



Advice To Officers

I have an issue in the workplace and need Federation assistance to help me resolve it.

Q. What should I do?

Answer. In the first instance you should contact your local, LPU Federation Representative. They will be able to offer help and advice.

Federation Representatives are elected by those who they represent locally, for a three-year term. Some members are re-elected for further terms, whilst others may be newly elected and thus not quite as knowledgeable and experienced as some other representatives. Whilst a representative's electorate are made up of the officers from the same rank on their LPU, once elected, they are NOT confined to representing those officers only and are available to represent an officer of any rank up to, and including, that of Chief Inspector.

Consequently, on each LPU you have a choice of three Federation Representatives who you can go to for help, initially, with your problem.

Q. What if my local LPU representative is unable to resolve my issue?

Answer. As local representatives have varying degrees of knowledge and experience, it may be that they need to seek help and advice themselves. In this instance they have two options. They could: -

- Choose to seek the support of a more experienced/knowledgeable representative from another LPU or from Guardians House, to advise and mentor them whilst they assist you.

or

- Refer you to an executive officer at Guardians House for more specialised help and assistance.

Q What if I have been served with a Regulation 15 notice informing me that I am being investigated for a complaint?

Answer. Where your issue is one concerning “misconduct” and you have been served with a form informing you that you are being investigated for a complaint that has been made against you, you will be referred to the **Secretary to the Discipline Standing Committee.**

This committee is made up of very experienced and specially trained representatives across all three ranks. A member of the committee will then manage the misconduct process and your representation at any Professional Standards Department interview etc.

Q. What can I expect from my Federation representative?

Answer. When representing a member on an individual basis, a representative’s core duties are: -

Justice and the rule of law/regulations.

Your Federation Representative must uphold the rule of law and the proper administration of justice.

Integrity

Your Federation Representative must act with integrity.

Independence

Your Federation Representative must not allow their independence to be compromised. There is a conflict of interests if:

- (a) Your Federation Representative owes, separate duties to act in the best interests of two or more persons in relation to the same or related matter, and those duties conflict, or there is a significant risk that those duties may conflict;

Or

- (b) Your Federation Representative’s duty to act in the best interests of any member in relation to a matter conflicts, or there is a significant risk that it may conflict, with their own interests in relation to that or a related matter.

Best interests of members.

Your Federation Representative must act in the best interests of the member whom they represent.

Your Federation Representative must always act in good faith and do his or her best for each member. Most importantly, they must observe:

- (a) Their duty of confidentiality to the member.
- (b) Their obligations with regard to conflicts of interests.
- (c) Their obligation not to use their position to take unfair advantage of the member.

Standard of service

Your Federation Representative must provide a good standard of service to their member.

Public confidence

Your Federation Representative must not behave in a way that is likely to diminish the trust the membership places in them self or the Police Federation.

Member care

(1) Your Federation Representative should:

- (a) Identify clearly the member's objectives in relation to the work to be done for the member;
- (b) Give the member a clear explanation of the issues involved and the options available to the member;
- (c) Agree with the member the next steps to be taken; and
- (d) Keep the member informed of progress, unless otherwise agreed.

Q. What does success look like?

A. The single most important thing to establish from a complainant is what will resolve it. As long as a complainant's idea of success is reasonable it may well be achievable.

Q. I am angry at the way I have been treated and want to punish the organisation/management by taking them to an Employment Tribunal. What should I do?

Further information can be obtained from the document "Learning the lessons from Employment Tribunals" available to download in "pdf" format from the West Midlands Police Federation web site. <http://www.westmidspolfed.com>

A. Assuming you have a case in the first place, you will be sorely disappointed with the tribunal process if that is your intention. There are no winners at Employment Tribunals. The single lesson to be learnt from Tribunal cases is that complaints are better resolved early, without going to the law.

An Employment Tribunal is like a court but it is not as formal; for example, nobody wears a wig or gown. However, like a court it must act independently and cannot give legal advice. Almost all hearings are open to the public. It has very limited powers of sanction, as its purpose is not to punish, but to resolve workplace issues.

The decision of an Employment Tribunal hearing is based on the balance of probabilities and the remedies available are limited to: -

- Compensation, based on loss of any earnings, injury to feelings or personal injury and out of pocket losses.
- In some rare cases, aggravated damages plus interest, in cases where the respondent has behaved unreasonably;

- A declaration, in respect of the rights of the claimant;
- A recommendation that the Respondent takes, within a certain period, action to reduce the act of discrimination covered by the complaint. **Note that this is not an order.** It may include, for example, a recommendation of training. It is most unlikely that it will extend to a recommendation that the perpetrators of the discrimination be disciplined.

