

## **Explanatory notes for filling in the form to make a complaint of discrimination in the provision of goods, services or facilities - Form ES.3**

Please read this booklet if you are considering making a complaint to the Equality Tribunal in relation to discrimination in the provision of goods, services or facilities. It gives information about what you must do before you make a claim, and gives guidance on filling in the form and sending it back to the Tribunal office.

You will find the form for making your complaint at the back of this booklet. Or, you can make your download the form from the Equality Tribunal's website [www.equalitytribunal.ie](http://www.equalitytribunal.ie).

This booklet is also available in Braille, as an audio tape, in large print or on disc on request. The form for making your complaint is also available in large print.

## Filling in the form

The following notes have been drawn up to help you complete the Form ES.3. They are a basic guide only and they are not a legal explanation of the Act. They cannot cover everything. They include a summary of the main provisions, but there are significant exceptions and exclusions which are not covered in the form.

You may need advice to cover your individual situation. See details of helpful organisations at the end of this guide.

### 1. Your details

Please put in your name and address and email address here. The “**complainant**” is the legal term for the person who says they were discriminated against.

**Important:** If your address changes, you must let the Tribunal know. Otherwise you may miss important letters from the Tribunal, including the date of any hearing, which will be sent by post, and the complaint could be decided in your absence or even dismissed.

### 2. Your Representative's details

If you have agreed with someone to represent you, please tick yes and put in their name & contact details. Otherwise, please tick no.

You can bring your case by yourself but, if you wish, you can be represented by a lawyer, support organisation or support person. You will have to pay any costs involved as the Tribunal cannot award costs.

### **3. The person, organisation or company you are complaining about**

Please put in the name of the person, organisation or company against whom you are making the claim. They are known as the “**respondent**”.

You must identify the person, organisation or company. The Tribunal cannot change the name of the respondent. If you are complaining about a company or an organisation, you must use their full legal name.

### **4. Action before making claim**

#### **What is “essential prior notification”?**

You cannot bring a claim to the Tribunal unless you have **first** sent a letter to the respondent telling them you are thinking of making a claim. This is called “**notification**”. This is a legal requirement and the Tribunal cannot deal with your complaint unless you have done this.

By law the letter of notification **must** say all of the following:

- Be received by the respondent not later than 2 months after the event
- Explain what the complaint is about
- Give them a chance to reply to you to explain their position

- Say that if you are not happy with their reply (or if they don't reply) you may take a case under the Equal Status Acts.

Please forward a copy of your letter and of any reply you receive. It is useful to get proof of postage or register the letter of notification.

We can give you a form which you can use for this. Please ask for Forms ES1 and ES2 or download them from our website [www.equalitytribunal.ie](http://www.equalitytribunal.ie).

### **If you have not notified the respondent in time**

If the event happened between 2 and 4 months ago, you may still be in time to notify the respondent if you have good reason for the delay. You should send the notification to the respondent and write to the Director of the Tribunal, when you are making the claim, to explain the delay and ask for extra time.

### **If it is more than 4 months after the event**

Only in rare, exceptional circumstances can you make a claim without notification. There are strict legal conditions for this.

## **5. On what “grounds” is different treatment unlawful?**

You can claim unlawful discrimination on one or more of nine “protected grounds”.

You will normally have to show that you were treated less favourably than someone else is, was or would have been.

You will usually have to be able to compare your treatment with the way in which someone else (the "**comparator**") was or would have been treated. For the list of grounds and some examples, please see the following table.

**GROUND(s): if you are claiming you have been less favourably treated because of your**      **COMPARATOR would:**

**Gender:** being male or female      Be the opposite gender, e.g. you are female and the other person is male

**Marital Status:** being single, married, separated, divorced or widowed      Have a different marital status, e.g. you are separated and the other person is married

**Family Status:** being pregnant, or responsible for a person under 18, a parent or resident main carer for a person with a disability      Not have "family status", e.g. you have a child and the other person does not

**Sexual orientation:** heterosexual, homosexual or bisexual      Have a different sexual orientation, e.g. you are gay and the other person is not

**Religious belief:** includes religious background or having no belief

Belong to a different religion or religious belief, or have no religion.

