

# What now?

A guide to your options if you have been discriminated against under the Equality Act (Sexual Orientation) Regulations 2007



**Stonewall**  
S C O T L A N D

## What now? Your options if you are discriminated against

This is a guide to the legal action you can take if you think you have been discriminated against by a business or service provider because of your sexual orientation. Laws to prevent discrimination in goods, facilities and services provision have been in place since 2007, but despite this, some businesses and service providers still treat people differently and less well just because they identify as lesbian, gay, or bisexual. You don't have to tolerate this anymore - even if people do break these laws, you can do something about it.

This information is aimed at people who have experienced discrimination from organisations that know full well about the laws but continue to discriminate against you. If you are unable to resolve the situation with the service provider in a satisfactory way, taking legal action may be necessary, and this guide explains what can be done and how to go about beginning legal proceedings.

### Transgender discrimination

The Equality Act (Sexual Orientation) Regulations 2007 **do not** cover discrimination on the grounds of gender or discrimination against transgender people. Trans people have been protected against discrimination in goods, facilities and services since 2008, under the **Sex Discrimination (Amendment of Legislation) Regulations 2008**. The regulations amend the Sex Discrimination Act and make it unlawful to directly discriminate against someone who 'intends to undergo, is undergoing or has undergone gender reassignment' in the provision of goods, facilities or services. However, this law does not cover discrimination in education services or in schools. The Scottish Transgender Alliance website (<http://www.scottishtrans.org/>) has an Equality and Rights Principles section with more detailed information about transgender discrimination issues and the law.

### Discrimination in the workplace

This guide refers to discrimination against people using or purchasing goods, facilities and services from public, private and voluntary sector businesses and organisations. If you are experiencing discrimination at work as an employee, you are still protected from discrimination, but under different laws. For more information, visit [http://www.stonewall.org.uk/at\\_work](http://www.stonewall.org.uk/at_work).

This guide has been produced by Stonewall Scotland and refers to civil court procedures in **Scotland only**. The Stonewall website contains information about [civil court procedures in England and Wales](#).

## Why go to court?

In 2007, the Equality Act (Sexual Orientation) Regulations 2007 were introduced. This legislation outlaws discrimination against lesbian, gay and bisexual people in a range of important areas, from hospitals to schools in the public sector and hotels to banking in the private sector.

All organisations in the public sector are covered by the legislation. Gay people pay taxes just like everyone else, so service providers such as hospitals, GPs and schools are obliged to treat everyone equally.

It's the same in the private sector. It's unlawful for businesses including banks, estate agents, hotels and bars to turn away gay customers or discriminate against them when providing goods or services. It's never good business sense to do this anyway, but some companies still discriminated against LGB people.

If you're discriminated against under these regulations, the first thing you should do is tell the person, organisation or company involved about the laws and what they should be doing in order to meet these regulations. You might consider contacting their head office or complaints department, or the relevant umbrella body such as the Care Commission or the Financial Ombudsman Service, or the local authority if it's a council-provided service. Organisations that provide mediation services may also be able to help and support you to approach the service.

Many situations can be sorted out informally, but sometimes this is not possible. If negotiation has failed, as a last resort you can bring court proceedings against the person or organisation which has discriminated against you, and in some cases, get compensation. This guide gives you more information about what will happen if the situation does come to this.

## **What is Discrimination?**

### **Direct Discrimination**

This occurs when a person is treated less favourably than another in a similar situation on the grounds of their sexual orientation, such as a lesbian or gay couple being refused entry to a bar or club when straight couples are let in.

### **Indirect Discrimination**

This occurs when a rule or practice is applied across the board, but as a result of doing so it discriminates against LGB people, such as only providing a service to married couples. Doing this is not directly discriminatory to LGB people but as lesbian and gay couples cannot marry each other, and the service does not specify that couples in a civil partnership are considered to be married, they are automatically discriminated against by rules such as these. Such a rule amounts to discrimination only if the service cannot reasonably justify it by reference to matters other than the person's sexual orientation.

