not with people's attitudes or motives.

There are three main types of unlawful racial discrimination :

- direct discrimination
- indirect discrimination
- victimisation.

DIRECT DISCRIMINATION

Most of the race cases heard in the courts and industrial tribunals are about direct discrimination. Direct discrimination occurs when someone is treated less favourably on 'racial grounds' than others in the same, or similar, situation. Racial grounds include not only race, but also colour, nationality (including citizenship) and ethnic or national origin.

EXAMPLE *Mr Sahota, an Indian working for London Brick Co Ltd, complained that the company had reduced his prospects of promotion by not sending him on a training course even though less experienced white staff, who were his juniors, had been sent. Later he was turned down for promotion in favour of less experienced candidates. Mr Sahota claimed that this was because of his race. The tribunal awarded Mr Sahota £500 for injury to feelings and asked the company to consider him for any supervisory job that came up in the future.*

Direct discrimination is not always clear cut:

- in one case, a white woman was turned down for a job because she was married to an Afro-Caribbean. The industrial tribunal decided that she had been discriminated against because of her husband's race.
- in another case, a white bartender was told by the pub owner not to serve any black customers. When she refused, she was sacked. She won her case because it is against the law to instruct someone to discriminate on racial grounds, or to put pressure on them to do so.
- finally, there is the question of motive which can sometimes confuse matters. Employers sometimes admit that they discriminated but they say that they had no choice; they felt badly about it but it was either that, or lose their business, or have a strike on their hands, or whatever. This is no defence. What counts in law is the fact that they discriminated, not their motive for discriminating.

If you think you have been directly discriminated against on racial grounds, the way to prove it is by comparing the way you were treated with the way people of another 'racial group' were treated, or might have been treated in similar circumstances.

The term 'racial group' covers race, colour, nationality and national or ethnic origin. Religious discrimination is not covered by the Order but Sikhs and Jews are protected because the courts in England have ruled that they are also racial groups as defined by the Race Relations Act. The Irish Traveller Community has been recognised as a racial group by the Order.

Your case will turn on the facts, the immediate facts of the case as well as other facts. For example, if you have been refused a job because 'there were other applicants who were better qualified' but you suspect it was actually because of your race, you won't get very far on just a hunch.

What you need are the facts: about the other applicants and their qualifications, about the number of ethnic minority workers the company has, or how many of them it has hired, say, in the last two years. As long as the information you are asking for is relevant to your case, the company can be made to divulge it to a tribunal, even if it is confidential.

In 1990 Lord Justice Neill said in the Court of Appeal that it was important to recognise that it was very unlikely that anyone would freely admit to having discriminated and that tribunals should therefore be prepared to infer racial discrimination from the facts, unless they were satisfied that there was some other innocent explanation. For example, in the case of *Virdee v ECC Quarries*, Mr Virdee was asked if he had worked with white technicians before and whether he had any trouble supervising them. The tribunal inferred unlawful racial discrimination from this question. In another case, *Owen & Briggs v James* (1982), the Court of Appeal made it clear that if race was an important factor in the employer's decision, this was enough to prove unlawful racial discrimination, even though there might have been other reasons for the decision as well.

INDIRECT DISCRIMINATION

Indirect discrimination, as the term suggests, is less obvious. It involves accepted ways of doing things - rules, regulations, procedures etc - that seem quite fair because they are the same for everyone. On closer inspection though they could, and often do, act as a bar against people from a certain racial group. The law on indirect discrimination is very complicated but, basically, you have to show four things - all four ingredients must be present for the discrimination to be unlawful.

1. **The company you are complaining about has a rule or requirement which is compulsory for everyone; that is, it is a precondition for the job.** For example, a school may insist that all pupils must wear the school uniform, or a building society may say that only people on the electoral register can apply for a mortgage, or a company may insist

on UK qualifications only. Remember, what may be discriminatory for one group may not be discriminatory for another. For example, a rule that shop assistants have to wear skirts may affect Asian women but not Afro-Caribbean women; and a minimum height rule may affect Asians and Chinese but not Africans or Afro-Caribbeans. Rules and requirements are not always stated openly and they are constantly changing. You may need to look carefully at job descriptions, job contracts, agreements, letters and memos, as well as general rules and regulations and the small print to find them.

