**FE44**

FAIR EMPLOYMENT AND TREATMENT (NI) ORDER 1998

**THE QUESTIONS PROCEDURE**

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A complainant should obtain TWO copies of this booklet, one to send to the respondent and the other to keep.

Before completing the questionnaire or the reply form the complainant and the respondent should read Part I of the guidance and (as appropriate) Part II or III.

**FAIR EMPLOYMENT AND TREATMENT (NI) ORDER 1998**

**PART I - INTRODUCTION**

1. The purpose of this guidance is to explain the questions procedure under Article 44 of the Fair Employment and Treatment (NI) Order 1998. The procedure is intended to help a person (referred to in this guide as the **complainant**) who thinks he/she has been discriminated against by another (the **respondent**) to obtain information from that person about the treatment in question in order to -

(a) decide whether or not to bring proceedings, and

(b) if proceedings are brought, to present his/her complaint in the most effective way.

A questionnaire has been devised which the complainant can send to the respondent and there is also a matching reply form for use by the respondent (both are included in this booklet). The questionnaire and the reply form have been designed to assist the complainant and the respondent to identify information which is relevant to the complaint. It is not, however, obligatory for the questionnaire or the reply form to be used: the exchange of questions and replies may be conducted, for example, by letter.

2. This guidance is intended to assist both the complainant and the respondent. Guidance for the complainant on the preparation of the questionnaire is set out in Part II; and guidance for the respondent on the use of the reply form is set out in Part III. The main provisions of the Fair Employment and Treatment Order are referred to in the appendix to this guidance. Further information about the Order will be found in the various guides and leaflets published by the Equality Commission. The guides and leaflets may be obtained, free of charge, from the Equality Commission at -

Equality Commission for Northern Ireland

Equality House

7- 9 Shaftesbury Square

BELFAST

BT2 7DP

Telephone: (02890 500 600

**The Commission is available to give personal advice, free of charge, to individuals who telephone, write or visit its offices with a complaint or enquiry.**

**In certain circumstances, the Commission may provide individuals with assistance to process a complaint through the Fair Employment Tribunal system or a claim through the County Court.**

**How the questions procedure can benefit both parties**

3. The procedure can benefit both the complainant and the respondent in the following ways:-

(1) If the respondent’s answers satisfy the complainant that the treatment was not unlawful discrimination, there will be no need for legal proceedings.

(2) Even if the respondent’s answers do not satisfy the complainant they should help to identify what is agreed and what is in dispute between the parties. For example, the answers should reveal whether the parties disagree on the facts of the case, or, if they agree on the facts, whether they disagree on how the Order applies. In some cases, this may lead to a settlement of the grievance, again making legal proceedings unnecessary.

(3) If it turns out that the complainant institutes proceedings against the respondent the proceedings should be that much simpler because the matters in dispute will have been identified in advance.

**What happens if the respondent does not reply or replies evasively**

4. The respondent cannot be compelled to reply to the questions of the complainant. However, if the respondent deliberately, and without reasonable cause, does not reply within a reasonable period or replies in an evasive or ambiguous way, his/her position may be adversely affected should the complainant bring proceedings against him/her. The respondent’s attention is drawn to these possible consequences in the note at the end of the questionnaire.

**Period within which the questionnaire must be served on the respondent**

5. There are different time limits within which a questionnaire must be served in order to be admissible under the Questions Procedure in any ensuing legal proceedings. Which time limit applies depends on whether the complaint would be under the employment, training and related provisions of the Order (in which case the proceedings would be before the Fair Employment Tribunal) or whether it would be under the education, goods, facilities and services or premises provisions (in which case proceedings would be before a county court).

