



Fair Employment (Northern Ireland) Act 1976

1976 CHAPTER 25

PART III

UNLAWFUL DISCRIMINATION

General

16 Meaning of " discrimination " and " unlawful discrimination "

- (1) In this Act " discrimination " means—
 - (a) discrimination on the ground of religious belief or political opinion; or
 - (b) discrimination by way of victimisation ;and " discriminate " shall be construed accordingly.
- (2) For the purposes of this Act a person discriminates against another person on the ground of religious belief or political opinion if, on either of those grounds, he treats that other person less favourably in any circumstances than he treats or would treat any other person in those circumstances.
- (3) For the purposes of this Act a person discriminates against another person (" the person victimised ") by way of victimisation if he treats that other person less favourably in any circumstances than he treats or would treat any other person in those circumstances, and does so by reason that the person victimised has—
 - (a) made a complaint against him or any other person under this Act of unlawful discrimination, or
 - (b) given evidence or information in connection with any such complaint or any investigation, legal proceedings or appeal under this Act, or
 - (c) alleged that he or any other person has committed an act which (whether or not the allegation so states) would amount to a contravention of this Act, or

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- (d) otherwise done anything under or by reference to this Act in relation to him or any other person,
or by reason that he knows the person victimised intends to do any of these things, or that he suspects the person victimised has done, or intends to do any of them.
- (4) Subsection (3) does not apply to treatment of a person by reason of any allegation made by him if the allegation was false and not made in good faith.
- (5) For the purposes of this Act a person commits unlawful discrimination against another if he does an act in relation to that other which is unlawful by virtue of this Part, or if he is treated by virtue of any provision of Part IV as doing such an act.

Acts of unlawful discrimination

17 Discrimination by employers

It shall be unlawful for an employer to discriminate against a person, in relation to employment in Northern Ireland.— '

- (a) where that person is seeking employment—
 - (i) in the arrangements the employer makes for the purpose of determining who should be offered employment, or
 - (ii) by refusing or deliberately omitting to offer that person employment for which he applies, or
 - (iii) in the terms on which he offers him employment ; or
- (b) where that person is employed by him—
 - (i) in the terms of employment which he affords him, or
 - (ii) in the way he affords him access to benefits or by refusing or deliberately omitting to afford him access to them, or
 - (iii) by dismissing him, or
 - (iv) by subjecting him to any other detriment.

18 Discrimination against contract workers

- (1) This section applies to any work for a person (" the principal ") which is available to be done by individuals (" contract workers ")—
 - (a) who are employed not by the principal himself but by another person, who supplies them under a contract made with the principal, and
 - (b) who, if they were instead employed by the principal to do that work, would be in his employment in Northern Ireland.
- (2) It shall be unlawful for the principal, in relation to work to which this section applies, to discriminate against a contract worker—
 - (a) in the terms on which he allows him to do that work, or
 - (b) by not allowing him to do it or continue to do it, or
 - (c) in the way he affords him access to benefits or by refusing or deliberately omitting to afford him access to them, or
 - (d) by subjecting him to any other detriment.

19 Discrimination by persons with statutory power to select employees for others.

It shall be unlawful for a person who is empowered by virtue of an enactment to select or nominate another person for employment by a third person to discriminate against a person, in relation to employment in Northern Ireland.—

- (a) by refusing or deliberately omitting to select or nominate him for employment, or
- (b) where candidates are selected or nominated in order of preference, by selecting or nominating him lower in order than any other who is selected or nominated.

20 Discrimination by employment agencies

(1) It shall be unlawful for an employment agency to discriminate against a person, in relation to employment in Northern Ireland.—

- (a) in the terms on which the agency offers to provide any of its services, or
- (b) by refusing or deliberately omitting to provide any of its services, or
- (c) in the way it provides any of its services.

(2) References in subsection (1) to the services of an employment agency include guidance on careers and any other services related to employment.

(3) This section does not apply if the discrimination only concerns employment which the employer could lawfully refuse to offer the person concerned.