2. **A far smaller proportion of people of your racial group can comply with the rule than the proportion of people of other racial groups.**
For example, if the company you work for decides to make staff redundant on a 'last in, first out' basis, you would have to show that the percentage (not the number) of people of your racial group who lose their jobs as a result is much greater than the percentage of other workers.
3. **There is no valid reason for the rule.**
This means the employer has to justify the need for the rule.
4. **The rule is to your disadvantage.**
For example, you didn't get the job, or lost your job, or had to work longer hours etc.

EXAMPLE *An 18-year-old Asian girl was refused a job by the Blackburn branch of British Home Stores because she said she could not wear a skirt as required by the company. About 14% of Blackburn's population at the time were of Asian origin. The company tried to justify the rule by saying that business depended on having a uniform image in all its branches. The tribunal said that only a minor adjustment was needed to adapt the uniform and found the company guilty of indirect discrimination.*

VICTIMISATION

The number of actual complaints of racial discrimination is not a measure of the amount of discrimination that is actually going on. Most people are afraid to jeopardise their career prospects or damage relations with their colleagues by complaining. The Order recognises the risks people run by daring to stand up to what they think is unfair treatment and makes it illegal to victimise someone for having brought a complaint of racial discrimination. The Order also protects those who speak out in support of someone else's complaint or appear as witnesses.

EXAMPLE *Mr Parker acted as a tester for the CRE to see if a nightclub in Leeds was discriminating against black people. A few months after the club had been found guilty of racial discrimination by the court, Mr Parker visited the club with five friends. The owner of the club recognised him as the man who had given evidence against the club earlier and refused to let him in. Mr Parker brought a complaint of victimisation against the club. The owner denied the charge saying that anyone causing trouble for the club was treated in the same way. Mr Parker won his case in the county court.*

RACIAL HARASSMENT AND VIOLENCE : IS IT DISCRIMINATION ?

Racial attacks involve criminal offences and are not covered by the Order. Only the Police have the power to act and all racial attacks, including racial intimidation and threats, must be reported to the Police. Anyone who witnesses a racial attack should also report the incident to the Police. The Commission does not have the power to assist with such cases.

It is a criminal offence under the Public Order (Northern Ireland) Order 1987 to use threatening, abusive or insulting language or behaviour in order to stir up racial hatred. This includes distributing racist leaflets. The Commission does not have the power to enforce the Public Order Order - only the Police have this power.

Racial harassment and abuse at work

Complaints of racial harassment and abuse at work have been increasing. The Order does not specifically prohibit racial harassment but industrial tribunals have ruled that racial abuse can amount to racial discrimination if it makes the atmosphere at work intolerable and the employer has done nothing about it in spite of complaints.

EXAMPLE *Eugene Sutton, who had endured persistent racial abuse from workmates at Balfour Beatty Construction Ltd, finally brought a complaint of discrimination against his supervisor and against the company. The tribunal found the company liable and ordered it to pay Mr Sutton £ 2,000 by way of aggravated damages. The tribunal also said that calling someone a 'black bastard' was not a sign of 'camaraderie' as the company had argued.*

Employers are responsible in law for any racial discrimination by their employees in the course of their work unless employers can show that they have done everything that can reasonably be expected to prevent discrimination. When filing your complaint in the industrial tribunal you should, therefore, name both the person who abused or harassed you and his or her employer.

Some employers have made racial harassment a disciplinary offence and you may be able to take satisfactory action through the firm's grievance procedure, possibly with help from your union (if there is one). In employment law racial harassment and abuse would count as misconduct. If you resign from your job because of racial harassment, you may also be able to claim unfair constructive dismissal under the Employment Rights (Northern Ireland) Order 1996, so long as you have worked for the same employer for two years.

YOUR RIGHTS UNDER THE RACE RELATIONS (NORTHERN IRELAND) ORDER 1997

The types of racial discrimination described above could occur in all walks of life but the Order only protects you if you are discriminated against in certain areas - employment, training, education, housing and the provision of goods, facilities and services. This means that if you are racially abused in the street, or by a spectator at a football match, or by a customer in a shop, you have no protection under the Order; they are all strictly Police matters. Disputes between neighbours who do not share a common landlord also fall outside the scope of the Order. The Northern Ireland Housing Executive, however, does have a responsibility [under the Housing (Northern Ireland) Order 1988] to assist people who are homeless, threatened with homelessness or subject to intimidation, which may occur as a result of racial harassment.