**Fair Employment Tribunal Cases**

6. Where the complaint is under the employment, training and related provisions of the Order the Questionnaire will only be admissible as evidence in proceedings before the Fair Employment Tribunal -

(a) where it was served on the respondent before a complaint (Form ET1) had been presented to the Tribunal, if it was so served before the end of the period of three months beginning with the day on which the complainant first had knowledge or might reasonably be expected first to have had knowledge, of the act complained of, or before the end of the period of six months beginning with the day on which the act was done, whichever is the earlier;

(b) where it was served on the respondent when a complaint had already been presented to the Tribunal, either if it was so served within the period of 21 days beginning with the day on which the complaint was presented, or if it was so served later with leave given and within a period specified, by a direction of the Tribunal.

**County Court Case**

7. All complaints relating to discrimination in the fields of education, goods, facilities and services and premises are dealt with by way of civil proceedings in the county courts. In order to be admissible under the Questions Procedure in any ensuing county court proceedings, the complainant’s questionnaire must be served on the respondent before proceedings in respect of the treatment concerned are brought, but not more than six months after the treatment\*. However, where proceedings have been brought, a questionnaire may still be served provided the leave of court has been obtained.

 \*Where the respondent is the governing body of an institution of further education, prior notice of the claim must be sent to the Department of Education.

**PART II - GUIDANCE FOR THE COMPLAINANT**

NOTES ON PREPARING THE QUESTIONNAIRE

8. Before filling in the questionnaire, you are advised to prepare what you want to say on a separate piece of paper. If you have insufficient room on the questionnaire for what you want to say, you should continue on an additional piece of paper, which should be sent with the questionnaire to the respondent.

**Paragraph 2**

9. You should give, in the space provided in paragraph 2, as much relevant factual information as you can about the treatment you think may have been unlawful discrimination, and about the circumstances leading up to that treatment. You should also give the date, and if possible and relevant, the place and approximate time of the treatment. You should bear in mind that in paragraph 4 of the questionnaire, you will be asking the respondent whether he/she agrees with what you say in paragraph 2.

**Paragraph 3**

10. In paragraph 3 you are telling the respondent that you think the treatment you have described in paragraph 2 may have been unlawful discrimination by him/her against you. It will help to identify whether there are any legal issues between you and the respondent if you explain in the space provided **why** you think the treatment may have been unlawful discrimination. However, you **do not have** to complete paragraph 3; if you do not wish or are unable to do so, you should delete the word “because”. If you wish to complete the paragraph, but feel you need more information about the Fair Employment and Treatment Order before doing so, you should look at the appendix to this guidance and/or contact the Equality Commission.

11. If you decide to complete paragraph 3, you may find it useful to indicate -

(a) what **kind** of discrimination you think the treatment may have been ie whether it was direct discrimination on the grounds of religious belief or political opinion, indirect discrimination on the grounds of religious belief or political opinion, or victimisation.

(For further information about the different kinds of discrimination see paragraph 1 of the appendix.)

(b) which provisions of the Order you think may make unlawful the kind of discrimination you think you may have suffered. (For an indication of the provisions of the Order which make the various kinds of discrimination unlawful, see paragraph 2 of the appendix.)

**Paragraph 6**

12. You should insert here any other question which you think may help you to obtain relevant information. (For example, if you think you have been discriminated against by having been refused a job, you may want to know what were the qualifications of the person who did get the job and why that person got the job.)

13. Paragraph 5 contains questions which are especially important if you think you may have suffered direct discrimination on the grounds of religious belief or political opinion. This is because they ask the respondent whether your religious belief or political opinion or supposed religious belief or political opinion or the absence or supposed absence of any, or any particular, religious belief or political opinion had anything to do with your treatment. Paragraph 5 does not however, ask specific questions relating to **indirect discrimination** on the grounds of religious belief or political opinion or victimisation. If you think you may have suffered indirect discrimination on the grounds of religious belief or political opinion you may find it helpful to include the following question in the space provided in paragraph 6:

 “was the reason for my treatment the fact that I could not comply with a condition or requirement which is applied equally to all persons regardless of religious belief and/or political opinion?

 If so:-

(a) what was the condition or requirement?

(b) why was it applied?”