**Age:** persons under school leaving age (currently 16) are not allowed to claim on the age ground

Be older or younger than you

**Disability:** includes physical, intellectual or mental disability

Not have a disability or have a different disability

**Race:** colour, nationality, national or ethnic origins

Be of a different nationality, colour, or national or ethnic origin to you

**Membership of the Traveller community:** whether or not you are a member of the Traveller community

Be the opposite –e.g. if you are a Traveller, the person is not a Traveller

It is not necessary to have a comparator for claims of harassment or sexual harassment or for claims that you are treated less favourably because of pregnancy.

## 6. What kind of treatment is “unlawful treatment”?

Discrimination means being treated less well than someone else because of one of the grounds.

Discrimination is always a comparative term. Your claim cannot succeed if you do not show that someone else was or would have been treated better than you because of one of the above grounds.

### What kinds of discrimination are unlawful?

- **Direct discrimination** means that you are treated less well than someone else because of one of the grounds.
- **Indirect discrimination** means that there are conditions in place which appear neutral but which impact more strongly on you because of your inclusion in one of the grounds.
- **Harassment** means you have been treated in a demeaning way because of one of the grounds.
- **Sexual harassment** means you have been treated in a sexually demeaning way.
- **Victimisation** is a technical term which means you have been treated badly because you have taken action to oppose discrimination. It is not the same as being treated as a victim.

- **Discrimination by association** means you have been treated badly because of your connection with someone covered by the grounds.
- **Failure to provide “reasonable accommodation” for a disability** means the service provider has not made efforts to enable you, as a person with a disability, to get access to the goods or services.

## 7. Details of your complaint

It is important:

- to be as precise as you can about the dates.
- “ongoing” means that there are continuing incidents of discrimination.
- to give a clear account of what happened and why you think this was discrimination. You may continue on a separate page if you wish.

Unless your case is mediated or withdrawn, you will be asked later for a more formal outline of the alleged discrimination.

## **8. Important points to note**

Please ensure that you have fully completed the form as otherwise your complaint may not be valid. The Tribunal will return incomplete forms to you to fill in blanks.

Please sign and date the form clearly and send it to the Tribunal.

When the Tribunal has accepted your complaint as valid, you will be offered mediation. This is a less formal and confidential process to get both parties to reach an agreement acceptable to both of you.

If your complaint goes to investigation and is decided, the decision will be published and included on the Tribunal's website.

Please note that your form, and any other correspondence, will be copied to the respondent and you will get copies of all correspondence from the respondent.

Remember to tell the Tribunal if you change your address or contact details.

## **9. Further information**

For further information please see [www.equalitytribunal.ie](http://www.equalitytribunal.ie).

Staff at the Equality Tribunal can answer general telephone queries, give information about tribunal publications and explain how the tribunal system

works. They cannot assist you in filling out the form, or give you legal advice, such as advising you whether your complaint is likely to be successful.

The telephone number is **LoCall 1890 34 44 24**. The cost of calls varies depending on your phone company.

## **10. Further advice and help**

You do not have to take advice before you make a complaint to the Equality Tribunal. However, you may feel it is helpful to do so.

You can get information on your rights from the **Equality Authority's** Public Information Centre **LoCall 1890 245 245** or on **[www.equality.ie](http://www.equality.ie)**.

You can get more help and advice from:

- a trade union, if you are a member;
- free advice centres such as Citizens Information. The website address for Citizens Information is **[www.citizensinformation.ie](http://www.citizensinformation.ie)** or **LoCall 1890 777 121**;
- solicitors and other professional advisers may be able to help you to prepare your case.