The Commission can only consider your application for assistance if your complaint is covered by the Order.

There are some areas where only the Commission can take legal proceedings; for example, against racially discriminatory advertisements, signs or notices and in cases where someone has issued discriminatory instructions, or tried to persuade or put pressure on others to discriminate.

EMPLOYMENT

The Order applies to all employers, big or small, to trade unions, employers' organisations, employment agencies (including T&EA offices), vocational training bodies, qualifying or licensing bodies (like the Law Society or the General Medical Council) and subcontractors. The Order protects you against racial discrimination, both as a job applicant and as an employee or trainee. You are covered whatever your age, whether you work part-time or full-time, whatever your working hours and whether you are on a temporary or permanent contract. You are also covered if

you work from home or if you are self-employed. The protection you get covers almost all aspects of work and training - hiring, terms and conditions, pay levels, promotion, transfer, training, dismissal and redundancy.

EXAMPLE *John Haggas, a textile firm in Bradford, had an all Asian night shift and an all white day shift. The Asian workers were not paid overtime (unlike their white colleagues), they received four days less holiday a year and had no promotion chances. Matters came to a head when the firm threatened the Asian workers with the sack after they refused to take on extra duties; the all white day shift were also asked to take on extra duties but not threatened with dismissal. An industrial tribunal ruled that the company had discriminated directly against the Asian workers and ordered it to pay £229,000 to 82 workers. The case was brought to the tribunal with help from the TGWU union.*

If you are dismissed and you think you have been racially discriminated against you can also bring a complaint of unfair dismissal under the Employment Rights (Northern Ireland) Order 1996 (as long as you have worked for the same employer for two years). The Commission has produced a statutory race relations Code of Practice in employment. It explains what employers should be doing to stay within the law. If you can show that an employer has ignored the Code, this can go against them at the tribunal hearing.

EDUCATION

Schools, colleges and other educational institutions cannot refuse you a place because of race, colour, nationality and national or ethnic origin. They cannot set different rules for you, or stop you from using certain facilities, or refuse to provide the same education and services for you as others.

EXAMPLE *The headteacher of an independent school in Birmingham refused to admit Mr Sewa Singh Mandla's son unless the boy agreed to follow the school uniform to the letter by removing his turban and cutting his hair. Mr Mandla won his case in the House of Lords who ruled that Sikhs are a racial group and that the rule indirectly discriminated against them.*

HOUSING

You are protected against racial discrimination when you rent, buy or sell a house. You cannot be refused accommodation because of your race, colour or ethnic origin or offered worse terms and conditions than others. The Northern Ireland Housing Executive, housing associations, hostels, private landlords and landladies, estate agencies, accommodation agencies, property developers, managing agents, owner-occupiers, banks and building societies are all covered by the Order.

EXAMPLE *An estate agent decided that it would be easier to file details of white househunters on white cards and black househunters on pink cards. That way, when sellers said they did not want to sell to blacks, the agent just put stickers on their files saying 'no pink cards'. This was direct racial discrimination.*

GOODS, SERVICES AND FACILITIES

You are protected from racial discrimination in the services, facilities or goods you receive from hotels, insurance companies, pubs, clubs, cinemas, theatres, restaurants, travel agencies etc. The Order covers the actual provision of the services, their quality, how they are provided and the terms on which they are provided.

EXAMPLE *Mr Fox, an Afro-Caribbean, and his wife, an Anglo-Indian, had reserved a hotel room at the Tudor Rose Hotel for their wedding night. When they arrived Mr Fox, who had already been given a room key by the agency, asked at the desk about his reservation. He was ignored and then told by Mr Mackevych, the proprietor, that the hotel was full. When Mr Fox showed him the room key Mr Mackevych ignored him and went on serving other guests. The Foxes left the hotel very upset and filed a complaint. The hotel was ordered to pay the couple £8000, the highest damages ever awarded in a county or sheriff court for racial discrimination.*

Regulatory activities by the Government are not covered by the Order. This means that the police service, the Director of Public Prosecutions Department, the probation service, the courts and the prison service are exempt from the Order unless the goods, facilities or services they provide are similar to those provided by the private sector.

