
Sex Discrimination Act 1975: The Questions Procedure

This booklet is in four parts:

- Part 1:** Introduction (SD74).
Part 2: Questionnaire of the person aggrieved: The Complainant (SD74(1)(a)).
Part 3: Reply: The Respondent (SD74(1)(b)).
Appendix: Notes on the scope of the Sex Discrimination Act 1975.

Part 1: Introduction

General

- The purpose of this introduction is to explain the questions procedure under Section 74 of the Sex Discrimination Act 1975 (*the prescribed forms, time limits for serving questions and manner of service of questions and replies under section 74 are specified in the Sex Discrimination (Questions and Replies) Order 1975 No. 2048*).
- The procedure is intended to help a person (*referred to in this booklet 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:
 - decide whether or not to bring legal proceedings; and
 - if proceedings are brought, to present his/her complaint in the most effective way.
- We have devised a questionnaire which the complainant can send to the respondent. There is also a matching reply form for use by the respondent – both are included in this booklet. The questionnaire and reply form are designed to assist both the complainant and respondent to identify information which is relevant to the complaint. It is not obligatory for the questionnaire and reply form to be used: the exchange of questions and replies may be conducted, for example, by letter.
- The complainant and respondent should read this booklet thoroughly before completion and retain a copy of the information supplied.
- Guidance for the complainant on the preparation of the questionnaire is set out in Part 2.
- Guidance for the respondent on the use of the reply form is set out in Part 3.
- The Appendix explains the main provisions of the Sex Discrimination Act 1975. If you require further information about this Act or your rights and responsibilities, you can obtain it from the Equal Opportunities Commission (EOC) or from the detailed Guide to the Sex Discrimination Act 1975.
- If you require help or advice about completing or responding to this booklet, please contact the EOC.
- You can also obtain copies of this booklet ("*Form SD74*"), as well as copies of the Guide to the Sex Discrimination Act 1975, free of charge from the Women and Equality Unit. See reverse of booklet for details.

How the questions procedure can benefit both parties

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

- If the respondent's answers satisfy the complainant and the treatment was not unlawful discrimination, there will be no need for legal proceedings;
- 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 Act applies. In some cases, this may lead to a settlement of the grievance, making legal proceedings against unnecessary.
- If 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

The respondent cannot be compelled to reply to the complainant's questions. However, if the respondent deliberately, and without reasonable excuse, does not reply within a reasonable period, or replies in an evasive or ambiguous way, the respondent's 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

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 Act (*in which case the proceedings would be before an 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 or, in Scotland, sheriff court*).

Employment tribunal proceedings

In order to be admissible under the questions procedure in any ensuing employment tribunal proceedings, the complainant's questionnaire must be served on the respondent either:

- before a complaint about the treatment concerned is made to an employment tribunal, but not more than 3 months after the treatment in question; or
- if a complaint has already been made to a tribunal, within 21 days beginning when the complaint was received by the tribunal.

However, where the complainant has made a complaint to the tribunal and the period of 21 days has expired, a questionnaire may still be served provided the leave of the tribunal is obtained. This may be done by sending a written application to the Secretary of the Tribunal, stating the names of the complainant and the respondent and setting out the grounds of the application. However, every effort should be made to serve the questionnaire within the period of 21 days as the leave of the tribunal to serve the questionnaire after expiry of the period will not necessarily be obtained.

Use of the questions and replies in employment tribunal proceedings

If you decide to make (*or have already made*) a complaint to an 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 Tribunals 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 a tribunal, send the copies with your complaint to the Secretary of the Tribunal.

County or sheriff court proceedings

In order to be admissible under the questions procedure in any ensuing county or sheriff court proceedings, the complainant's questionnaire must be served on the respondent before proceedings in respect of the treatment concerned is brought, but not more than 6 months after the treatment¹. However, where proceedings have been brought, a questionnaire may still be served provided the leave of the court has been obtained. In the case of county court proceedings, this may be done by obtaining form Ex23 from the county court office, completing it and sending it to the Registrar and the respondent, or, by applying to the Registrar at the pre-trial review. In the cases of sheriff court proceedings, this may be done by making an application to a sheriff.