### **Victimisation**

This occurs when an individual who has sought to enforce their rights under these regulations, or helped another to do so, is treated less favourably than others who have not complained, such as a person who has given evidence in someone else's discrimination case being treated differently for this reason. This protection only applies when the allegations have been made in good faith, and they are not false.

Under the regulations, all of these forms of discrimination are prohibited in the provision of goods, facilities and services. If any of these forms of discrimination apply to you – if a shop assistant refuses to sell you something, if a company provides you with worse or more expensive services than someone with a different sexual orientation, or if they behave in a rude or hostile way towards you because of your sexual orientation, then you are entitled to raise a claim for compensation against them or their employer if you cannot come to a satisfactory agreement outside of court.

### **How do I bring a case to court?**

In most circumstances where a claim is brought under these regulations, it will happen in the Sheriff Court. As this guide describes legal procedures in principle, more detailed advice about the Sheriff Court system that can be tailored to specific cases can be obtained from the [Equality and Human Rights Commission](#) or your local Citizen's Advice Bureau.

### **To bring a case to court:**

- **You must have taken all reasonable steps to resolve your complaint before raising a court action – the court will expect you to have done this.**

- **You must prove that ‘an act of unlawful discrimination’ has taken place and there is no reasonable alternative explanation for the action.**

An ‘alternative explanation’ is quite unusual in sexual orientation cases, as there are very few reasons why discriminating against a person based on their sexual orientation would be necessary. Unless the other party can prove otherwise, the court must assume an unlawful act has been committed.

There is a **time limit** for bringing a case under the regulations – six months from the date of the action (or the last of a number of actions) that is being complained about. If the act of discrimination is ongoing, the time limit will not begin until the act stops. Once an action has been raised in court (and served on the other party) there is no time limit for proceedings to be completed.

You will stand a much better chance of convincing a court that you have been discriminated against if there is **evidence** of it occurring. Evidence that can be used in the event of a claim being defended:

- Witness accounts of what happened (for example, from a friend who was with you at the time the discrimination occurred)
- Your own detailed notes about what has happened, and where/how the discrimination happened
- Letters, emails or any other documents stating that you have been refused or denied a service (such as a hotel booking cancellation or refusal)

Your solicitor, if you have one, will be able to help you with other examples of evidence as they will be specific to your particular case. It is also important to remember that you don’t need to prove that discrimination has taken place “beyond all reasonable doubt” – **the burden of proof is on the other party to prove that they have not discriminated against you** and are able to explain their actions. All the sheriff needs from you is evidence that discrimination is likely to have taken place – to prove facts from which the court could conclude, in the absence of a reasonable alternative explanation, that an unlawful act has been committed. The court will assume that the act was unlawful unless the defender proves that it was not.

You will need to decide what you want the outcome to be. This can be:

- Getting a service you were denied (for example, to rent a property you were initially refused)
- Receiving compensation
- The court can issue a ‘declarator’ indicating that the act committed was unlawful discrimination
- Forcing the person or organisation to change their policies, so the same thing won’t happen to someone else.

Most claims seek payment of compensation (damages). For this, you will need to estimate how much your case is worth. You are entitled to the loss directly caused by the discrimination – e.g. if you were refused a room on arrival at a guest house because of your sexual orientation and had to stay in a more expensive one as a result, your losses would include the difference in price between the two guest houses and any expenses incurred in travelling to the alternative place. In addition to this, in practically all cases of discrimination the person making the claim will have experienced injury to feelings; compensation can also be awarded for this. The awards in these cases can vary considerably and in a number of cases can be quite high.

Before raising a claim, you will need to identify exactly who the opponent is – whether it is an individual or an employee. In the latter case you will probably want to sue the person’s employer (as an incident that occurred as part of the regulations will probably have happened at their workplace, and so is the responsibility of their employer), and if so you will need to identify the correct employer and the correct name of the company. This can have an effect on any compensation you may receive – if an individual has few assets, for example, you are much less likely to receive any compensation, or recover the court fees and your legal expenses.