(4) An employment agency shall not be subject to any liability under this section if it proves—

- (a) that it acted in reliance on a statement made to it by the employer to the effect that, by reason of the operation of subsection (3), its action would not be unlawful, and
- (b) that it was reasonable for it to rely on the statement.

(5) A person who knowingly or recklessly makes a statement such as is referred to in subsection (4) (a) which in a material respect is false or misleading shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £400.

21 Discrimination by vocational organisations

It shall be unlawful for a vocational organisation to discriminate against a person who is employed or is seeking employment in Northern Ireland, or who is engaged or is seeking to become engaged in an occupation in Northern Ireland.—

- (a) where that person is not a member of the organisation—
 - (i) by refusing or deliberately omitting to accept his application for membership, or
 - (ii) in the terms on which it is prepared to admit him to membership ; or
- (b) where that person is a member of the organisation—
 - (i) in the way it affords him access to benefits or by refusing or deliberately omitting to afford him access to them, or
 - (ii) by depriving him of membership, or varying the terms on which he is a member, or
 - (iii) by subjecting him to any other detriment.

22 Discrimination by persons providing training services

- (1) It shall be unlawful for a person who provides services in connection with the training of persons for employment in any capacity, or for a particular employment or occupation, in Northern Ireland to discriminate against another person—
- (a) where that other person is seeking to obtain those services or they are sought to be obtained on his behalf—
 - (i) by refusing or deliberately omitting to provide those services, or
 - (ii) in the terms on which the person offers to provide those services ; or
 - (b) where that other person is receiving those services—
 - (i) in the way the person provides those services, or
 - (ii) in the way he affords him access to benefits connected with the services or by refusing or deliberately omitting to afford him access to them, or
 - (iii) by withdrawing those services from him or varying the terms on which they are provided, or
 - (iv) by subjecting him to any other detriment.
- (2) In subsection (1) "services", in relation to training for employment, means services provided otherwise than by the employer of the person who is seeking to obtain or is receiving the services.

23 Discrimination by persons with power to confer qualifications

It shall be unlawful for a person who has power to confer on another a qualification which is needed for, or facilitates, his engagement in employment in any capacity, or in a particular employment or occupation, in Northern Ireland to discriminate against him—

- (a) by refusing or deliberately omitting to confer that qualification on him on his application, or
- (b) in the terms on which the person is prepared to confer it, or
- (c) by withdrawing it from him or varying the terms on which he holds it.

*Complaints of unlawful discrimination***24 Investigation of complaint of unlawful discrimination**

- (1) Subject to the provisions of this section, where a person makes a complaint in writing to the Agency alleging that unlawful discrimination has been committed against him by another person (" the respondent "), the Agency shall investigate the complaint (unless it considers that the complaint is frivolous).
- (2) Where a person against whom unlawful discrimination is alleged to have been committed has died or is for any reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family or other individual suitable to represent him ; and where a person who has made or continued a complaint dies or becomes unable to act, the complaint may be continued by the personal representative, or a member of the family, of the person against whom the discrimination is alleged to have been committed, or by such other individual as aforesaid.

- (3) A complaint must be made before the expiration of—
- (a) two months from 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
 - (b) six months from the day on which the act was done, whichever first occurs; but the Agency may, if it thinks fit, investigate a complaint made after the expiration of that period, if of the opinion that there are special circumstances which make it proper to do so.
- (4) For the purposes of this section—
- (a) where the inclusion of any term in a contract renders the making of the contract an unlawful act, that act shall be treated as extending throughout the duration of the contract, and
 - (b) any act extending over a period shall be treated as done at the end of that period, and
 - (c) a deliberate omission shall be treated as done when the person in question does an act inconsistent with doing the omitted act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the omitted act if it were to be done.
- (5) The Agency shall not consider a complaint relating to an act which is unlawful by virtue of section 23, if the act is one in respect of which an appeal, or proceedings in the nature of an appeal, may be brought to a court under any enactment.
- (6) Without prejudice to subsection (5), where the Agency is satisfied that the subject-matter of a complaint has been or is being considered by some other statutory body or by a person holding a statutory office, the Agency shall not be obliged to investigate the complaint; but it may do so, after consultation with that other body or person, if it thinks fit.
- (7) Schedule 5 shall have effect with respect to the conduct of investigations under this section.
- (8) Where the Agency is of the opinion that, by virtue of any provision of Part V, it is precluded from investigating, or continuing the investigation, of a complaint, the Agency shall serve on the complainant and the respondent a notice stating the opinion.