GENERAL PRINCIPLES

Purpose of the Employment Tribunals

“Learning the lessons from Employment Tribunals”

Employment Tribunals were first set up in 1965 with the intention that they would be informal 'industrial courts' before which parties could obtain a cheap, informal and speedy solution to their workplace disputes without the need for legal or formal representation. Although Tribunals do still operate relatively cheaply and informally, there has been an increased degree of formality and legalism within the system. The law is now complex and case law plays a substantial part in the interpretation of the various statutes applied by the Employment Tribunals, and so increasingly solicitors and barristers are now usually instructed on behalf of both employers and employees.

The procedure can become very confrontational. Both sides defend their position and try to undermine and embarrass the other side by whatever means they can. This can have a devastating effect on individuals caught up in the process. The trauma of appearing at a Tribunal cannot be over emphasised. No party ever finds it an easy experience. Inevitably the process can result in the complete breakdown of the employee/employer relationship with people leaving the Service before their time, in circumstances where they are disillusioned and disappointed. It is always preferable to resolve differences before they get to a Tribunal.

Tribunals are subject to a duty to comply with the so-called “over riding objective” to deal with cases “justly”. In practice, this means that they must ensure that the parties are on an equal footing, seek to save expenses, deal with the case in ways that are proportionate to the complexity of the case, and handle the case “expeditiously and fairly”. However, everyone connected with Employment Tribunals recognise that it is better to resolve a workplace dispute amicably rather than judicially. The government has introduced a range of legislative options that facilitate settlement of a case before a Tribunal hearing. At every stage in the procedure there are opportunities to resolve.

It is incumbent on both sides to examine the range of outcomes that may follow Tribunal litigation and make decisions that recognise the possibility that the Tribunal may not give them exactly what they want.

All the Police Service stakeholder organisations are committed to resolving workplace disputes at the earliest opportunity. Although sometimes perceived to be on different sides, they are all committed to working together to develop non-discriminatory workplace practices.

The Police Authority has a legal and moral responsibility to the individual staff involved and are committed to ensuring that grievances and Employment Tribunals are resolved at the earliest opportunity and that cases are settled wherever possible to avoid prolonged and damaging disputes and to minimise the impact on both staff morale and public confidence in policing.

If left unchallenged, workplace disputes can very easily become Employment Tribunal cases. Workplace disputes that are fought in the public arena can damage a Force's external image as well as its internal culture and morale. They can destroy the working relationships within a Force, and they can damage the personal lives of the people involved. Consequently ACPO, are also committed to ensuring equality of opportunity for all in the police service family.

The Police Federation of England and Wales Statement.
"Learning the lessons from Employment Tribunals"

"No one benefits from protracted disputes in the workplace and the Federation is committed to resolving complaints at the earliest opportunity. Officers are encouraged to identify at an early stage what they want to achieve a resolution to their grievance and to consider possible alternative resolution strategies that are both practical and achievable.

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, on the potential costs of taking the case and the potential award.

The Federation 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 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 funding of a case is regularly reviewed and funding may be withdrawn 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."

There is be a duty on everyone to come to the table to resolve complaints Police Regulations include similar provisions as those in the Dispute Resolution Regulations 2003 in order to ensure that police officers are required to use their Force Fairness at Work procedure.

Q **What is the Fairness At Work Procedure that I should explore first?**

A. The term "Fairness at Work" is a national phrase, which, in the West Midlands Police is more commonly referred to as the "Resolution" procedure, (formerly the "Grievance Procedure"). In the majority of cases, normal discussions between colleagues and line managers will lead to successful resolution of matters. To that end, the procedure is not intended to undermine normal management processes or the overall effectiveness and efficiency of the service.

The Resolution Procedure should therefore only be used where normal, and/or local discussions fail to resolve matters. Where this is the case, individuals who feel they

have been treated unfairly, and find themselves in conflict with colleagues at work, can use the procedure.

The procedure is not a mechanism to establish blame, and is designed to resolve work place relations where they have been damaged in some way.

The procedure is in accordance with the Employment Act 2002 (Dispute Resolution) Regulations 2004.

The West Midlands Police Resolution policy can be found in full via the intranet following the link:

HQ departments > Personnel >Policy Guide A-Z > Resolution.

Resolution Strategies

Workplace disputes can be resolved at an informal level.

All involved in a workplace dispute should be encouraged to try to identify at an early stage what they want in order to obtain a practical and achievable resolution to the problem. Resolution could take the form of one or more of the following options, or anything else that the parties may agree:

- **An apology:**

Although this is often hard to achieve, it is the outcome most complainants seek. There may be different perceptions about the complaint. At one level, it may be that a person was unaware that their behaviour or language caused offence and by explaining the hurt caused, they can apologise. At another level, it may be that by accepting they were wrong, the offender may believe that they may be disciplined for the behaviour. It is important to facilitate the giving and the acceptance of an apology in a spirit of conciliation.