**It is recommended that a lawyer is used when taking any form of legal action – all of the court procedures described below are relatively formal and a legal professional is best placed to deal with court procedures and make sure that everything is happening the way that is intended. The courts are used to dealing with people who represent themselves and will be able to guide you through the process if you need help. However, neither the courts nor the sheriff clerk will be able to give you legal advice on your case. They will only tell you what the court procedure entails and what the rules are.**

**In the case of ordinary cause actions especially, the process can be quite complicated, requires legal documents to be drafted, and there are no standard forms to make it easier for you as there are with small claims and summary cause procedures. Also, without a lawyer you will be disadvantaged if your opponent has a legal professional representing them. However, you do not have to use a lawyer and there is nothing to stop you from representing yourself in court if you wish to.**

**If you don’t think you can afford a lawyer, there are many legal professionals who will operate on a ‘no win, no fee’ (Conditional Fee Agreement) basis – meaning that if you lose your case, you will not have to pay the solicitor. You will, however, have to pay the costs of the other party. If you win the case, your solicitor and all other costs will be paid by the losing party. If you wish to have an arrangement like this, it should be discussed when you first meet your lawyer.**

## The Sheriff Court

The Sheriff Court is unique to the Scottish legal system and is used for a wide variety of legal cases, both civil and criminal, and deal with most cases in Scotland that go to court. It is more formal than other civil disputes such as tribunal hearings, and sheriffs and solicitors may wear formal court dress such as wigs and gowns. The courts are open to the public and most cases will be heard in public – this can be helpful if you are unsure of court procedures as you can go along to hearings to see what happens and what to expect. Due to the formality of proceedings a certain amount of jargon is also used. See the glossary link on page 12 for an explanation of the most commonly used jargon and legal terms.

Depending on the complexity of the case and/or the amount of compensation you are seeking, there are three different procedures that can be used. The **small claims procedure** is the most common. There are also **summary cause procedures** and **ordinary cause procedures** for more complex cases or when a larger amount of money is being sought.

**If it is not clear which process is right for you and your case, then it is highly recommended that you seek advice from a solicitor or law centre.**

### Small claims

Simple civil claims for compensation of **£3000 or less** can use the small claims system. This is a relatively quick and simple way to settle a dispute compared to other parts of the court system – it is quite informal and you don't have to be represented by a lawyer if you don't want to be. Legal aid is not available for a lawyer to represent you in the small claims procedure although a friend or acquaintance can act as a representative on your behalf. You also do not have to draft any legal documents yourself – there are [standard forms](#) that can be filled in with the details of the case.

This procedure can also be used where you want the court to order the opponent to do something (called an **order for specific implement**) which may be relevant for a claim under the Sexual Orientation Regulations 2007 – for example, if you wish to use a facility or service which had been denied to you because of your sexual orientation and want the court to order the provider of the service or facility to let you do this.

### What to do:

Get a small claims summons form, which is available from your local sheriff clerk's office or the [ScotCourts](#) website, which also provides in-depth guidance about how to complete and submit the form correctly.

Completing the form will involve filling in the details of both parties in the claim, how much is being claimed, and space for the 'statement of claim' which sets out the details more thoroughly. You will also have to fill in a **service copy** (the copy which is given, or 'served' to the person you are bringing the claim against.)

Both copies are taken or sent to the relevant Sheriff Court, and the service copy is served on your behalf by the court, either by recorded delivery mail or in person by a Sheriff Officer. If a Sheriff Officer has to be used (for example, if the summons is returned undelivered) then you will have to pay a further charge. The sheriff clerk will fix a **return date** (the date by which the defender has to reply) and a date for the first hearing of the case.

