

Discrimination in housing under the Equal Status Act 2000 – 2018

About 'Your Rights'

The Irish Human Rights and Equality Commission ("IHREC") operate the 'Your Rights' service to provide individuals with information in respect of their rights, and the remedies that may be available if they have suffered discrimination and/or a breach of their human rights in Ireland. IHREC can only provide information through this service, and cannot provide advice or comment on individual cases. This is not a legal document and it is not a substitute for legal advice.

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The contents of this document are provided for information purposes only and do not constitute a legal analysis of any individual's particular situation. While we seek to ensure that the information provided is accurate and up to date, it is not a legal interpretation of the law and should not be relied on as such. For any professional or legal advice, all individuals should consult a suitably qualified person.

Discrimination in the Provision of housing

Under the Equal Status Acts ("the Acts"), discrimination occurs where one person is treated less favourably than another has been, is being or would be treated in a comparable situation on one or more protected grounds. A person cannot discriminate against another on any one of the following ("protected") grounds:

- Gender
- Civil status
- Family status
- Sexual orientation
- Religion
- Age
- Disability
- Race
- Membership of the Traveller community

- Being in receipt of rent supplement, housing assistance, or any payment under the Social Welfare Acts.

This prohibition on discrimination includes the initial stages of housing provision, for example when a landlord is deciding whether to let out a property or to invite a potential tenant for a viewing. For instance, where a landlord refuses to grant a person a viewing of their property because they are a member of the Traveller community, they act unlawfully under the Acts. Similarly, the Acts apply to the final stages of a tenancy, such as when a landlord is deciding to terminate. A landlord who terminates a tenancy after a tenant discloses their sexual orientation, or after a change in their civil status, has thereby discriminated under the Acts.

Landlords are also prohibited from discriminating when *'providing services or amenities related to accommodation'* such as when providing housing repairs. If, for instance, a landlord refuses to provide repairs to a tenant's house on the basis that the tenant is an elderly person, the landlord will be discriminating on the ground of age, which is contrary to the Acts.

The prohibition on discrimination extends beyond landlords to letting agents who discriminate at the request of the landlords against a potential tenant or existing tenant. For instance, if a letting agent discriminates against a client on the basis of their race, because the current landlord demanded that they do so, this will constitute discrimination on the part of the landlord, even though the agent is acting on their behalf. Equally, it will constitute discrimination by the letting agent, by their implementation of the landlord's policy.

Discrimination on the Basis of Housing Assistance

When a landlord or an estate agent is providing housing, it is unlawful to discriminate against a person because they are in receipt of housing assistance, whether in the form of the Housing Assistance Payment ("HAP"), rent supplement or any payment under the Social Welfare Acts.

In [*A Tenant v A Landlord*](#), a landlord was found to have discriminated against their tenant when the tenant received a notice of termination two days after they informed their landlord that they were going on to rent supplement. This was found to constitute less favourable treatment of the tenant on the basis of receiving rent supplement.

Persons need not have been approved for HAP to be covered by the guarantee of non-discrimination. If a tenant applies for HAP, and on the basis of this application is served with notice of eviction by their landlord, this will be discrimination under the Acts. Similarly, the refusal of a landlord to complete the paperwork necessary for housing assistance through either delay or outright rejection of the tenant bringing the paperwork to their attention will constitute discrimination. In most cases, several requests to the landlord to complete the paperwork in question tend to receive no reply or follow-up. However, in 2019, the Workplace Relations Commission found that even one unanswered request by the tenant to the landlord to complete the necessary paperwork was adequate to establish that the landlord was treating them less favourably on the basis of being on housing assistance.

Discrimination on the basis of housing assistance disproportionately affects specific minority groups who are already subject to discrimination in their own right, such as single parents, people with a disability and members of the Roma and Traveller communities.

Exceptions under the acts

Landlords and agents are entitled to discriminate in some limited circumstances. For example, discrimination in providing housing will not be unlawful where the landlord lives in the property, or where renting the property would affect the landlord's private or family life or that of anyone else residing with the landlord. This will apply where, for example, a property owner takes in a lodger. However, if the landlord is letting out a part of their home as a self-contained dwelling (for example, a basement flat), then they cannot discriminate on any one of the protected grounds.