¹ Where the respondent is a body in charge of a public sector educational establishment, the 6 month period begins when the complaint has been referred to the appropriate Education Minister and 2 months have elapsed or, if this is earlier, the Minister has informed the complainant that he/she requires no more time to consider the matter.

Questionnaire of person aggrieved: The Complainant

Note:

- Before filling in this questionnaire, we advise you 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, continue on an additional piece of paper, which should be sent with the questionnaire to the respondent.

Enter the name of the person to be questioned (the respondent)

To

Enter the respondent's address

of

Enter your name (you are the complainant)

1. I

Enter your address

of

Please give as much relevant information as you can about the treatment you think may have been unlawful discrimination. You should mention the circumstances leading up to that treatment and, if possible, give the date, place and approximate time it happened. You should bear in mind that in question 4 of this questionnaire you will be asking the respondent whether he/she agrees with what you say here.

2. consider that you may have discriminated against me contrary to the Sex Discrimination Act 1975.

In 3 you are telling the respondent that you think the treatment you have described in 2 may have been unlawful discrimination by them against you. It will help to identify whether there are any legal issues between you and the respondent if you explain why you think the treatment may have been unlawful discrimination.

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

- You do not have to complete 3. If you do not wish or are unable to do so, you should delete the word 'because'. If you wish to complete 3, but feel you need more information about the Sex Discrimination Act before doing so, see the appendix attached.
- If you do decide to complete 3, you may find it useful to indicate what kind of discrimination you think the treatment may have been ie. whether it was:
 - direct sex discrimination;
 - indirect sex discrimination;
 - direct discrimination against a married person;
 - indirect discrimination against a married person;or
 - victimisation;and which provision of the Act you think may make unlawful the kind of discrimination you think you may have suffered.

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

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

The questions at 5 are especially important if you think you may have suffered direct sex discrimination, or direct discrimination against a married person, because they ask the respondent whether your sex or marital status had anything to do with your treatment. They do not ask specific questions relating to indirect sex discrimination, indirect discrimination against a married person or victimisation. Question 6 provides you with the opportunity to ask any other question you think may be of importance. For example, if you think you have been discriminated against by having been refused a job, you may want to know what the qualifications were of the person who did get the job and why that person got the job. If you think you have suffered indirect sex discrimination (or indirect discrimination against a married person) you may find it helpful to include the following questions:

- 'Was the reason for my treatment the fact that I could not comply with a condition or requirement which is applied equally to men and women (married and unmarried persons)?'

If so,

- What was the condition or requirement?
- Why was it applied?

If you think you have been victimised you may find it helpful to include the following questions:

- '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:
 - brought proceedings under the Sex Discrimination Act 1975 or the Equal Pay Act 1970;
 - gave evidence or information in connection with proceedings under either Act;
 - did something else under or by reference to either Act; or
 - made an allegation that someone acted unlawfully under either Act?'

4. Do you agree that the statement in 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. 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 sex or marital status affect your treatment of me?

Other questions (if appropriate):

6.

7.

My address for any reply you may wish to give to the questions I have raised is:

on page 3, at question 1 below (please tick appropriate box)

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:

- describe himself/herself e.g. 'solicitor acting for (name of complainant)'; and
- give business address (or home address, if appropriate). Date

Signed

Address (if appropriate)

How to serve the papers

- We strongly advise that you retain and keep in a safe place, a copy of the completed questionnaire.
- Send the person to be questioned the **whole** of this document either to their usual last known residence or place of business or if you know they are acting through a solicitor, to that address. If your questions (ie the introduction, the questionnaire as completed by you and the reply form) are directed at a limited company or other corporate body or a trade union or employer's association, you should send the papers to the secretary or clerk at the registered or principal office. You should be able to find out where this is by enquiring at your public library. However, if you are unable to do so you will have to send the papers to the place where you think it is most likely they will reach the secretary or clerk. It is your responsibility to see that they receive them.
- You can deliver the papers in person or send them by post.
- If you send them by post, we advise you to use the recorded delivery service (this will provide you with evidence of delivery).