At the time of writing, the fee to bring a small claims action to court is £15 if the amount you are claiming as compensation is under £200; if it is over this amount, it is £65. The [ScotCourts](#) website has the current fees listed.

**Before the hearing date, you should collect any documents or papers that you want to use as evidence in the case. Put them in order with the name of the case, the court reference number and a list of the documents that you have included, headed 'Inventory of Productions for the Pursuer' on a sheet of paper at the beginning. Send this to the court with a covering letter asking the sheriff clerk to lodge them as productions. Send a copy to the defender and keep a copy for yourself.**

#### **At court**

You'll probably know what the response of the defender is going to be before the date of the hearing, because they have to return a form stating this to the court, and you should receive a copy of this. At this hearing, the Sheriff will decide what to do with the case – they will not hear evidence unless the matter cannot be settled.

If there is no response by the defender, or if they admit to the claims made against them, the Sheriff can make an order giving you everything that you have asked for. If the defender does not admit the claim and wants to defend the case, the Sheriff will usually fix a date for a further hearing.

If the Sheriff cannot negotiate a settlement, they note the disputed facts and law on the summons. Then, if it is decided that the facts are not agreed by the pursuer and the defender, they will fix a further hearing when the evidence will be heard.

**The hearing on evidence** is when the court hears the evidence as to what happened. In small claims cases, the Sheriff should take an active part in the hearing, asking questions and directing the proceedings, especially where one or both parties are representing themselves.

You will usually start, and will give evidence as to what happened, referring to any documents which have been lodged which are relevant to the case. You will then be cross-examined by the defender (or their legal representative) and the Sheriff may ask some questions. Any other witnesses for you are then asked a series of questions which will enable them to tell the court what they know about the discrimination alleged. Again, any

documents that are relevant are put to the witness, and the witness will be cross-examined by the defender and may be asked questions by the Sheriff.

Once you have finished giving your evidence, the defender will do the same thing. Each witness for the defence is also cross-examined by you or your legal representative. The purpose of cross-examination is to undermine those parts of the witness's evidence which are favourable to the other side and to bring out matters which are favourable to the cross-examiner's side.

Once all the evidence has been taken, each side tells the Sheriff why they should decide the case in their favour, making reference to the evidence that has been heard and to **points of law** – the legal principles on which the claim is resting. The Sheriff's decision can be made immediately, but it is more often made in writing at a later date.

The winning side can in many cases be awarded legal expenses, payable by the losing party. If the value of the claim is £200 or less, and the case has been defended, there will normally be no award of expenses. This includes any court fees paid.

If the value of the claim is between £200 and £1500, and the case has been defended, the maximum amount of expenses which can normally be awarded by the court to the successful party is £150.

If the value of the claim is between £1500 and £3000, and the case has been defended, the maximum amount of expenses which can normally be awarded by the court to the successful party is 10% of the value of the claim.<sup>1</sup>

### **Appealing the decision**

The unsuccessful party has a right of appeal **on a point of law**. That means that the reason for the appeal must be that the Sheriff has misunderstood the law in some way or the procedure adopted by the Sheriff has been unlawful in some way. There is no right of appeal simply on the grounds that a party does not agree with the decision of the Sheriff. If you are unsuccessful in your appeal, you may have to pay the defendant's costs.

### **Summary Cause Action**

This is used for claims of compensation of between £3,000 and £5,000. It can also be used for cases that are deemed to be too complicated for small claims procedure. An order for specific implement can also be sought, as in the small claims procedure.

The summary cause procedure is a little more formal than small claims. The design of the summary cause [summons form](#) is similar that used for small claims, and should be

---

1

[http://www.scotcourts.gov.uk/sheriff/small\\_claims/forms/01%20What%20is%20a%20Small%20Claim%201%20April%202008.pdf](http://www.scotcourts.gov.uk/sheriff/small_claims/forms/01%20What%20is%20a%20Small%20Claim%201%20April%202008.pdf)

completed in the same way. However, lawyers are more likely to be involved in summary cause actions than they are in the small claims procedure and they may well use more legal terms than you're used to; as a result of increased legal involvement, the Sheriff also has less of a proactive role.

