



## Equality Act 2010: Obtaining Information – Equality of Terms - Guidance

These Guidance Notes are in two parts:

**Part 1: Introduction**

**Part 2: Guidance Notes**

The questions and answers forms that this guidance covers, called “The Equality Act 2010 – Equality of Terms– Questions and Answers Forms” can be found on the Government Equalities Office (GEO) website

[http://www.equalities.gov.uk/news/equality\\_act\\_2010\\_forms\\_for\\_ob.aspx](http://www.equalities.gov.uk/news/equality_act_2010_forms_for_ob.aspx)

The purpose of this guidance is to explain the process for people who think they may have been treated unlawfully to obtain information under section 138 of the Equality Act 2010 in relation to an equality of terms complaint, (which used to be called an equal pay complaint).

The questions form is to be completed by someone who thinks that he/she is not getting equal pay with a colleague of the opposite sex and who wants to find out from his/her employer if this is the case. There is also a form which the employer can use to reply to the employee’s questions.

The Equality Act 2010 requires that where men and women are employed on equal work, the terms of their employment contracts should also be equal. That includes terms relating to pay, but also requires equality in relation to all other terms of the contract of employment. This is described in this document as “equality of terms”. This applies equally to men and women but does not give anyone the right to claim equality of terms with another person of the same sex. This replaces similar provisions in the Equal Pay Act 1970.

There are separate questions and answers forms and supplementary guidance for complaints about other forms of discriminatory conduct which are also on the GEO website: [http://www.equalities.gov.uk/news/equality\\_act\\_2010\\_forms\\_for\\_ob.aspx](http://www.equalities.gov.uk/news/equality_act_2010_forms_for_ob.aspx)

## Resolving employment disputes before going to a tribunal

Taking a claim to an employment tribunal is not the only way of resolving employment-related disputes: there are services which can avoid the need to do so. Many employers have internal dispute resolution mechanisms. If internal procedures do not result in an acceptable outcome, it may be helpful to consider mediation. The Advisory, Conciliation and Arbitration Service (Acas) can help mediate disputes and provide a free conciliation service. Paragraph 8 of the guidance notes gives information about the time limits within which a dispute can be taken to an employment tribunal should that become necessary. Mediation can also help restore working relationships after a claim has been disputed through a tribunal. Further information on alternative dispute resolution can be obtained via: [www.acas.org.uk](http://www.acas.org.uk)

## Part 1: Introduction

### Terms used in this document

- **Complainant** means the person who thinks they have not been given equal contractual terms with a person of the opposite sex who does equal work (the **comparator**). If the case reaches an employment tribunal, this person will be referred to as the “claimant”.
- **Employer** means the person or organisation responsible for the contractual terms of the complainant. If the case goes to tribunal the employer will be referred to as the respondent. The term is also used here to refer to the person responsible for the pay and terms of office holders and members of the armed forces.
- **Comparator** means the person the complainant is comparing themselves with. A comparator must be an actual person of the opposite sex who is receiving more favourable contractual terms and is shown to be employed on “like work”, “work rated as equivalent”, or “work of equal value”. Further information is given in the questions form.
- **Same employment** means that the comparator should be employed by the complainant’s employer or an associated employer. However, the term has to be interpreted in the light of European Union law and the decisions of our domestic courts and the Court of Justice of the European Union.
- **Equal work** means work that is the same or broadly similar (known as “like work”); work that has been rated as equivalent under a job evaluation study; or work of equal value.

**Further information on the terms used in the Equality Act 2010 is provided in Part 2.**

**What are the equality of terms questions and answers forms for?**

- The questions form is intended to help complainants to obtain information about whether they have received equality of terms from their employers. The answers form gives the employer an opportunity to respond. The information should help to establish key facts early on and make it easier to resolve the matter without needing to go to an employment tribunal. If the complainant decides to take a case to an employment tribunal, the information should enable the complaint to be presented in the most effective way and the proceedings should be that much simpler because the matters in dispute have been identified in advance.
- The focus of the forms is on establishing whether the employer agrees that a complainant is receiving less favourable pay and/or other contractual terms and conditions than a designated comparator and whether the employer agrees that the people being compared are doing “equal work”. It also gives an opportunity for the employer to explain the reasons for any difference in terms between people doing equal work.
- If the complainant wishes to enquire about possible discrimination by the employer in relation to non-contractual matters, or because of a protected characteristic other than sex, a separate form is provided (The Equality Act 2010: obtaining information – discrimination and other prohibited conduct). Such claims are not dealt with by the provisions on equality of terms and the time limits which apply to such claims are different from those governing equality of terms.
- If the complainant wishes to enquire about direct discrimination because of sex and relating to pay then both (equality of terms and discrimination) forms can be used.