14. If you think you may have been victimised you may find it helpful to include the following question in the space provided in paragraph 6:

 “Was the reason for my treatment the fact that I had done, or intended to do, or that you suspected I had done or intended to do, any of the following:

(a) brought proceedings under the Fair Employment and Treatment (Northern Ireland) Order; or

(b) gave evidence or information in connection with proceedings under the Order; or

(c) did something else under or by reference to the Order; or

(d) made an allegation that someone committed an act which is unlawful under the Order.

**Signature**

15. The questionnaire must be signed and dated. If it is to be signed on behalf of (rather than by) the complainant, the person signing should -

(a) describe himself/herself (eg “solicitor acting for (name of complainant)”), and

(b) give his/her business (or home, if appropriate) address.

**WHAT PAPERS TO SERVE ON THE RESPONDENT**

16. You should send the respondent the whole of this document (ie the guidance, the questionnaire and the reply forms), with the questionnaire completed by you. **You should retain, and keep in a safe place, a copy of the completed questionnaire** (and you might also find it useful to retain a copy of the guidance and the uncompleted reply form).

**HOW TO SERVE THE PAPERS**

17.You can either deliver the papers in person or send them by post. If you decide to send them by post you are advised to use the recorded delivery service, so that, if necessary, you can provide evidence that they were delivered.

**WHERE TO SEND THE PAPERS**

18. You can post the papers to the respondent at his/her usual or last known residence or place of business. If you know he/she is acting through a solicitor you should send them to him/her at his/her solicitor’s address. If you wish to question a limited company or other corporate body or a trade union or employers’ association, you should send the papers to the secretary or clerk at the registered or principal office of the company, etc. You should be able to find out where its registered or principal office is by enquiring at a public library or the Companies Registry.

**USE OF THE QUESTIONS AND REPLIES IN FAIR EMPLOYMENT TRIBUNAL PROCEEDINGS**

19. If you decide to make (or already have made) a complaint to the Fair Employment Tribunal about the treatment concerned and if you intend to use your questions and the reply (if any) as evidence in the proceedings, you are advised to send copies of your questions and any reply to the Secretary of the Office of Industrial Tribunals and the Fair Employment Tribunal before the date of the hearing. This should be done as soon as the documents are available; if they are available at the time you submit your complaint to the Tribunal, you should send the copies with your complaint to the Secretary of the Office of the Industrial Tribunals and the Fair Employment Tribunal.

**PART III - GUIDANCE FOR THE RESPONDENT**

NOTES ON COMPLETING THE REPLY FORM

20. Before completing the reply form, you are advised to prepare what you want to say on a separate piece of paper. If you have insufficient room on the reply form for what you want to say, you should continue on an additional piece of paper, which should be attached to the reply form sent to the complainant.

**Paragraph 2**

21. Here you are answering the question in paragraph 4 of the questionnaire. If you **agree** that the statement of the complainant in paragraph 2 of the questionnaire is an accurate **description** of what happened, you should delete the second sentence.

22. If you **disagree** in any way that the statement is an accurate description of what happened, you should explain in the space provided in what respect you disagree, or your version of what happened, or both.

**Paragraph 3**

23. Here you are answering the question in paragraph 5 of the questionnaire. If, in answer to paragraph 4 of the questionnaire, you have agreed with the description by the complainant of his/her treatment, you will be answering paragraph 5 on the basis of the facts in his/her description. If, however, you have disagreed with that description you should answer paragraph 5 on the basis of **your** version of the facts. To answer paragraph 5, you are advised to look at the appendix to this guidance and also the relevant parts of the Order. You need to know:-

(a) how the Order defines discrimination - see paragraph 1 of the appendix;

(b) in what situations the Order makes discrimination unlawful - see paragraph 2 of the appendix; and

(c) what exceptions the Order provides - see paragraph 3 of the appendix.