25 Finding following investigation; attempts at conciliation

- (1) On completing its investigation of a complaint the Agency shall—
- (a) form an opinion (its " finding ") whether or not unlawful discrimination has been committed by the respondent against the complainant; and
 - (b) use its best endeavours—
 - (i) to secure a settlement of any difference between the complainant and the respondent which was disclosed by the complaint, and
 - (ii) where the finding is that unlawful discrimination has been committed, to secure, if it is appropriate to do so, a satisfactory written undertaking by the respondent to comply with the terms of the settlement.
- (2) As soon as reasonably practicable after arriving at its finding, the Agency shall serve on the complainant and the respondent a notice stating the finding and the reasons

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for it; and, if the finding is that unlawful discrimination has been committed, as soon as reasonably practicable thereafter the Agency shall serve on the complainant a notice stating whether or not the Agency has secured a settlement, or a settlement and undertaking, as mentioned in subsection (1)(b), and if so on what terms.

- (3) A notice under subsection (2) stating the Agency's finding shall inform the complainant and the respondent of the right of appeal against the finding which is conferred by section 28.
- (4) A finding that unlawful discrimination has been committed by the respondent against the complainant—
 - (a) shall not be questioned in any legal proceedings under this Act, except by appeal under section 28; and
 - (b) in any such proceedings, except on such an appeal, shall be evidence that the unlawful discrimination was committed.

26 Further attempts at conciliation: recommendations

- (1) If the Agency's finding is that unlawful discrimination has been committed by the respondent against the complainant, and if a settlement and, where appropriate, a satisfactory undertaking have not been secured, then, unless the Agency decides that no further action by it is appropriate, it shall serve on the complainant and the respondent a notice containing recommendations as to the action to be taken by the respondent to dispose of the difference disclosed by the complaint.
- (2) The recommendations may be contained in a notice served under section 25(2) or in a subsequent notice.
- (3) Where such an undertaking has already been secured but has not been complied with, the Agency, unless it decides that no further action by it is appropriate, shall either—
 - (a) serve on the complainant and the respondent a notice such as is mentioned in subsection (1); or
 - (b) proceed to institute an action under section 30 by way of a claim in tort in respect of the unlawful discrimination.
- (4) Without prejudice to the Agency's power to make any relevant recommendation, the recommendations may include a recommendation for the submission for consideration for employment, or for the employment, re-employment, admission to membership or reinstatement, of, or for the provision of any service for, the affording of access to any benefit to, the removal of any detriment from, or the conferment of any qualification on, the person against whom the unlawful discrimination was committed, and may also include a recommendation for the payment by the respondent of compensation such as is mentioned in section 31(1) (including compensation payable only in the event of some other recommendation not being complied with).
- (5) The Agency, on the respondent's written application, may—
 - (a) revoke all of the recommendations ; or
 - (b) modify the recommendations in accordance with the application—
 - (i) by revoking any of them, or
 - (ii) by substituting new recommendations for all or any of them ;

and, in substitution for any recommendations which are revoked under paragraph (a), may accept from the respondent a satisfactory written undertaking to comply with

the terms of any settlement which may have been reached in order to dispose of the difference disclosed by the complaint.

- (6) The Agency shall serve on the complainant and the respondent notice of any revocation or modification of the recommendations under subsection (5), and shall serve on the complainant notice of the terms of any undertaking accepted under that subsection.
- (7) Any reference in the succeeding provisions of this Act to recommendations made by the Agency—
- (a) does not include recommendations revoked under subsection (5)(a); and
 - (b) where the recommendations have been modified under subsection (5)(b), is to them as so modified.
- (8) Where—
- (a) a settlement such as is mentioned in section 25 or this section, or
 - (b) a recommendation under subsection (1) or (5),

provides for the payment of any sum by the respondent to the complainant, then, if the Agency has made any payment to the complainant in respect of expenses or allowances as mentioned in Schedule 5, paragraph 11, a sum equal to the amount of that payment shall be a first charge for the benefit of the Agency on the sum so provided for, unless the Agency in any particular case waives that charge.