EXAMPLE *The Kent County Constabulary distributed a Neighbourhood Watch newsletter which carried the following announcement : 'Gypsies have currently moved into the area. We are keen to have details of any vehicles that they may be using... We have had 5000 Kent peg tiles stolen. We understand they steal vehicles in which to carry the stolen tiles...'. Following a complaint, the CRE took legal proceedings and the county court accepted the CRE's argument that the newsletter was an advertisement and that it clearly showed that the police intended to discriminate.*

If you think you have been discriminated against on racial grounds by any of these agencies, and your case is not covered by the Order, you should use the agency's own complaints procedure. If you think your case is covered by the Order, the Commission may be able to help.

WHEN DISCRIMINATION IS NOT AGAINST THE LAW

These are some of the areas not covered by the Order :

Employment

- Private households can legally refuse to hire someone on racial grounds.
- Partnerships where there are fewer than six partners are not covered by the race law.
- Employers can discriminate on racial grounds to fill jobs that involve working outside Northern Ireland for most of the time.
- There are restrictions on who can and cannot work for the Crown, as well as certain bodies such as the Bank of England, the British Museum, the British Council, the Tate Gallery, embassies and consulates etc ; discrimination by birth, nationality, descent or residence is legal but not discrimination by race or colour.
- If it is genuinely necessary to have someone from a certain racial or ethnic group for a job, it is legal to advertise for someone from that group ; for example, a film director can look for a black actor to play the part of Malcolm X, an Indian restaurant can hire only Indian waiters and a social services department can say that only Bangladeshis should apply for a job involving psychiatric counselling for Bangladeshis.

Housing

- The Order does not extend to 'small premises' where the landlord or owner, or a near relative, lives and where they would have to share facilities with people who are not members of the household.

- It is also legal to discriminate when you take someone into your home as one of the family ; for example, caring for an elderly person or a fostered child.

Associations

- It is legal for an association or club set up especially for people of a particular ethnic or national group to discriminate against people who are not from that group - but it cannot discriminate on the basis of colour.
- It is also legal to discriminate by nationality, place of birth or length of residence when selecting someone to represent an area or country in sports, but not by colour.

The Media

- The Order does not apply to what the media write, produce or broadcast. The law of libel is the main check on the powers of the media but it applies only to individuals, not groups of people. If you think a radio or television programme is racially offensive you should complain to the station Duty Officer or the editor of the programme. If your complaint is about a newspaper or magazine story, write to the editor and send a copy of your letter to the Press Complaints Commission.

The European Union

- The Order does not protect you against racial discrimination in other EU countries.

'Statutory exception'

- The Order does not cover anything done under 'statutory authority'. This means that it is not unlawful if someone discriminates in order to comply with an Act of Parliament or an Order in Council (whether this was passed before or after the Order) or with any rules or regulations made by a Government Minister under any law. For example, a parent's choice of school may be racially discriminatory, but quite legal, under the education laws.

HOW THE COMMISSION CAN HELP

The Commission is bound by law to consider all applications for assistance in cases of alleged racial discrimination. The Commission is not itself a tribunal, as some people think ; only the courts and industrial tribunals can decide on claims of racial discrimination.

Cases of racial discrimination in employment are heard in industrial tribunals. All other cases are heard in the county courts. Complaints about education in the public sector must first go to the Department of Education for Northern Ireland (DENI). They have two months to deal with the case. If you are not happy with their decision you can then take your case to the county court. County court hearings are much more formal than industrial tribunal hearings and you need expert legal advice to bring proceedings. Legal Aid is available for county court cases. As most of the complaints the Commission receives are about employment matters, the focus here is on industrial tribunal procedures but much of the general advice is relevant to county court applications as well.

The initial stages of the complaints procedure are designed to collect evidence and to see whether there is, in fact, a case to be answered. As the Commission can only consider an application properly when it has sufficient information about the facts of the case, it will help applicants through these stages. Once enough information has been collected, the

Commission's Article 64 Committee, which is made up of Commissioners, will make a decision on your application.

If the Commission is unable to offer you legal representation, this does not mean that you don't have a case, maybe even a strong case. You can still take your complaint to an industrial tribunal or court. The Commission will give you the names of solicitors and other agencies who might be able to help.