For instance, a property owner can refuse to let out a room in their own home to a prospective lodger on the basis that the lodger is gay. However, if the part of the property which was going to be let out was itself self-contained and independently-accessible, such as an annex to the house, then the landlord refusing to provide that accommodation to a prospective person on the basis that they are gay would be unlawful.

Accommodation can also be provided exclusively to one gender if taking in a person of a different gender would lead to embarrassment or infringement of privacy. A 'women-

only' dormitory in a hostel, for instance, may therefore be lawful, whereas having an 'Irish-only' hostel would not be, because only in the case of gender is such an exception permitted.

Similarly, housing may be provided for the exclusive use of a particular category of persons, such as for members of a religious community, or as a nursing home, retirement home, home for persons with a disability or hostel for homeless persons or for a similar purpose. Again however, outside of these exceptions less favourable treatment will remain unlawful discrimination, such as if housing was being provided exclusively for the use of people who are white.

The Acts also allow the Minister for Housing, housing authorities and approved housing bodies to provide different treatment to persons on the housing list based on family size, family status, civil status, disability, age, or membership of the Traveller community. A housing authority plan which makes specific provision for family accommodation, or provides accessible accommodation for people with disabilities, is thereby still allowed under the Acts. However if a housing authority treats people differently outside of the exceptions, such as on the basis of gender identity or sexual orientation, it will be unlawful under the Acts.

What Can I Do if I Experience Discrimination in Housing Provision?

If a person is discriminated against in relation to housing provision, they can bring a case to the Workplace Relations Commission ('**WRC**'). The WRC is the body established by the Government to hear, among other matters, complaints under the Acts. The WRC procedure is designed to be as informal as possible. Parties do not necessarily need to engage legal representation, although many choose to do so. For more in-depth information, see the 'Your Rights' guide on instituting proceedings at the WRC. For further information on what to expect at the Workplace Relations Commission, please see IHREC's Guide: [How you bring a case to the Workplace Relations Commission under the Employment Equality Acts and the Equal Status Acts.](#)

In advance of bringing a case to the WRC, a complainant must write to the landlord about whom they are complaining, within two months of the date of the latest incident of discrimination, outlining the nature of the complaint, and that they intend to seek redress at the WRC if they are not satisfied with the response their form receives. This

can be done via the ES1 Form available on the WRC website. It will be necessary for a complainant to be able to prove they have notified a respondent, for example, by showing a certificate of posting or proof of registered post.

If there is no reply within one month, or if a complainant is unhappy with the response they receive, they can refer the complaint to the WRC within six months of the last date of discrimination.

It is often difficult to identify the landlord's address, which is sometimes withheld by estate agents. The WRC *may* accept that notification submitted to a landlord via a letting or estate agent is valid, however it is not clear what the position is where correspondence is not sent on to the landlord in question.

For example, if a landlord, who has not shared their address, refuses to provide repairs to a tenant because the tenant is a Muslim, the tenant may send a copy of their ES1 form to the letting or estate agent instead, expressly requesting that the form be forwarded promptly to the landlord in question. The tenant should send the form to their letting agent well in advance of the expiration of the two month period outlined above, so that there is time for the agent to send it to the landlord in question.

Mediation

If and when a person refers a complaint to the WRC, they can choose whether they want the WRC to deal with their complaint by way of adjudication (hearing) or by mediation. Mediation is a confidential process where the parties try to resolve their differences with the help of a neutral third party called a mediator. The mediator shuttles between the parties, looking for points of agreement. If the parties are able to settle their differences at the end of the day, they will sign an agreement setting out what they have agreed. If they cannot, they can proceed to hearing if the person making the complaint wishes to do so.

NOTE: It is possible to try mediation first and then adjudication second. It is not possible to do the other way around, i.e. adjudication first and then mediation.

For instance, a tenant who has been discriminated against by their landlord on the basis of their disability may wish to reach an agreed settlement, particularly if the tenant does not want to disclose publicly that they have a diagnosed disability. In this regard, mediation provides a confidential way to seek to have their complaint of discrimination resolved with their landlord.