27 Remedying of practices excluding equality of opportunity which are disclosed on investigation of complaint

Where, following its investigation of a complaint, the Agency (whether or not its finding is that unlawful discrimination has been committed by the respondent against the complainant) is of the opinion that the respondent has failed to afford equality of opportunity in relation to persons of any class, the Agency shall use its best endeavours to ensure that action such as is mentioned in section 13(1) is taken and that, where appropriate, an undertaking is given as there mentioned, and, without prejudice to the operation of any provision of this Part in consequence of the Agency's finding, the provisions of this Act shall have effect as if the Agency had formed that opinion following an investigation under section 12.

Appeal against finding following complaint of unlawful discrimination

28 Appeal to county court against Agency's finding on complaint of unlawful discrimination

- (1) This section has effect where, following a complaint of unlawful discrimination, the Agency serves a notice under section 25(2) on the complainant and the respondent stating the Agency's finding.
- (2) If the finding is that unlawful discrimination has been committed, the respondent may appeal against the finding.
- (3) If the finding is that such discrimination has not been committed, the complainant may appeal against the finding.
- (4) An appeal under this section shall lie to the county court and notice of the appeal must be given within 21 days from the date of service of the notice stating the finding.

- (5) In an appeal under subsection (2) the parties shall be the respondent and the Agency, and in an appeal under subsection (3) the parties shall be the complainant and the respondent.

29 Supplementary provisions as to appeal under s. 28

- (1) On an appeal under section 28—
- (a) if the court agrees with the Agency's finding, it shall dismiss the appeal; or
 - (b) if the court disagrees with the Agency's finding, then—
 - (i) if the court decides that unlawful discrimination has been committed by the respondent against the complainant it shall remit the case to the Agency and thereupon section 25(1)(b) and, if appropriate, section 26 shall have effect as if that were the Agency's finding; or
 - (ii) if the court decides that such discrimination has not been committed, the court shall quash the complaint.
- (2) Where the court disagrees with the Agency's finding it shall state the reasons for its decision.
- (3) Where the court on an appeal under section 28 disagrees with the Agency's finding and decides that unlawful discrimination has been committed by the respondent against the complainant, the court's decree shall be evidence that the unlawful discrimination was committed, if it would not be such evidence apart from this provision, and shall not be questioned, in any legal proceedings under this Act.

Legal proceedings to secure compensation for, or the remedying of, unlawful discrimination

30 Action in county court following breakdown of attempts at conciliation

- (1) Where, within such period as the Agency considers reasonable.—
- (a) an undertaking to comply with the terms of a settlement such as is mentioned in section 25(1)(b), or an undertaking accepted by the Agency under section 26(5) in substitution for revoked recommendations, has not been complied with ; or
 - (b) recommendations made by the Agency have not been complied with, the Agency, on behalf of the injured person (that is to say, the person against whom the unlawful discrimination was committed or, where that person is dead, his personal representative) may institute an action in the county court against the respondent by way of a claim in tort in respect of the unlawful discrimination.
- (2) Such an action shall not be instituted in consequence of failure to comply with recommendations—
- (a) until the expiration of the period allowed by section 28 for an appeal against the finding which led to the recommendations; or
 - (b) if notice of such an appeal is given within that period, unless the appeal is abandoned or dismissed ; but this subsection does not apply to anything done after a case has been remitted by the court to the Agency under section 29(1)(b)(i).
- (3) Subsection (4) of section 24 (time when certain acts are to be treated as done) shall have effect for determining, for the purposes of the Statute of Limitations (Northern

Ireland) 1958, when a cause or right of action under subsection (1) of this section accrued.

(4) In an action under this section the court shall have power by its decree—

- (a) to award damages ; or
- (b) to grant an injunction ; or
- (c) to award damages and grant an injunction,

in accordance with the provisions of section 31, or sections 31 and 46; and the damages may be awarded to the Agency as if it were the injured person, and it shall be for the Agency to take steps to recover the damages and, subject to section 31(6), to account to the injured person for any damages recovered.

