

# Sex Discrimination

## Is gender on the agenda?



### Sex discrimination in employment & your legal rights

Discrimination on the grounds of sex is illegal. The definitions of discrimination in legislation are phrased in terms of discrimination against women, but men are also protected, although women may be given special treatment in relation to pregnancy and childbirth.

The law also prohibits discrimination against married people on the grounds of their married status. This includes those in civil partnerships. Those who are single are not protected from less favourable treatment because they are single. In addition, it is illegal to discriminate on the grounds of gender reassignment.

For more information please see the *'Transgender factsheet'*.

There are a number of different pieces of legislation covering this area, including the Sex Discrimination Act 1975. Any claim about equal pay or other terms and conditions is covered by the Equal Pay Act 1970 (see below).

This fact sheet focuses sex discrimination in employment, but the law also protects you in other areas, such as education or the provision of services.

### Direct discrimination

The law protects you from three types of unfair treatment: direct and indirect discrimination, and victimisation. Broadly speaking, discrimination means you have been denied opportunities for or access to promotion, transfer, training or other benefits, facilities or services, or that you have been subjected to some other disadvantage.

To prove direct discrimination, you will have to show that:

- You have been less favourably treated than a man has or would have been treated and
- This treatment was on the grounds of your sex.

You will have to identify a male "comparator". This means someone of the opposite sex but who is in the same position as you in every other way. This can be a hypothetical person.

### Indirect Discrimination

You are also protected from indirect discrimination. This is when:

- Your force has a policy or practice that applies equally to men and women but
- Which puts women including you at a particular disadvantage when compared with men
- Which cannot be objectively justified.

The definition extends to practices which "tend" to discriminate, for example, a provision that all candidates for a position are of a minimum height.

Whether the policy or practice puts you at a disadvantage compared to men will often depend upon the "pool" of people considered. Sometimes this might be a particular unit, other times it will be the whole force.

Policies or practices which do not permit flexible or part-time working or require a particular working arrangement, such as having to do night duty, are likely to put women at a disadvantage, because more of them have childcare responsibilities.

To defend a claim of indirect discrimination your force will have to prove the policy or practice can be objectively justified. For example, there may be very good reasons why a force requires a particular shift pattern in a particular role. If the tribunal agrees this is a proportionate way of meeting those requirements, this will mean the policy or practice is legal.

### Victimisation

The law also protects you from discrimination for seeking to enforce or rely on your rights or assisting someone else to do so. This is called victimisation and is when you are treated less favourably than someone else because you have made or are about to make a complaint or allegation about equal pay, sex discrimination or sexual harassment or are helping someone else to do so. Under the legislation, any of these activities are referred to as "protected acts".

### Sexual harassment

Sexual harassment is a form of direct sex discrimination, but it has a specific legal definition. It can either be harassment because of someone's sex, or harassment of a sexual nature. It does not matter whether or not the victim and the person responsible are of the opposite sex or not. There is also protection against harassment because of sex change.

Sexual harassment is unwanted behaviour that makes you feel intimidated or humiliated either because it is targeted at you for being a woman or because it is of a sexual nature. It doesn't matter whether or not the person deliberately wanted to offend you.

It is also sexual harassment to treat you unfavourable because of your reaction to this kind of unwanted behaviour.

In any of these types of behaviour it is up to you to decide what is acceptable or offensive to you.

## Proving sex discrimination

If you have a complaint about sex discrimination and you show clear facts which could enable the Employment Tribunal to conclude that discrimination has occurred, the force must provide an adequate explanation for the treatment complained about which is unrelated to your sex. If it cannot the Employment Tribunal can decide the treatment was sex discrimination.

There are also codes of practice and directives the force has to follow when you make a complaint. If they don't do this properly then the Tribunal can also rule against them.

Since July 2003, the chief officer will be liable for any discriminatory acts carried out by police officers against other police officers. It is also unlawful to discriminate against you by subjecting you to a detriment after your service has ended, for example, by giving her a poor reference in comparison with a male officer.



## Making a claim for sex discrimination

You will need to bring a sex discrimination claim to an employment tribunal within three months less one day of when the incident happened. If the discrimination takes place over a period of time, you measure this time limit from the end of that period. The strict time limit applies even if you are already going through the force's internal grievance procedure, although sometimes a tribunal will consider claims brought outside this time limit if it considers that it is fair to do so.

You can ask your force or an individual officer to fill in a questionnaire to get information about your claim. You can do this at any time before going to a tribunal or within 21 days of lodging your claim. Once you have brought your claim to the tribunal, you will need their permission if you want to serve a questionnaire.

The force should reply to a questionnaire within eight weeks. If it fails to reply fully or at all, the tribunal may conclude there has been unlawful sex discrimination.

## Equal Pay

The Equal Pay Act protects you from sex discrimination in pay, allowances, benefits and terms and conditions.

To bring a claim, you have to compare the terms of your contract with a comparator of the opposite sex. For the police, this refers to the terms and conditions of service, such as those contained in the Police Regulations 2003 or the Police Pensions Regulations 1987. As for other sex discrimination claims, you can ask the force to fill in a questionnaire to get more information to support your claim.

However, you have a longer time limit for making an equal pay claim. You can bring a claim at any time while you are a police officer or within six months less one day after you have left the service. If your claim is about pay or benefits which are specific to a particular role, the time limit might run from when you leave that role. In that case you should get advice as quickly as possible.

Equal pay and sex discrimination are very complicated and technical areas of the law. So you should get advice if you think either applies to you.

## Contact Us

*If you need further assistance, please contact your JBB in the first instance.*

Regulated by The Solicitors Regulation Authority.  
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This fact sheet is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more details or information about the matters referred to in this fact sheet please seek independent formal legal advice. This information was correct at time of going to press October 2009.