**How does the questions form work in practice?**

- Under section 138 of the Equality Act 2010, a complainant is entitled to ask his or her employer for information that will help establish whether he or she has received equality terms and, if not, what the reasons are. The questions and answers forms have been devised as an aid to this process. Although there is no obligation on the complainant or employer to use the forms, and the information can be asked for and obtained in other ways, such as by letter, using the forms will help ensure that relevant questions are asked.

### **Where can I go for advice or to find further information?**

- If you need help or advice about completing or responding to the questions form, please see the end of Part 2 of this document for details of organisations that can help.

### **How to complete the questions and answers forms**

- **The complainant should read this guidance and complete the questions form.** This includes standard questions for the employer to answer and space for any additional questions.
- Once this has been completed, the whole form (including the answers form) should be sent to the employer. It can be sent either before a complaint is made to an employment tribunal or within 28 days of making such a complaint or, if later, within a period permitted by the employment tribunal (for further details see paragraph 8 in the guidance notes in Part 2 of this document). The complainant should keep a copy of the completed form sent to the employer.
- **The employer should complete the answers form.** This gives the employer the opportunity to say whether they agree with the complaint and if not, explain the reasons why. Although completion of the form is not compulsory, an employment tribunal may draw an inference from a failure to reply within **8 weeks**, or from an evasive or ambiguous answer.

### **Guidance**

- **Please read the whole of this document before completing the forms and keep a copy of the completed forms.** Guidance notes for completing the forms are set out alongside the questions in both the questions and answers forms. Further guidance is set out in Part 2 which also explains the main provisions of the Equality Act 2010 dealing with equality of terms and answers frequently asked questions.

## Part 2: Guidance Notes – Please read carefully

Further guidance explaining the main provisions of the Equality Act 2010 dealing with equality of terms can be found in the Statutory Code of Practice on Equal Pay produced by the Equality and Human Rights Commission (EHRC) which can be found [here](#). You may also wish to seek legal advice before completing the forms.

### The scope of the equality of terms provisions of the Equality Act 2010

1. The purpose of the equality of terms provisions of the Equality Act 2010 is to prohibit discrimination in pay and other contractual terms and conditions between men and women in the same employment when they are employed to do:

- **like work** – work of the same or a broadly similar nature;
- **work rated as equivalent** – that is, jobs which a job evaluation study of part or all of their employer's workforce has shown to have an equal value;
- **work of equal value** – that is, jobs which are equal in value in terms of the demands made on them under headings such as effort, skill and decision-making.

### What is covered under equality of terms?

2. For the purposes of the Equality Act 2010, equality of terms includes both contractual pay and other terms and conditions of employment contracts. This means that there may still be a breach of the principle of equality of terms where a man and a woman receive the same basic rate of pay, but other benefits (such as a company car, private health care etc.) are not provided on an equal basis. While the equality of terms provisions of the Equality Act 2010 apply to pay and other benefits provided by the contract of employment, the discrimination at work provisions cover non-contractual arrangements, which may include, for example, benefits such as access to a workplace nursery, travel concessions or a discretionary bonus.

3. This form should only be used in respect of pay and other terms which are part of the contract of employment and which are dealt with under the equality of terms provisions of the Act. If the claim relates to pay which is not part of the contract of employment, such as a discretionary Christmas bonus, or if it relates to direct discrimination where there is no actual comparator, it should be made under the sex discrimination at work provisions of the Act. A separate questions form is provided for other claims under the Act, including sex discrimination claims. It is possible to have a claim covering both, in which case two separate forms will be required (although it should be noted that different time limits will apply in each instance).

## What is a comparator?

4. In order to bring a claim, a person must compare themselves with an actual person of the opposite sex who is shown to be employed on “like work”, “work rated as equivalent”, or “work of equal value”. This person is their “comparator”. A complainant can, in certain circumstances, compare themselves with someone who did the same job before them. The comparator must be in the “same employment” as the person making the equality of terms complaint. “Same employment” is a term used in the Equality Act 2010 which broadly means that the comparator should be employed by the complainant’s employer or an associated employer: this is generally the person who can put right the inequality.

5. If the complaint is about direct discrimination but there is no comparator, then the form for discrimination should be used (The Equality Act 2010: obtaining information – discrimination form).

6. The complainant is entitled under the Equality Act 2010<sup>1</sup> to ask colleagues about their pay in order to identify unlawful pay differences, and those colleagues are entitled to disclose their pay in such a discussion – though there is no obligation on them to do so. Any action taken against an employee for having such a discussion would be an act of unlawful victimisation under the Act.