Unlike the small claims procedure, if expenses are awarded, they will be awarded on a fixed scale depending on the various steps of procedure that have taken place and the length of the hearings. In a case that has gone to a hearing on evidence, the legal expenses could easily run into thousands of pounds. As with the small claims procedure, if you do not win your case you will also have to pay your opponent's legal costs.

### **What to do:**

You will have to fill in a summons, like for the small claims procedure; there are two parts to the form, with the second part being completed depending on who your opponent is and what the case is about. The summons is filled in with the details of the person pursuing the case, the details of the person defending the case, more information about the court where the hearing is to be held and about the solicitors who are acting for both parties, and a statement of the claim. You should try and include as much detail as possible in the statement of the claim.

After this, the procedure is the same as in small claims; a copy of the summons is served on the defender after it has been lodged with the court, so that they can respond and decide whether to defend the case. The procedures within the court during the hearing are the same as the small claims procedure.

### **Ordinary Cause Actions**

Ordinary cause action is a court procedure that deals with claims that are worth more than £5,000 or cases that are too complicated for small claims and summary cause.

As a consequence of this procedure being used for complex cases, there are no standard forms that you can fill in, unlike the other two procedures. It can also be much more expensive. If you're taking a case to court using ordinary cause procedure, you have to do so by preparing a formal legal document called an **initial writ**. The initial writ has to contain certain information, be written in a particular style and, ideally, you should instruct a solicitor to draft it for you.

The initial writ is then lodged with the sheriff clerk, and there is a fee for doing this; at the time of writing it is £80. The sheriff clerk will then 'warrant' the writ, which then allows you to serve the writ on the defender. This has to be done by a Sheriff Officer.

If the defender wishes to defend the action, they have to lodge defences with the court and also send you a copy. The sheriff clerk will then send all the parties a timetable for the

action, showing the period during which **adjustments** are allowed in the case and when the **open record** is to be lodged and the date of the **options hearing**.

An **adjustment** – a change or addition to the initial writ or a response to the defences – is permitted during the adjustment period. This is done in writing, showing the adjustments along with the original pleadings. The adjustments are sent direct to the other party and not to the court.

**Open Record:** This is a single document, prepared by the pursuer, that comprises all of the pleadings, plus adjustments, that have been made by both parties, organised with each of the statements followed by the defendant's answer. This is then sent to the court and the defendant within three days of the first hearing; the **options hearing**.

**Options Hearing:** This is where the Sheriff decides what will happen to the case. The decision can be:

- The Sheriff may **close the record** – finalise the written pleadings. There may then be a further date fixed – known as the **proof** or **proof before answer** – where all the evidence will be heard. The basic procedure for this is similar to the hearing on evidence of the small claims procedure, but more formal and complicated. Following this, the sheriff may give their decision immediately but will often reserve the decision (called **making avizandum**) until later.
- The Sheriff may fix a **debate**. If this happens, there will be no evidence led; instead each party will make submissions about whether the case makes sense legally and factually on paper. Following the debate, the Sheriff may dismiss the action, fix a proof, allow amendments to the closed record or grant a **decree** (an order containing the decision of the claim in favour of one of the parties to do something – in discrimination cases, this will be an order to pay damages, provide the goods, facility or service that was originally refused, or similar orders depending on the nature of the case.)

Court fees are due for each stage in the procedure. At the time of writing, the fee for warranting the initial writ is £50 and the fee for lodging a motion is £26. However, those who are on certain state benefits are exempt.

The court will normally award the legal expenses (**judicial expenses**) of the winning party against the losing party, who will have to pay the expenses. In a case that has gone to proof, the fees are certain to be many thousands of pounds. As before, it is recommended to check the [ScotCourts](http://ScotCourts) website for details of the latest fees.