If the Commission offers you legal representation, you will be told exactly what it covers and the conditions on which it is offered. Your case will be treated in strict confidence at all times.

ADVICE DOES NOT MEAN LEGAL REPRESENTATION

Many applicants have mistaken the initial help and advice they get from the Commission for legal representation. This is a serious mistake. Commission Complaints Officers will help you as much as possible but they are not your representatives. It is only if and when the Commission makes a firm offer of legal assistance that it will act as your representative. Until then it is your case and you must be prepared to take full responsibility for its progress. It is up to you to check that you meet all the deadlines, attend any preliminary hearings that the tribunal may call and have all the paperwork ready for the final hearing.

CRITERIA FOR ASSISTANCE FROM THE COMMISSION

The Commission can only help if your case is covered by the Order. The Order lays down three criteria that the Commission must use to decide which cases to support:

- cases that test a point in law.

- cases that are too complex for someone to deal with on their own.
- cases that deserve special consideration.

When considering these criteria the Commission will also take into account:

- whether the case has a reasonable chance of success.
- whether the case falls within certain strategic areas selected for special attention. The Commission Complaints Officer who advises you will be able to tell you which areas currently fall within this definition.
- What implications the case has for the Commission's resources.

SHOULD YOU PURSUE YOUR CASE?

No one should be under any illusion that taking his or her employer to court on an allegation of racial discrimination will be anything but stressful and time-consuming. It can take anything from six months to two years after filing an application in the court or industrial tribunal for the case to be heard. It is not a decision you should ever take lightly. Past complainants have said that life is never the same again, with your colleagues as well as your boss, whether you win, lose or even withdraw your application halfway.

There are five key questions you should ask yourself when you are thinking of taking legal action.

- **Can I get my application in on time?**
If your complaint is about an employment matter, you have three months from the date of the incident you want to complain about to register an 'originating application' (IT1) with the Office of Industrial Tribunals and Fair Employment Tribunals (OITFET). In all other cases

you have six months from the date of the incident to file a complaint in a county court. As complaints about education in the public sector have to go to DENI first, the six-month deadline will be extended by the two months that the Department has to deal with it.

- **Is my case covered by the Order?**

This booklet should give you some idea of the scope of the Order but you should seek advice as soon as possible, from the Commission, your trade union, minority ethnic association, law centre, complainant aid centre or a Citizens Advice Bureau (CAB).

- **Is there any other way of dealing with the problem without going to court or to the industrial tribunal?**

If you are in work and there is a union where you work, they may be able to help you to take out a grievance - racial discrimination should be a disciplinary, even a dismissable, offence. But you should not delay seeking advice about filing a complaint while trying to resolve matters through the company's internal procedures - you could miss the deadline for applying. You can always withdraw your case at any time if you reach a satisfactory agreement with your employer.

- **Do I have a strong case?**

People often think their case is unanswerable until they realise that the evidence they need is in the hands of the person they say discriminated against them on racial grounds (known as the 'respondent'). The Order allows you to ask the respondent to give reasons for their action and to give you any information you think is relevant to your case. There is a special form you can use, the RR63 questionnaire, but you can also draw up your own questions. The RR63 procedure is very important because the answers you receive will give you some idea of the way the respondents are planning to defend their actions and you will at least know what it is you disagree about. You may even be satisfied with their explanation and decide not to go ahead with your case. If the respondents do not answer the questions, or try to avoid answering them, this could count against them at the tribunal hearing.

You can serve the RR63 before filing a complaint in the tribunal or court. If you serve the RR63 after filing your complaint, you must do so within 21 days. Obviously, your application to the tribunal or court will be much better informed if you go through the RR63 procedure first but you need to keep a close eye on the calendar - you must get your application in within the time limit.

If you are applying for assistance from the Commission, a Commission Complaints Officer will advise you on the best course of action and may help you to fill out the RR63 form.

- **Can I afford it?**

You have the right, under the Order, to apply to the Commission for assistance but only a small proportion of applicants receive legal representation. You may be able to get help from a law centre, minority ethnic association, complainant aid organisation, a Citizens Advice Bureau or a trade union (depending on your case) but the chances are small. Your only recourse may be a private lawyer and they do not come cheap.