## The material factor defence

7. If a person does not receive equal terms with someone of the opposite sex who is doing equal work, this may be for a legitimate reason which has nothing to do with the sex either of the complainant or the comparator. It is for the employer to show that such a factor exists and is material, i.e. that it is the real reason for the difference in terms. For example, in some circumstances different geographic locations may justify a difference in pay or other terms, as may the operation of market forces, such as the need to recruit for particular jobs or the need to retain employees occupying particular jobs. The employer must be able to show that **all** of the differences in terms are genuinely attributable to that factor. If the factor that the employer relies on applies to both men and women doing equal work but affects a greater proportion of workers of one sex than the other, then the employer would have to show that the factor is “objectively justified”. This means that the employer would have to show that the difference in terms is a proportionate means of meeting a legitimate aim. For example, rewarding workers for being prepared to work longer hours at short notice may disadvantage a greater proportion of women workers with childcare responsibilities, but may be justified if there is a shortage of skilled workers and it is both necessary to achieve a business objective and is a proportionate means of achieving that objective.

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<sup>1</sup> More information and guidance on section 77 of the Equality Act can be found in the Statutory Code of Practice on Equal Pay produced by the EHRC (<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice/> )

## **What if the employer is asked to disclose confidential information?**

8. The purpose of the forms is to help the complainant decide whether or not to begin tribunal proceedings. Employers are expected to answer the questions as fully as possible, explaining any reasons why a complainant is not receiving equality of terms. Establishing the facts at an early stage, including the reasons why there may be differences in terms, could encourage equality of terms matters to be addressed in the workplace rather than through an employment tribunal.

9. The forms are intended to help establish whether the employer agrees that employees being compared are doing the same work, work that has been rated as equivalent under a job evaluation scheme, or work of equal value; whether an individual is receiving less favourable contractual terms than their comparator; and whether any differences are due to a material factor which is not connected to the sex of the worker.

10. Sometimes employers may be asked to provide information that may be confidential to another person, or which could identify a particular individual. For example, the complainant might ask for exact details of a colleague's pay package or appraisal review. In such instances, an employer may wish to seek the explicit consent of the comparator to disclose these details to the complainant for the purposes of the equality of terms questions form or prospective legal proceedings.

## **Legal protection of confidential information**

11. Confidential information is protected by both the Data Protection Act 1998 (DPA) and the common law duty of confidence. Where information is confidential, an employer would only be able to disclose the information if he or she had the consent of the individual in question, there was a legal obligation to do so or there was a strong public interest in favour of disclosure.

12. The DPA puts in place a framework within which the privacy rights of individuals are balanced with the legitimate interests of third parties: the right to privacy is not absolute. The DPA is not an automatic bar to the disclosure of information requested in the questions form. The DPA does not apply where information is provided without the comparator's consent in a form that does not enable a particular individual to be identified.

13. Where information *does* enable a specific individual to be identified by the complainant, the employer will need to consider how to balance the privacy rights of that individual with the legitimate interests of third parties.

14. In many cases employers will be able to answer detailed questions in general terms whilst still preserving the anonymity and confidence of their workers. Where more than one comparator is named, information could be provided in an anonymised

way. For example, the employer could provide information on average payments or payments to the group by gender and grade without disclosing the names. If only one comparator is named, employers could provide some of the information being sought in a generalised fashion – for example by explaining more fully how the pay system operates and answering detailed questions on it while preserving the anonymity of their employees. However, the employer should give genuinely informative responses specific to the question asked.

15. Employers need to be aware that section 35(2) of the DPA provides that information may be disclosed for the purpose of or in connection with: any legal proceedings including prospective legal proceedings; for the purpose of obtaining legal advice; or where it is otherwise necessary for the purposes of establishing, exercising or defending legal rights. If the case proceeds to a tribunal complaint, tribunals may order disclosure of relevant information in any event, if they believe it is in the interests of justice to do so.

16. For advice on specific issues relating to data protection legislation and practical guidance, an employer may wish to refer to the Information Commissioner's Office by phoning 0303 123 1113 or looking on their [website](http://www.ico.gov.uk): [www.ico.gov.uk](http://www.ico.gov.uk).

### **What happens if the employer does not answer or answers evasively?**

17. The employer does not have to answer the complainant's questions. However, if the employer does not answer within 8 weeks, or answers in an evasive or equivocal way, the tribunal may draw an inference, and the employer's position may be adversely affected should the complainant bring proceedings. For example, it may conclude that the employer did not provide a proper explanation for a difference in terms because there was no genuine reason for this difference.

18. There may be circumstances where the employer is unable or unwilling to answer a question. For example, an employer may not feel able to provide confidential information relating to the comparator in response to the questions form if the comparator did not want such information disclosed. Paragraph 3 of the employer's answers form gives the employer an opportunity to explain why he or she has chosen not to answer a particular question. If an employer does not feel able to provide information in response to the questions form, the reason for any refusal should be clearly given in the answers form.