- **Policy revision:**

A complainant may say that their objective in raising a matter is because they do not want another person to suffer the same treatment, so an amendment to Force policies and/or practices and the introduction of a procedure for monitoring to ensure that there was no reoccurrence will be regarded by many as a successful outcome to their complaint.

- **Personal Needs:**

The grievance may draw attention to the necessity for the Force to address the personal needs of the complainant or the subject of the complaint. This could be, for example, the introduction of different working hours or conditions, a revised training programme, or the provision of coaching or mentoring.

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- **Compassionate Leave/Special Leave:**

If there is a need for a “cooling off” period, it may be possible to arrange for a period of leave for either or all parties involved in a workplace dispute.

- **Transfer:**

It may be possible to offer one or more of the parties a transfer to another area or department in the Force. But it is important to remember that it could be unlawful victimisation to move any of the parties against their wishes.

• **Statement:**

In some circumstances, a written undertaking that, for example, the complainant (or other party involved) will not suffer future victimisation or that all records of the complaint will be removed from the officer's personal file may well be sufficient to resolve the matter.

• **Compromise agreement**

A signed agreement, through ACAS or other mediator, where all parties agree to a binding formal resolution. This could include an ex-gratia payment in recognition of the damage or hurt caused.

• **Restorative Justice/Mediation**

The complainant and the subject of the complaint could take part in a facilitated settlement. A mediator can sit down with all the parties, or work on their behalf to bring about an agreement.

Q I do not want to use the “Resolution” procedure or I have used it and it did not work for me. Can I try to resolve my issue in another way?

A. Yes, you could try mediation either through the use of force mediators or by using the mediation service provided by ACAS.

Q. What is Mediation?

A. Mediation is the process by which a neutral third party assists colleagues in the resolution of workplace disputes to reach a mutually agreeable outcome.

Mediation aims to

- resolve conflict and reduce tension, anxiety, fear, etc
- resolve conflict at an early stage
- provide a way to deal with behaviour through constructive and efficient negotiations which focus predominantly on the parties' needs and interests and which broaden the search for options and alternative solutions
- encourage individuals to take charge of their own decisions and to accept responsibility for the consequences of their decisions

Where all parties approach mediation in an open-minded, constructive way, it can prove to be extremely successful and it is therefore recommended that mediation is considered as a means of resolution at the earliest possible opportunity. Mediation is voluntary on the basis that both parties must be committed to achieving a mutually agreeable outcome and solution.

Successful mediation will lead to both parties feeling that the outcome is fair, reasonable and appropriate under the circumstances.

Q. What are the general principles of mediation?

Answer.

- Where there is conflict in working relationships, colleagues will be encouraged to consider mediation as a means of resolution.
- The appointed mediator will be neutral to both parties to ensure impartiality
- Mediation will be strictly confidential between the two parties and the mediator. Once resolution has been achieved, an agreement will be signed by both parties which may, if appropriate, be shared with the line manager. Any notes made by the mediator will be destroyed immediately after mediation has taken place.
- Any agreements reached through mediation are morally binding. They are not legally binding on parties. Equally, any discussions and/or agreements are without prejudice.
- Opting for mediation does not take away an individual's right and access to resolution procedure (see Links with the Resolution Procedure, below)
- Line managers will monitor the well being of both parties and, in conjunction with local personnel managers, arrange for additional supportive measures to be introduced, where appropriate.
- Opting for mediation does not compromise an individual's legal rights.

Q. How does it work and what can I expect?

A. Both parties should indicate their willingness to proceed by signing an Agreement to Mediation.

Stage One – Pre-meeting

The mediator will meet both parties individually for the purpose of:

- explaining the role of the mediator and the process of mediation, including confidentiality; and
- defining the core issues and identifying the ideal outcome expected by both parties
- ensuring that both parties agree to mediation
- confirm that during stage two, work-related uniforms will not be worn by any party (i.e. casual dress).

The mediator may need to meet either or both parties again to clarify any further issues arising from stage one.

Stage Two – Face to Face Mediation

The mediator will arrange a suitable venue, where there will be no interruptions and confidentiality will be preserved. Ideally this will be at a mutually agreed location. The face to face mediation should be arranged at the earliest possible opportunity.