There is one further snag. Only cases heard in the county court are eligible for Legal Aid. You cannot get Legal Aid for representation at an industrial tribunal, that is, for complaints about employment matters. However, if you are unemployed, or your income is below a certain level, you may be able to get up to two hour's advice or help from a solicitor under the Green Form Scheme.

THE APPLICATION PROCESS

Application forms for help from the Commission are available from its office at the address given inside the cover of this booklet.

The Commission application form

- Apply as soon as possible after the incident you are complaining about. Because of the time limits for filing complaints in the tribunals and courts, any delay could mean disqualification.
- You will get a letter from the Commission acknowledging receipt of your application.

The Commission interview

- If your case is covered by the Order, a Commission Complaints Officer will contact you to ask you to come for an interview, should this be necessary.
- If you need an interpreter, tell the Complaints Officer in advance. The Commission will make every effort to provide one.
- You may bring a friend or relative to the interview with you.
- The Commission cannot pay for any travelling expenses you might incur to attend interviews or other meetings with Commission officers. Nor can the Commission compensate you for any wages you might lose by taking a day off for the interview.
- A Complaints Officer will normally interview you. Bring with you any documents you think are relevant - for example:
 - your job contract;
 - any written statement of reasons for dismissal you were given by your employer;
 - copies of the job advertisement and any correspondence about your application;
 - notes and records you have kept about incidents, conversations, interviews etc.
- The purpose of the interview is to go through your application form in more detail and to get a better picture of what exactly happened. You will be asked questions along the following lines:
 - what exactly was said?
 - where did the incident happen?
 - did anyone else see what happened?
 - would they be ready to say so in court?
 - was anyone else involved besides yourself and the person you have complained about?

The Complaints Officer will explain the procedures and go through the industrial tribunal application form (IT1) and the RR63 questionnaire with you (if you have already filed your IT1 before applying to the Commission do not forget to bring a copy of it with you to the interview).

Witnesses

- The Commission Complaints Officer may contact the witnesses you have named in your application form. It is always best to get a willing witness who is prepared to testify at the tribunal or court - one good witness is better than ten poor or reluctant witnesses. If necessary, the Commission Complaints Officer will help you to apply to the tribunal or court for a witness order.

The IT1 and RR63 forms

- If the Commission is helping you to fill out the forms, you will receive the IT1 form and the RR63 questionnaire soon after the interview, filled out by the Complaints Officer on the basis of the interview.
- Read through the IT1 and RR63 forms very carefully. Sign the IT1 form and post it to OITFET (Long Bridge House, 20-24 Waring Street, Belfast BT1 2EB) by recorded delivery (remember to keep a copy). Sign the RR63 questionnaire and post it by recorded delivery to the respondent along with the RR63 reply form. In some cases you may be asked to return the RR63 to the Commission Complaints Officer who will send it on to the respondent on your behalf.
- If the respondent fails, or refuses, to give you the information you have asked for in the RR63 questionnaire, you can ask the tribunal to order 'discovery' of the documents you need. But the respondent has the right to appeal against the order and this could mean long delays.

Contact with the Office of Industrial Tribunals and Fair Employment Tribunals

- You will receive an acknowledgement of your IT1 form from OITFET within a few days of its receiving it. You will be given a case number. A copy of your IT1 form will be sent to the respondents, along with a 'notice of appearance' form (IT3). The respondents must normally complete and return it within 14 days if they want to contest the case. OITFET will send you a copy of the completed IT3 form when it arrives. Inform the Commission Complaints Officer immediately you receive it and send him or her a copy - it may be necessary to ask the respondents for 'further particulars'. If there is no reply to your request within 14 days, or you are not satisfied with the reply, you can ask the tribunal to order the respondents to produce the information.
- The tribunal or the respondent may call for a preliminary hearing if there is any doubt that the tribunal has the right to hear the case. You will hear about this directly from OITFET. The Commission will not usually represent you at this hearing but you should talk to the Complaints Officer about it.
- The tribunal can, at any time, order the case to be struck out or amended if it thinks it is unreasonable, or that you are just trying to make trouble.
- The tribunal or the respondents can also ask for a pre-hearing assessment to consider whether the case has a chance of success. Both sides can attend. The pre-hearing is based on the IT1 and IT3 forms and any other written evidence from either side. No witnesses are called.
- OITFET will write to you about 5-7 weeks after you filed your IT1 giving you details about the date of the hearing. You must receive at least 14 days notice of the date of the hearing.