24. If you think that an exception (eg the exception for employment where particular religious belief or political opinion is a genuine occupational qualification) applies to the treatment described in paragraph 2 of the complainant’s questionnaire, you should mention this in paragraph 3a of the reply form and explain why you think the exception applies.

**Signature**

25. The reply form should be signed and dated. If it is to be signed on behalf of (rather than by) the respondent, the person signing should -

(a) describe himself/herself (eg “solicitor acting for (name of respondent”) or “personnel manager of (name of firm)”), and

(b) give his/her business (or home, if appropriate) address.

**SERVING THE REPLY FORM ON THE COMPLAINANT**

26. If you wish to reply to the questionnaire you are strongly advised to do so without delay. **You should retain, and keep in a safe place, the questionnaire sent to you and a copy of your reply.**

27. You can serve the reply either by delivering it in person to the complainant or by sending it by post. If you decide to send it by post you are advised to use the recorded delivery service, so that, if necessary, you can produce evidence that it was delivered.

28. You should send the reply form to the address indicated in paragraph 7 of the questionnaire of the complainant.

**USEFUL ADDRESSES**

**OFFICE OF THE INDUSTRIAL TRIBUNALS AND THE FAIR EMPLOYMENT TRIBUNAL**

Killymeal House

5 Cromac Quay

Ormeau Road

Belfast

BT7 2JD

Telephone: (028) 90 327 666

**LABOUR RELATIONS AGENCY**

2-8 Gordon Street

Belfast

BT1 2LG

Telephone: 03300 552 220

**District Office**

1-3 Guildhall Street

Londonderry

BT48 6BJ

Telephone: (028) 71 264 681 or (028) 71 269 639

**EQUALITY COMMISSION FOR NORTHERN IRELAND**

Equality House

7-9 Shaftesbury Square

Belfast

BT2 7DP

Telephone: (028) 90 500 600

FAIR EMPLOYMENT AND TREATMENT (NI) ORDER 1998

**QUESTIONNAIRE OF THE COMPLAINANT**

 *(Name of respondent)* To ..................................................................................................................

 *(Address)*  Of ..............................................................................................................

 ....................................................................................................................

 ..................................................................................................................

1. *(Name of complainant)* I ...............................................................................................................

 *(Address)* Of ................................................................................................................

 ...................................................................................................................

 .......................................................................................................................

consider that you may have discriminated against me contrary to the Fair Employment and Treatment (NI) Order 1998.

2. *(Give date, approximate time, place and factual description of the treatment received and of the circumstances leading up to the treatment (see paragraph 9 of the guidance).)*

 On...

3. *(Complete if you wish to give reasons, otherwise delete the word “because” (see paragraphs 10 and 11 of the guidance).)*

 I consider that this treatment may have been unlawful because...

4. *(This is the first of your questions to the respondent. You are advised not to alter it.)*

 Do you agree that the statement in paragraph 2 is an accurate description of what happened? If not, in what respect do you disagree or what is your version of what happened?

5. *(This is the second of your questions to the respondent. You are advised not to alter it.)*

 Do you accept that your treatment of me was unlawful discrimination by you against me?

 If not

 (a) why not?

 (b) for what reason did I receive the treatment accorded to me?

 (c) how far did my religious belief or political opinion or supposed religious belief or political opinion or the absence or supposed absence of any, or any particular, religious belief or political opinion affect your treatment of me?

6. *(Enter here any other questions you wish to ask (see paragraphs 12-14 of the guidance). Continue on a separate sheet if required.)*

7. *(\*Delete as appropriate. If you delete the first alternative, insert the address to which you want the reply to be sent.)*

 My address for any reply you may wish to give to the questions raised above is \*that set out in paragraph 1 above/\*the following address.

Signature of complainant .........................................................................................................................

Date .........................................................................................................................................................

*(see paragraph 15 of the guidance)*

FAIR EMPLOYMENT AND TREATMENT (NI) ORDER 1998

**REPLY BY THE RESPONDENT**

 *(Name of complainant)* To ................................................................................................................