### **What happens if the questions form reveals an inequality of terms?**

19. In the first instance, it is likely to be in all parties' interests to try to resolve the problem within the workplace. Many employers have their own internal grievance procedure that the complainant might use to seek resolution of their complaint. If the complainant is a member of a trade union, he or she may wish to seek advice from the



trade union representative. The information gained from the questions form can be used as a basis for discussion between the employer and worker and should help to resolve any difficulties. If both sides agree that there is an inequality of terms, then it may be possible to reach an agreement through conciliation services provided by organisations such as Acas (details can be found at the end of this document).

### **Applying to an employment tribunal – time limits**

20. The majority of problems in the workplace are resolved through discussion between employees and employers or as described above. However, if all else fails, then it may be necessary for an application to be made to an employment tribunal. The Equality Act 2010 contains strict time limits within which the complainant must bring a claim. An application can be made at any time while the complainant is employed in the job to which the claim relates, or within six months of leaving that job or ceasing to do it because of, say, a transfer or promotion. In certain circumstances, the period may be longer, for example, if the employer has kept something relevant from the complainant or the complainant was under 18 years of age (16 in Scotland) or lacked capacity (as within the meaning of the Mental Capacity Act 2005) at the relevant time. More information is available from the Equality and Human Rights Commission (whose details can be found at the end of this document).

### **Use of the questions and answers in employment tribunal proceedings**

21. In order to be admissible in any employment tribunal proceedings, the complainant's questions form must be served on the employer either:

- before a complaint is made to an employment tribunal, or
- within 28 days after making such a complaint to a tribunal.

However, where the complainant has made a complaint to the tribunal and the period of 28 days has expired, a questions form may still be served within a time specified by the tribunal. This requires making an application to the employment tribunal by writing to the Regional Secretary Tribunals asking for permission to serve the questions form out of time and setting out the reasons for making the application. The complainant should make every effort to serve the questions form within the period of 28 days, as the tribunal may not grant permission for it to be served later.

22. The complainant should send copies of the questions and any answers to the employment tribunal dealing with the claim before the date of the hearing. This should be done as soon as the documents are available.

## **Protection against victimisation**

23. The Equality Act 2010 provides protection for complainants where they suffer a disadvantage as a result of making a complaint under the Act in good faith, including serving a questions form or bringing proceedings. Further advice is available from the Equality and Human Rights Commission.

## **Alternative formats to accommodate disabilities**

24. This document can be accessed in alternative formats from the Government Equalities Office's website [www.equalities.gov.uk](http://www.equalities.gov.uk). Complainants are advised to use the standard printed questions form (getting someone else to complete it on their behalf as necessary) to serve on the respondent. This is because an employment tribunal may not always be able to accept the material in a format other than the written one. Please contact the local office of the tribunals service to see if the tribunal may be able to provide support.

25. A complainant with a disability might normally use an alternative format during the course of his or her (working or other) relationship with the respondent (e.g. as an employee/employer). Even where this is the case it would be advisable to obtain the respondent's agreement to using this alternative format for the process of obtaining information. The respondent would need to consider the use of an alternative format as a reasonable adjustment to accommodate a disability.

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**For help or advice about completing either questions or answers forms, please contact the Equality and Human Rights Commission or your local Citizens Advice Bureau.**

The Equality and Human Rights Commission has offices in Manchester, London, Glasgow and Cardiff. The main telephone numbers are:

Helpline:

England: 0845 604 6610

Scotland: 0845 604 5510

Wales: 0845 604 8810

For other contact details visit their website: [www.equalityandhumanrights.com](http://www.equalityandhumanrights.com)

For details of your local Citizens Advice Bureau visit their website:

[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

**The forms and website pages can be read aloud by clicking the 'Browsealoud' logo in the top-right corner. The website is also available in text-only and high contrast. If you require an alternative format or any further assistance, please contact [enquiries@geo.org.uk](mailto:enquiries@geo.org.uk).**

If you require this document in an alternative language please contact the GEO to discuss your needs

Paper copies of this guidance and forms are available in some local CABx.

**Further information about resolving conflicts and disputes at work can be found at:**

<http://www.businesslink.gov.uk/bdotg/action/layer?r.s=m&r.l1=1073858787&r.lc=en&r.l3=1074045599&r.l2=1074207487&topicId=1074045599&r.i=1073792732&r.t=RESOURCES>

<http://www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/index.htm>

The Acas Guidance Booklet “Managing Conflict at Work” contains useful guidance for employers on alternative dispute resolution. This can be accessed from:

<http://www.acas.org.uk/index.aspx?articleid=1662>