- See that all the evidence and paperwork is lodged with the tribunal before the hearing.
- You can withdraw your case at any time. You need to notify OITFET in writing otherwise the hearing will go ahead. The longer you leave it before withdrawing, the greater the chance that you might have to cover the costs.

CONCILIATION

While you are going through all the stages described above, another completely independent process may be going on at the same time. OITFET will automatically send copies of the IT1 and IT3 forms to the Labour Relations Agency (LRA). LRA is an independent body set up to act as a go-between in disputes. It does not represent the tribunal and is not supposed to express an opinion as to whether you will win or lose the case. You are under no obligation to accept LRA's advice. The Commission Complaints Officer will discuss your case with an LRA Complaints Officer, if necessary.

You should not rule out the possibility of settling the case without a hearing. Employers prefer to settle because they would rather avoid the publicity of a tribunal hearing. You should be clear in your own mind about why you are bringing the case and what you hope to gain from it. A settlement may get you a reference from the respondent and a statement but they are not likely to accept liability for the discrimination.

If you settle through LRA you cannot go to a tribunal and the settlement is binding. You can then either write to the tribunal to withdraw your application or apply to the tribunal jointly with the respondent to have the settlement approved as a formal tribunal decision and entered in the public register (this is obviously better).

THE COMMISSION DECISION

The Commission Complaints Officer will prepare a report on your case for the Commission's Article 64 Committee. The Commission will make every effort to let you know within two months whether your application has been successful.

If the Commission is unable to offer assistance or legal representation, you will be given reasons why. Remember, you still have the right to take your case before the industrial tribunal or court. The Commission will advise you about other agencies or solicitors who may be able to help you.

If the Commission decides that it can offer you legal assistance, you will be told exactly what this covers - for example, legal representation at the tribunal or court hearing, or help with conciliation. The following are the conditions on which the assistance will be offered:

- The Commission will decide how your case is conducted.
- The Commission will nominate your legal representative.
- The Commission will deal with any contact with the media.
- The Commission reserves the right to withdraw representation at any time or to change the terms on which it has been offered. This may happen if the case appears to have no chance of succeeding or if you do not co-operate fully with the Commission or if the respondent makes a reasonable offer to settle the case.

If you decide to accept the Commission's offer of legal representation, you will be asked to complete a form and return it to the Complaints Officer. Your case will then be passed to a solicitor appointed by the Commission. He or she will be your contact in future.

THE HEARING

Only one of the three members of an industrial tribunal is legally qualified; the other two are lay members appointed by trade unions and employers' organisations. The hearing is not held in a court and is therefore less intimidating than a full court proceeding. It is the purpose of the legislation to provide a hearing with due legal process including legal representation. Such representation would be recommended.

IF YOU WIN

The outcome of the proceedings may often not feel like a win, even when the decision is in your favour. The legislation cannot provide redress in the form of the previous action. The industrial tribunal can order monetary compensation.

Tribunals often make recommendations, asking the employer to take certain steps; for example, to consider you for the next suitable vacancy that comes up. If the employer does not comply by considering but not necessarily appointing, the tribunal can either order compensation or increase the amount of compensation already awarded. There is no compensation in cases of indirect discrimination unless the discrimination can be shown to be intentional.

IF YOU LOSE

You will not automatically be ordered to pay the other side's legal costs but the tribunal may make you pay if they think your case was unreasonable, frivolous or vexatious.

You can ask for a review of the tribunal's decision within fourteen days. You can also appeal against the tribunal's decision to the Court of Appeal but only on a point of law. You have forty- two days to lodge an appeal. Appeal cases are eligible for Legal Aid. Remember, very few cases go beyond the industrial tribunal.

USEFUL BOOKS

Jurisdiction / Procedure in Industrial Tribunals . Office of Industrial Tribunals and Fair Employment Tribunals (OITFET)

Race through the 90's. CRE with BBC Radio 1 FM. Revised edition 1993



COMMISSION FOR
RACIAL EQUALITY
FOR NORTHERN IRELAND