 *(Address)*  Of ..............................................................................................................

 ....................................................................................................................

 ..................................................................................................................

1. *(Name of respondent)* I ...............................................................................................................

 *(Address)* Of ................................................................................................................

 ...................................................................................................................

 .......................................................................................................................

 *(complete as appropriate)* hereby acknowledge receipt of the questionnaire signed by you and dated .................. which was served on me on *(date)* ................................

2. I \***agree/disagree** that the statement in paragraph 2 of the questionnaire is an accurate description of what happened. *(\*Delete as appropriate)*

 *(If you agree that the statement in paragraph 2 of the questionnaire is accurate, delete the sentence beginning “I disagree with...”. If you disagree, complete that sentence (see paragraphs 21 and 22 of the guidance).)*

 I disagree with the statement in paragraph 2 of the questionnaire in that...

3. I **\*accept/dispute** that my treatment of you was unlawful discrimination by me against you. *(\*Delete as appropriate)*

 *(If you accept the assertion of the complainant of unlawful discrimination in paragraph 3 of the questionnaire, delete the sentence at (a), (b) and (c). Unless completed, a sentence should be deleted (see paragraphs 23 and 24 of the guidance).)*

 (a) My reasons for so disputing are...

 (b) The reason why you received the treatment accorded to you is...

 (c) Your religious belief or political opinion or supposed religious belief or political opinion or the supposed absence of any, or any particular, religious belief or political opinion affected my treatment of you to the following extent:-

4. *(Replies to questions in paragraph 6 of the questionnaire should be entered here.)*

5. *(Delete this whole sentence if you have answered all the questions in the questionnaire. If you have not answered all the questions, delete “unable” or “unwilling” as appropriate and give your reasons for not answering.)*

I have deleted (in whole or in part) the paragraph(s) numbered .......... above, since I am **unable/unwilling** to reply to the relevant questions of the questionnaire for the following reasons:-

Signature of respondent.....................................................................................................................

Date..................................................................................................................................................

*(see paragraph 25 of the guidance)*

FAIR EMPLOYMENT AND TREATMENT (NI) ORDER 1998

**REPLY BY THE RESPONDENT**

 *(Name of complainant)* To ................................................................................................................

 *(Address)*  Of ..............................................................................................................

 ....................................................................................................................

 ..................................................................................................................

1. *(Name of respondent)* I ...............................................................................................................

 *(Address)* Of ................................................................................................................

 ...................................................................................................................

 .......................................................................................................................

 *(complete as appropriate)* hereby acknowledge receipt of the questionnaire signed by you and dated .................. which was served on me on *(date)* ................................

2. I \***agree/disagree** that the statement in paragraph 2 of the questionnaire is an accurate description of what happened. *(\*Delete as appropriate)*

 *(If you agree that the statement in paragraph 2 of the questionnaire is accurate, delete the sentence beginning “I disagree with...”. If you disagree, complete that sentence (see paragraphs 21 and 22 of the guidance).)*

 I disagree with the statement in paragraph 2 of the questionnaire in that...

3. I **\*accept/dispute** that my treatment of you was unlawful discrimination by me against you. *(\*Delete as appropriate)*

 *(If you accept the assertion of the complainant of unlawful discrimination in paragraph 3 of the questionnaire, delete the sentence at (a), (b) and (c). Unless completed, a sentence should be deleted (see paragraphs 23 and 24 of the guidance).)*

 (a) My reasons for so disputing are...

 (b) The reason why you received the treatment accorded to you is...

 (c) Your religious belief or political opinion or supposed religious belief or political opinion or the supposed absence of any, or any particular, religious belief or political opinion affected my treatment of you to the following extent:-

4. *(Replies to questions in paragraph 6 of the questionnaire should be entered here.)*

5. *(Delete this whole sentence if you have answered all the questions in the questionnaire. If you have not answered all the questions, delete “unable” or “unwilling” as appropriate and give your reasons for not answering.)*

I have deleted (in whole or in part) the paragraph(s) numbered .......... above, since I am **unable/unwilling** to reply to the relevant questions of the questionnaire for the following reasons:-

Signature of respondent.....................................................................................................................