By virtue of section 74 of the Act, this questionnaire and any reply are (subject to the provisions of the section) admissible in proceedings under the Act and a court or tribunal may draw any such inference as is just and equitable from a failure without reasonable excuse to reply within a reasonable period, or from an evasive or equivocal reply, including an inference that the person questioned has discriminated unlawfully.

Reply: The Respondent

Note:

- Before completing this reply form, we advise you 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, continue on an additional piece of paper, which should be attached to the reply form and sent to the complainant.

Enter the name of the person you are replying to (the complainant)

To

Enter the complainant's address

of

Enter your name (you are the respondent)

1. I

Enter your address

of

Complete as appropriate

hereby acknowledge receipt of the questionnaire signed by you and dated

which was served on me on (date)

Please tick relevant box: you are answering question 4 of the complainants questionnaire here. If you **disagree** with the complainant's statement of events, you should explain in what respects you disagree, or your version of what happened, or both.

2. I agree

that the statement in 2 of the questionnaire is an accurate description of what happened.

I disagree

with the statement in 2 of the questionnaire in that:

Please tick relevant box: you are answering question 5 of the complainant's questionnaire here. If, in answer to paragraph 4 of the questionnaire you have agreed that the statement is an accurate description of what happened but dispute that it is an unlawful description, you should state your reasons. If you have **disagreed** with the facts in the complainant's statement of events, you should answer the question on the basis of your version of the facts. We advise you to look at the attached Appendix and also the relevant parts of the 'Guide to the Sex Discrimination Act 1975'. You will need to know:

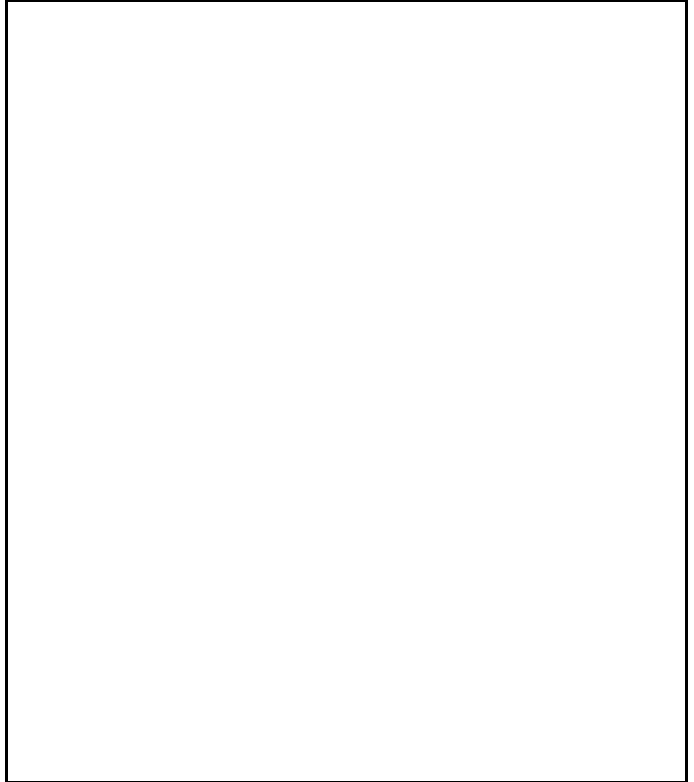
- how the Act defines discrimination – see paragraph 1 of the Appendix;
- in what situations the Act makes discrimination unlawful – see paragraph 2 of the Appendix; and
- what exceptions the Act provides – see paragraph 3 of the Appendix.

If you think that an exception (eg. the exception for employment where a person's sex is a genuine occupational qualification) applies to the treatment described in 2 of the complainant's questionnaire, you should mention this in paragraph 3a, with an explanation about why you think the exception applies.