#### **Legal representation**

Whilst you do not need to have legal representation for the civil law procedures discussed here, it is highly recommended. Although the small claims procedure is especially designed

to be simple and accessible, a legal professional who is used to the procedures and jargon will prevent any confusion or misunderstanding about what is happening or what the outcome of the case is.

Be sure to check at the outset that any solicitor you are using is confident about being able to properly advise you in the area of discrimination law. Solicitors have different legal specialisations and some will be more skilled in cases of discrimination than others. Law centres, all of which employ solicitors, will usually be able to advise and represent in sexual orientation discrimination cases.

Stonewall Scotland keeps a list of LGBT-friendly legal professionals who you may wish to contact if you have a discrimination claim, which is available on the [Stonewall Scotland website](#).

Some advice agencies, such as Citizens Advice Bureaux, may be able to offer some help including information about the law and the best way to proceed, based on the specifics of your case. However, most such agencies do not offer representation even in the small claims procedure. Neither can their workers, not being legally qualified, represent in defended summary cause actions or in ordinary cause actions.

Taking a case to court is not a light undertaking or an easy thing to do. Before the decision is taken to do this, it is strongly advised that you exhaust any other means of dealing with the dispute out of court. Stonewall Scotland are happy to advise on ways in which you can go about this, and provide support. **Legal action is only worth considering when it is the only way forward.** If things get to this stage, it is especially important that you are completely sure that you have a case in law. This is another good reason for consulting a solicitor or legal professional before deciding to proceed – they will have a much clearer idea of whether the law is on your side and, as a result, how likely you are to win the case.

The ScotCourts website has a downloadable [legal glossary](#) if you require further definitions of any of the terms used in this guide.

## Further information

### Stonewall Scotland

Stonewall Scotland cannot provide legal advice, but can provide a list of LGBT-friendly Scottish solicitors along with well as more general advice on your rights in cases of discrimination in a number of areas.

9 Howe Street  
Edinburgh EH3 6TE  
0131 557 3679  
0131 558 2757

[info@stonewallscotland.org.uk](mailto:info@stonewallscotland.org.uk)  
<http://www.stonewallscotland.org.uk>

**Shelter Scotland's** website has some very useful information about [court procedures](#) that are not specific to housing, although housing examples are used to illustrate the guidance. The procedures, however, are for the most part the same as for discrimination cases.

### EHRC

The Equality and Human Rights Commission promotes equality and diversity issues across the UK and provides advice and guidance on a range of issues, including legal advice in cases of discrimination.

In Scotland their contact details are as follows:

0845 604 5510 - main helpline  
0845 604 5520 - textphone  
0845 604 5530 - fax

Equality and Human Rights Commission Helpline Scotland  
Freepost RSAB-YJEJ-EXUJ  
Equality and Human Rights Commission  
PO Box 26961  
Glasgow  
G2 9DU

Email: [scotlandhelpline@equalityhumanrights.com](mailto:scotlandhelpline@equalityhumanrights.com)  
<http://www.equalityhumanrights.org.uk>

**The Equality Network** works for lesbian, gay, bisexual and transgender (LGBT) equality and human rights in Scotland.

30 Bernard Street  
Edinburgh EH6 6PR  
07020 933 952

Email: [en@equality-network.org](mailto:en@equality-network.org)  
<http://www.equality-network.org>

**CAB Scotland** is an umbrella body that supports the network of Citizens' Advice Bureaux in Scotland. Local citizens' advice bureaux provide the advice people need for the problems they face, with trained advisers help write letters, make phone calls, and represent clients at tribunals and courts.

The contact details for your local Citizens' Advice Bureau will be in the phone book.

**Govan Law Centre's** Education Law Unit can provide advice for people who are experiencing discrimination at school, college or university which is unlawful under the Sexual Orientation Regulations 2007 – <http://www.edlaw.org.uk>