Date..................................................................................................................................................

*(see paragraph 25 of the guidance)*

**APPENDIX**

NOTE ON THE SCOPE OF THE FAIR EMPLOYMENT AND TREATMENT (NI) ORDER 1998

**Definition of discrimination**

1. In broad terms, the different kinds of discrimination covered by the Order are summarised below:

 **Direct discrimination** on the grounds of religious belief or political opinion arises where a person is treated less favourably than another is (or would be) treated because of his/her religious belief or political opinion or supposed religious belief or political opinion or the absence or supposed absence of any, or any particular, religious belief or political opinion;

 **Indirect discrimination** in **employment and vocational training** cases on the grounds of religious belief or political opinion arises where a provision, criterion or practice is applied or would apply equally but:

 (a) which puts or would put people of a particular religious belief or political opinion at a particular disadvantage when compared with others; and

 (b) which puts the complainant at that disadvantage; and

(c) which cannot be shown to be a proportionate means of achieving a legitimate aim.

 **Indirect discrimination** in **non-employment** cases on the grounds of religious belief or political opinion arises where a person is treated unfavourably because he/she cannot comply with a condition or requirement which:

 (a) is (or would be) applied equally to persons not of the same religious belief or political opinion as that person, **but**

 (b) is such that the proportion of persons of the same religious belief or political opinion as that person who can comply with it is considerably smaller than the proportion of persons not of that religious belief or political opinion who can comply with it, **and**

(c) is to the detriment of the person in question because he/she cannot comply with it, **and**

 (d) is such that the person applying it cannot show that it is justifiable regardless of the religious belief or political opinion of the person to whom it is applied.

 **Victimisation** arises where a person is treated less favourably than the other persons are (or would be) treated because that person has done (or intends to do or is suspected of having done or intending to do) any of the following:-

 (a) brought proceedings under the Order; or

 (b) given evidence or information in connection with proceedings brought under the Order; or

 (c) done anything else by reference to the Order (eg given information to the Equality Commission for Northern Ireland); or

 (d) made an allegation that someone committed an act which is unlawful under the Order. Victimisation does **not**, however, occur where the reason for the less favourable treatment is an allegation which was false and not made in good faith.

 **Harassment** in employment and vocational training cases is defined as unwanted conduct on the grounds of religious belief or political opinion that has the purpose or effect of violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

**Unlawful discrimination**

2. The provisions of the Order which make discrimination unlawful are indicated on the next page. Complaints about discrimination which is unlawful under the provisions in Group A (the employment provisions) must be made to the Fair Employment Tribunal. Complaints about discrimination which is unlawful under the provisions in Group B must be made to a County Court.

**Exceptions**

3. Details of exceptions to the requirements of the Order not to discriminate may be found in Parts IV and VIII of the Order.

**PROVISIONS OF THE FAIR EMPLOYMENT AND TREATMENT (NORTHERN IRELAND) ORDER 1998 WHICH MAKE DISCRIMINATION UNLAWFUL**

|  |  |
| --- | --- |
| **GROUP A**Discrimination by employers in recruitment and treatment of employeesDiscrimination against contract workersDiscrimination by persons with statutory power to select employees for others Discrimination by employment agenciesDiscrimination by vocational organisationsDiscrimination in the provision of training servicesDiscrimination by bodies which confer qualifications or authorisation needed for particular kinds of jobsDiscrimination by partnerships**GROUP B**Discrimination by bodies in charge of establishments of further and higher education Discrimination in the provision of goods, facilities or servicesDiscrimination in the disposal or management of premisesDiscrimination by or relevant to barristers | **Article of Order** |
| **19****20****21****22****23****24****25****26****27****28****29****32** |