- 3a.** I accept that my treatment of you was unlawful discrimination by me against you.
- I dispute that my treatment of you was unlawful discrimination by me against you. My reasons for so disputing are:

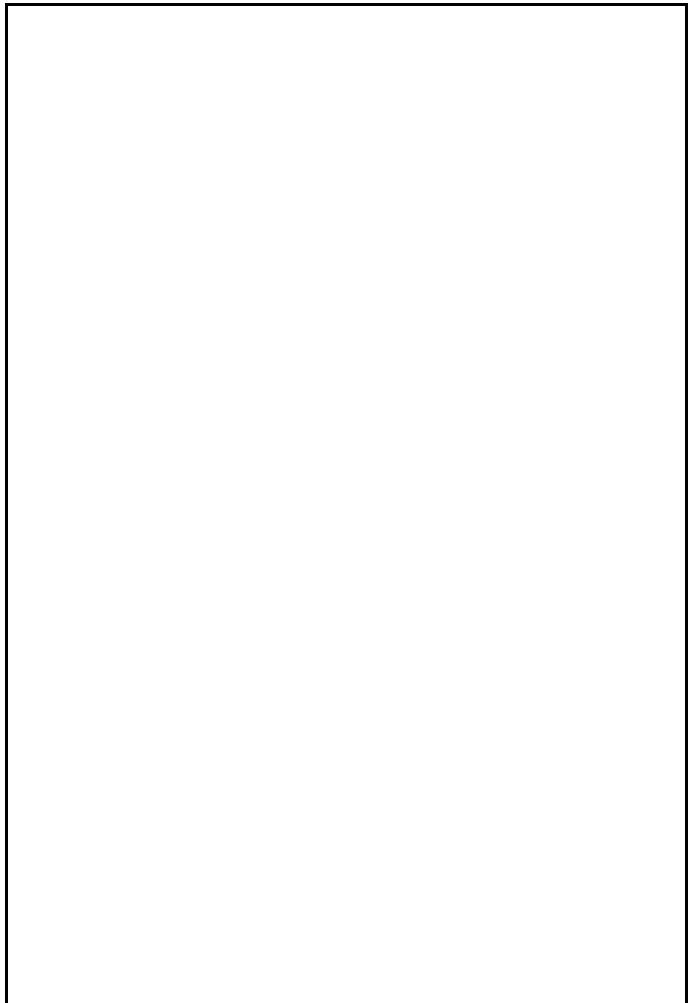
- 3b.** The reason you received the treatment accorded to you is:

3c. Your sex or marital status affected my treatment of you to the following extent:



Replies to the questions in paragraph 6 of the complainant's questionnaire can be entered here.

4.



Delete the whole of this sentence if you have answered all the questions in the complainant's questionnaire. If you are unable or unwilling to answer the questions please tick the appropriate box and give your reasons for not answering them.

5. I have deleted (in whole or in part) the paragraphs numbered above

since I am unable

since I am unwilling

⇒ to reply to the relevant questions in the complainant's questionnaire for the reasons given in the box below.

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

- describe himself/herself eg. 'solicitor acting for (name of respondent)' or 'personnel manager of (name of firm)'; and
- give business address (or home address if appropriate).

Signed

Address (if appropriate)

Date

How to serve the reply form on the complainant

- If you wish to reply to the questionnaire we strongly advise that you do so without delay.
- You should retain, and keep in a safe place, the questionnaire sent to you and a copy of your reply.
- You can serve the reply either by delivering it in person to the complainant or by sending it by post.
- If you send it by post, we advise you to use the recorded delivery service (this will provide you with evidence of delivery).
- You should send the reply form to the address indicated in paragraph 7 of the complainant's questionnaire.

Notes on the scope of the Sex Discrimination Act 1975

Definitions of discrimination

1. The different kinds of discrimination covered by the Act are summarised below. Some of the explanations have been written in terms of discrimination against a woman, but the Act applies equally to discrimination against men.

Direct sex discrimination arises where a woman is treated less favourably than a man is (*or would be*) treated **because of her sex**.

Indirect sex discrimination other than in the fields of employment and vocational training arises where someone applies a condition or requirement to a woman which:

- is (*or would be*) applied to men and women equally; and
- is such that the proportion of women who can comply with it is considerably smaller than the proportion of men who can comply with it; and
- is to the detriment of the woman in question because she cannot comply with it; and
- is such that the person applying it cannot show that it is justifiable regardless of the sex of the person to whom it is applied.