(5) The court shall state the reasons for its decree.

31 Powers of court as to damages and injunctions

(1) In an action under section 30, the amount of any damages awarded shall be such as the court considers just in all the circumstances to compensate the injured person for any loss or injury he has suffered in consequence of the act of unlawful discrimination in question, including (without prejudice to the generality of the foregoing provision of this subsection)—

- (a) compensation for expenses reasonably incurred by the injured person in connection with the subject-matter of the complaint which led to the action (which for the purposes of this section shall be taken to include compensation for loss of his time); and
- (b) compensation for loss of opportunity, that is to say for loss of any employment, occupation or benefit which the injured person might reasonably be expected to have had but for the unlawful discrimination ;

but—

- (i) any award of damages for loss of opportunity shall be subject to the application of the same rule concerning the duty of a person to mitigate his loss as applies in relation to damages recoverable at common law; and
- (ii) compensation shall not be awarded for the same loss both by way of damages under this Act and by way of damages under any other enactment or at common law.

(2) Where the undertaking or any of the recommendations mentioned in section 30(1) includes provision for the injured person to be given a benefit of any kind by the respondent, and that provision has not been complied with.—

- (a) if the court finds that the reason why the provision was not complied with was that the injured person refused an offer of benefit on the terms stated in that provision, and the court considers that he acted unreasonably in doing so, the court may reduce the assessment of his loss; or
- (b) if the court finds that the reason why the provision was not complied with was that the respondent refused or failed to make such an offer, and the court considers that he acted unreasonably in doing so, the court may increase that assessment,

to such extent (in either case) as in all the circumstances the court considers just and equitable.

(3) Where it appears to the court in an action under section 30 that justice can be done to the injured person only by directing the defendant in the action to do, or refrain from

doing, any particular act or acts, the court, if satisfied that in all the circumstances it is reasonable to do so, may make an order (to which section 46 shall apply) containing such a direction.

- (4) The powers conferred on the county court by subsections (1) and (2) may be exercised by that court notwithstanding anything to the contrary in any enactment which imposes limitations on the jurisdiction of a county court by reference to an amount claimed.
- (5) Where the injured person is the personal representative of the person (" the victim ") against whom the unlawful discrimination was committed, the reference in subsection (1) to any loss or injury the injured person has suffered shall be construed—
 - (a) in relation to any item of damages which compensates for the expenses mentioned in subsection (1)(a), as including a reference to the victim, and
 - (b) in relation to any item of damages which compensates for the loss mentioned in subsection (1)(b), as a reference to the victim.
- (6) An award of damages for expenses incurred as mentioned in paragraph (a) of subsection (1) (including that paragraph as modified by subsection (5)) may include compensation for expenses so incurred which have been defrayed by sums paid by the Agency under Schedule 5, paragraph 11; and so much of the damages as compensates for expenses so defrayed shall be identified by the court's decree as a separate item of damages and shall be retained by the Agency and applied for its benefit.
- (7) Section 26(8) shall apply to sums payable under a compromise or settlement arrived at to avoid or bring an end to an action under section 30 as it applies to a settlement such as is mentioned in section 25 or 26.

32 Power of court to revise contracts

- (1) Where a term is included in or omitted from a contract in contravention of any provision of this Part or in consequence of such a contravention, then, notwithstanding that the making of the contract is an unlawful act, neither the contract nor any part of it is unenforceable by reason only of the contravention; but in an action under section 30—
 - (a) the Agency on behalf of the injured person ; or
 - (b) the defendant,may apply to the court to revise the contract or any of its terms.
- (2) On such an application the court may make such order as it considers just in all the circumstances revising the contract or any of its terms so as to secure that, as from the date of the order, the contract in no way contravenes, or has any effect in consequence of a contravention of, any provision of this Part.
- (3) Where the court makes an order under this section, every party to the contract, whether or not a party in the action, shall be bound by the order; but the court shall not make such an order which affects a party to the contract who is not a party in the action without giving him an opportunity of being heard.