Setting the Scene

The mediator will:

- Welcome and introductions
- Set the boundaries and ground rules
- Explain and agree the process with both parties
- Clarify and summarise the agreed areas of conflict

Exploring the Issues

The mediator will:

- Explore the issues with both parties
- Encourage communication
- Manage any conflict during the early stages of the discussion
- Encourage a mutual understanding about the issue
- Identify any concerns about the issues
- Encourage a change of focus from the past to the future
- Summarise areas of consensus and disagreement

Building Agreements

Mediation will work towards:

- Generating and evaluating options
- Encouraging problem solving
- An acceptance or acknowledgement of conciliatory gestures
- Encouraging both parties to focus on future resolution rather than the past problem
- Constructing agreements
- Creating fall back arrangements
- Identifying what next if no agreement reached

It must be noted that agreements reached through mediation are morally, not legally, binding. Agreements through mediation do not form part of any legally agreed resolution. Any such legally binding resolution/agreement will be managed through Legal Services department outside of the mediation process.

Closure and Follow Up

- The session will be concluded when both parties agree that they have dealt with the conflict and have reached a mutual agreement with a clear understanding of what has been agreed
- An agreement will be drawn up in clear unambiguous language for signing by both parties
- It will be agreed who retains copies (e.g. the manager may require a copy to monitor that any agreed action is followed through and maintained). Confidentiality will be respected.
- Closing the session
- Arranging follow up (if necessary)

In the unlikely event that mediation does not achieve the desired outcome, the aggrieved officer may opt for the Resolution procedure to be instigated, or resumed, as necessary. Given the confidential nature of the mediation process, where this is the case, papers relating to the mediation process will not be disclosed. Local personnel managers will be updated on the final outcome of mediation (in terms of whether the issue has been resolved).

To ensure that the process remains entirely confidential, all notes created by the mediator will be destroyed on conclusion of the mediation process. To that end, the only documentation retained will be the Agreement that will be retained by the two parties (as detailed above).

Q It has not possible to resolve a complaint through the “Resolution” procedure or through Mediation, can I consider an Employment Tribunal?

A. Yes, however, Police Officers are limited to taking action under the following statutes:

- Disability Discrimination Act 1995 (Police Officers from Oct 2004)
- Employment Equality (Sexual Orientation) Regulations 2003 (from Dec 2003)
- Employment Equality (Religion and Belief) Regulations 2003 (from Dec 2003).
- Equal Pay Act 1970
- Health and Safety at Work Act 1974
- Maternity and Parental Leave Regulations 1999
- Part Time Worker (Prevention of Less Favourable Treatment) Regs 2000
- Public Interest Disclosure Act 1998 (from 1st April 2004)
- Race Relations Act 1976
- Sex Discrimination Act 1975
- Sex Discrimination (Gender Reassignment) Regulations 1999
- Working Time Regulations 1998

Q Are there any time limits that I should be aware of?

A. Currently cases of discrimination must be registered with an Employment Tribunal **within 3 calendar months less one day of the last alleged discriminatory act.**

Q. Will I have to pay anything?

A. If you are a subscribing member to the Police Federation and the incident occurred whilst you were on duty, or is related directly to the performance of your duties application can, generally, be made for legal assistance funding.

Application is made via the Secretary/Deputy Secretary to the Joint Branch Board who is based at Guardians House. The Secretaries to the Discipline Standing Committee and Personnel and Training Committees have a delegated authority too in certain circumstances. They in turn then, on their authority, refer the matter to the Joint Central Committee, (or respective sub-committee), at Leatherhead who will then make the final decision as to whether to agree to fund the issue.

Each case is judged on a cost/merit basis, thus it is possible to find that you do have a case in law, however, the significant cost of pursuing the case combined with a poor nett benefit at its conclusion, could result in your case having no “commercial viability”. In these, rare, cases funding would not be authorised.

Furthermore, once funding has been authorised it is only authorised in part and reviewed at very regular intervals for a decision to be made as to whether your case merits further expenditure.

In all cases where funding is authorised it is only ever to the extent of obtaining legal advice in the first instance. The solicitor acting for you in conjunction with your Federation Representative will make any subsequent funding applications that may be necessary.

It is also worthy of note that in this commercial relationship, the Police Federation are the “client” and not the member. This is because the Police Federation underwrites the funding.

Q. I know a good solicitor. Can I use them to represent me?

A. No. The Police Federation has a preferred list of suppliers consisting of a list of three firms having specialised knowledge of Police regulations. You are, however, entitled to choose from that list.

If you wish to use your own solicitor it must be at your own expense. You should also note that as a Police Officer, Employment Law does NOT cover you. Consequently, whilst some solicitors may sound quite knowledgeable and competent their lack of knowledge and experience when dealing with Police Regulations could ultimately serve to your detriment.