

having taken all reasonable steps to prevent the officer doing the relevant thing. However, an officer will not be liable if they have been told by the Force that the act is lawful and they reasonably believe this to be true.

EMPLOYMENT TRIBUNAL AWARDS

Officers may have an expectation that they will obtain compensation by taking their complaint to an Employment Tribunal. A Tribunal can award compensation for injury to feelings, loss of earnings and (infrequently) aggravated damages. They can make a declaration that unlawful discrimination has taken place and make appropriate recommendations as to future actions, but they cannot, for example, recommend that someone be promoted or given an apology. An Employment Tribunal's power to make recommendations is limited; for instance, it cannot recommend that an officer is selected for promotion in future. If a Force fails to comply with a recommendation made by an Employment Tribunal an officer cannot bring proceedings to enforce the recommendation (although the failure to comply with a recommendation could be used as evidence in a subsequent Employment Tribunal discrimination claim).

Remember - The personal costs of taking a claim should not be underestimated. The litigation process can be lengthy and is inevitably confrontational, often resulting in a breakdown of the relationship between the Officer and the force, with Officers being lost to the Service through extended periods of sickness and ill health.

There are no real winners at an Employment Tribunal; identifying what the member wants and achieving an early internal resolution is the best example of success.

FUNDING PRINCIPLES

The Police Federation can fund an Officer's case to an Employment Tribunal. Where appropriate, the Federation Representative can arrange for the Federation's solicitors to review the circumstances of the case and give a legal opinion on its merits. They also give an opinion on the potential costs of taking the case and the potential award. The Federation will balance this with an analysis of the benefit of the case to the officer and the Service before deciding whether to fund the case. The Federation will also assess the costs, merits and benefits of naming individual Officers as Respondents when deciding whether to fund each part of an applicant's case.

The Federation will regularly review the funding of a case and may withdraw funding at any stage if, for example, the circumstances of the case changes so that there is no longer a reasonable prospect of success, the member refuses a reasonable offer of settlement or otherwise acts in a manner against the advice of the instructed solicitors or detrimental to the interests of the Federation. The Federation operates a procedure enabling members to appeal against legal funding decisions and has encouraged all local Joint Branch Boards to introduce a Grievance Procedure, for members who wish to raise issues of concern about their treatment or representation.



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**POLICE FEDERATION
of England and Wales**

Internet: www.polfed.org
Intranet: <http://pfnet>
(access limited to JBB staff)

**Equality
&
Diversity**

NOVEMBER 2010

Representation Advice

The Police Federation of England and Wales is the representative body for all Constables, Sergeants and Inspector ranks in the Police Forces of England and Wales. Our Diversity Equality Scheme sets out our commitment to the elimination of unfair discrimination on the grounds of gender, gender reassignment, family status, age, race, ethnic origin, sexual orientation, religion, disabled status, or any other unjustified condition, and the promotion of equality and diversity for all, in our own practices and arrangements and throughout the Police Service in England and Wales.

RESOLUTION STRATEGIES

No one benefits from protracted disputes in the workplace and the Federation is committed to resolving complaints at the earliest opportunity. **Officers should try to identify at an early stage what they want in order for them to achieve a resolution to their grievance and to consider, with the Federation Representative, possible alternative resolution strategies that are both practical and achievable.** In Force resolutions could take the form of:

- **Apology:** This is often hard to achieve as it means that someone has to accept that his or her behaviour caused offence, but it may be possible to get a “statement of regret”
- **Policy revision:** The Force undertake to amend their policies and/or practices and introduce a procedure for monitoring to ensure that there was no reoccurrence.
- **Compensation:** The Force pay a sum in recognition of the damage or hurt caused.
- **Personal Needs:** It may be possible to address the personal needs of the individual complainant or the person complained of, by for example, a revised training programme or the provision of coaching or mentoring.
- **Compassionate Leave/Special Leave:** It may be possible to arrange for a period of leave for either or all parties.
- **Transfer:** One or other party could be offered a transfer to another post, but it is important to remember that it could be unlawful victimisation to move the complainant against his or her wishes.
- **Statement:** The organisation gives an undertaking in writing that, for example the

Officer will not suffer future victimisation or that all records of the complaint will be removed from the Officer's personal file.

• **Reasonable Adjustment:** The force makes changes to the working environment, hours or duties of a disabled Officer.

These options are not definitive but suggest ways a grievance could be resolved quickly, confidentially and without any blame being apportioned.

The main purpose of any Grievance or Fairness at Work Procedure is to ensure that Officers who feel they have been unfairly treated either by management or their colleagues are given every opportunity to have their issue(s) resolved in a fair and just manner. The procedure is intended to resolve Officer's grievances quickly, but it is important to remember that there is no guarantee of obtaining a resolution and that these procedures are not for establishing blame or providing punishment.

SUPPORT BY THE FEDERATION REPRESENTATIVE

The Police Federation trains its Representatives to help Police Officers who may have a grievance about unfair or potentially unlawful treatment at work, who may be the subject of a grievance, who may be a witness to acts that form a complaint or who may be otherwise involved. Police Federation Representatives can help Officers to resolve their complaint within the workplace. They will:

- be objective and independent;
 - maintain confidentiality;
 - help Officers to clarify matters and identify relevant information;
 - explore the options available to resolve their complaint;
 - seek to manage the Officer's expectations;
 - assist Officers to achieve a resolution through their Force procedures;
 - advise on how and when to use their Force Grievance Procedure; and,
 - in appropriate circumstances, they can arrange for a solicitor to advise on the possibility of taking a case to an Employment Tribunal.
- Both the Officer and the Representative should keep a detailed diary of events relating to the grievance and should ensure that they keep each other informed of any developments.

THE LEGISLATION

Police Officers are Officers of the Crown, not “employees” in the legal sense and are not covered by all employment laws. In matters of equality and diversity they are covered, and can take claims under the provisions of the Equality Act 2010 in respect of any alleged unlawful discrimination, harassment or victimisation because of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex and/or sexual orientation.

TIME LIMITS

If an officer has a claim that could give rise to an Employment Tribunal complaint it must be presented to a Tribunal within 3 months less 1 day from the date of the last alleged act of discrimination (in equal pay claims - these can be taken at any time during employment and no later than 6 months less 1 day from the date you leave employment).

The ACAS Code of Practice on Discipline and Grievance 2009 indicates that all involved in grievance issues must act reasonably. Employment Tribunals can take the Code into account when considering relevant cases, and will be able to adjust any awards made by up to 25% for unreasonable failure to comply with any provision of the Code. It is therefore important that officers and Forces comply with all reasonable requests for information and the time limits in the Force Grievance or Fairness at Work procedure.

LIABILITY

The Chief Officer is liable for acts of discrimination, harassment and victimisation carried out by their officers in the course of employment. It does not matter whether or not they know about or approve of those acts. However, Chief Officers who can show that they took all reasonable steps to prevent their employees from acting unlawfully will not be held liable.

An officer may be personally liable for unlawful acts committed in the course of their employment where the Chief Officer is also liable - or would be but for the defence of