Indirect discrimination in employment and vocational training arises where someone applies to a woman a provision, criterion or practice which he applies or would equally apply to a man, but:

- which is such that it would be to the detriment of a considerably larger proportion of women than of men; and
- which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied; and
- which is to the woman's detriment.

Note: this is a slightly different and slightly broader definition from the one applying to discrimination in fields other than employment and vocational training.

Direct discrimination against married people in the employment field arises where a married person is treated less favourably than an unmarried person of the same sex is or would be treated, because he or she is married.

Indirect discrimination against married people in the employment field arises where someone applies to a married person a provision, criterion or practice which he applies or would apply equally to an unmarried person but:

- which is such that it would be to the detriment of a considerably larger proportion of married than unmarried people of the same sex; and
- which he cannot show to be justifiable irrespective of the marital status of the person to whom it is applied; and
- which is to the detriment of the married person concerned.

Note: the Sex Discrimination Act does not prohibit discrimination against unmarried people.

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

- brought proceedings under the Sex Discrimination Act or the Equal Pay Act; or
- given evidence or information in connection with proceedings brought under either Act; or
- done anything else by reference to either Act (eg. given information to the Equal Opportunities Commission); or
- made an allegation that someone acted unlawfully under either Act.

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.

Unlawful discrimination

2. The provisions of the Act which make discrimination unlawful are indicated in the table over the page. Those in Group A are the employment provisions, for the purposes of which discrimination means direct sex discrimination, indirect sex discrimination, direct discrimination against married persons, indirect discrimination against married persons, and victimisation. Complaints about discrimination which is unlawful under these provisions must be made to an employment tribunal. For detailed information about these provisions see chapter 3 of the **Guide to the Sex Discrimination Act 1975**. For the purposes of the provisions in Group B, discrimination means direct sex discrimination, indirect sex discrimination and victimisation, but not direct or indirect discrimination against married persons. Complaints about discrimination which is unlawful under these provisions must be made to a county court or, in Scotland, a sheriff court. For detailed information about these provisions see chapters 4 and 5 of the **Guide**.

Exceptions

3. Details of exceptions to the requirements of the Act not to discriminate may be found in the **Guide**. The exceptions applying to the employment field are described in chapter 3; those applying to the educational field, in chapter 4; and those those applying to the provision of goods, facilities and services and premises, in chapter 5. General exceptions are described in chapter 7.

**Provisions of the Sex Discrimination Act 1975
which make discrimination unlawful**

	Section of Act	Paragraphs of Guide to the Act
Group A		
Discrimination by employers in recruitment and treatment of employees.	6	3.1-3.17
Discrimination against contract workers.	9	3.21
Discrimination against partners.	11	3.22
Discrimination by trade unions, employers' associations etc.	12	3.23, 3.24
Discrimination by qualifying bodies.	13	3.25-3.28
Discrimination in vocational training.	14	3.29-3.30
Discrimination by employment agencies.	15	3.31-3.34
Group B		
Discrimination by bodies in charge of educational establishments.	22	4.2-4.6, 4.11-4.15
Other discrimination in education.	23	4.7-4.8, 4.14-4.15
Discrimination in the provision of goods, facilities or services.	29	5.2-5.9, 5.13-5.16
Discrimination in the disposal or management of premises.	30	5.10-5.16
Discrimination by landlords against prospective assignees or sublessees.	31	5.17
Discrimination by, or in relation to, barristers (or advocates in Scotland)	35A, 35B	5.18-5.20 (take to cover Scotland too)

For help or advice about completing or responding to this booklet, please contact the EOC:



The Equal Opportunities Commission
Arndale House
Arndale Centre
MANCHESTER
M4 3EQ
Telephone: 0845 601 5901
Fax: 0161 838 1733

Website: www.eoc.org.uk

Further copies of this booklet and the Guide to the Sex Discrimination Act 1975 can be obtained from:



Women and Equality Unit
10 Great George Street
LONDON
SW1P 3AE

Telephone: 020 7273 8880
Fax: 020 7273 8813
E mail: info.women&equalityunit@cabinet-office.x.gsi.gov.uk

Copies are also available on the web-site at www.womenandequalityunit.gov.uk and at Jobcentre Plus offices and Citizen Advice Bureaux.