Adjudication

As an alternative to mediation, adjudication involves an Adjudication Officer being appointed by the WRC to investigate claims made under the Acts. They chair the hearing of disputes, investigate the facts of disputes and ultimately decide whether there has been discrimination. An Adjudication Officer carries out a similar role to a judge in a normal court case, but they are likely to act in a less formal manner, and they should be addressed as “Chair” or “Adjudication Officer”.

Before a hearing takes place, the parties put their arguments in writing and send them to the WRC. These are called submissions. Written submissions will usually include details of what each party say happened (the factual background) and how they argue the law applies to their particular case and circumstances. Previous decisions of the WRC may assist complainants in attempting to demonstrate that the conduct they have been subjected to was discriminatory, particularly if it is similar to other successful cases. Complainants may wish to reference other cases in their written submissions for that reason, and these can be found on the [WRC’s Decisions Database](#).

Submissions and any other documentation that a complainant or respondent wishes to rely upon must be provided 15 working days before the scheduled hearing date. If this rule is not adhered to by the other side, a complainant may wish to ask for the case to be adjourned, i.e. postponed and heard on another day, to ensure fairness and so that they have time to review the documents. This request can be made to the Adjudication Officer either in advance of a hearing or indeed, on the day of the hearing itself.

It is advisable for potential complainants to obtain and keep any documentary evidence that is available to them. This could include emails between a complainant and their landlord, text messages or their tenancy agreement. For instance, if a tenancy agreement expressly precludes the use of the property by single families, this is very important information to keep and to show to the WRC. Complainants should take a note as soon as possible after the incident of alleged discrimination, and they should include the date and time the note was taken on the document. Where available, complainants should also record the names and contact details of people who witnessed an incident involving discrimination, if those people consent to this being done, as they may be able to attend a hearing to support a complainant's case.

The Adjudication Officer will usually hear witnesses. At the very least, the Adjudication Officer is likely to hear the landlord and the tenant or prospective tenant at the centre of the dispute. However, they may also hear other witnesses that a complainant or respondent wishes to call, for example, eyewitnesses who saw an alleged act of discrimination occur. Again, taking the example of discrimination against a single family, while the discrimination may have been directed against the parent, the child may, if they are capable and were present when the discrimination occurred, be able to provide evidence to the Adjudication Officer. Witnesses are usually questioned first by the person that asked them to attend the hearing, and then by the other party or their representative. If any of the parties wish to rely on documents to prove or to defend their case, they will now be required to submit those documents to the WRC at least 15 working days before the hearing. They must also provide copies to all of the other parties at the same time.

Hearings of the WRC usually take place at the WRC's offices in Lansdowne House, Lansdowne Road, Ballsbridge, Dublin 4, but they can also take place at various locations across the country to facilitate participants who live outside or far from Dublin. They can also take place online.

If the person making the complaint can show that discrimination is likely to have occurred, they are said to have shown a *prima facie* ("at first sight") case of

discrimination. It is then up to the other side, i.e. the landlord, to show either that they did not discriminate against the complainant, or that they have a good defence to the allegation of discrimination. Absent such defences, a finding of discrimination may be made against the landlord.

Again taking the example above, providing a tenancy agreement which expressly states that the property is not available for single families would show *prima facie* discrimination, because it is treating tenants less favourably on the basis of a prohibited ground, which is family status. The landlord would then need to try to justify the requirement that the property is not to be let to single families and, in the absence of a justification, a finding of discrimination may be found.

After the hearing, the Adjudication Officer will issue a written decision that sets out whether the complainant has been successful or not. The decision will be sent to all of the parties and may be made available to the public through the WRC website. If the party who has been unsuccessful does not appeal the Adjudication Officer's decision within the time allowed, the decision will become final. If a landlord fails to comply with an Adjudication Officer's decision within a period of 56 days from the date of that decision, the successful tenant or prospective tenant may apply to the District Court to have the decision of the WRC enforced.

The default position of the WRC is that the parties will be named in the decisions. Anyone who wants to remain anonymous will have to apply to the WRC. The person will have to have a good reason for wanting to keep their name anonymous. They might be a child or an asylum seeker, for example. The WRC will also take into account the nature of the complaint – if, for example, it is a complaint of sexual harassment which collapsed a tenancy.

NOTE: Anyone experiencing difficulty in preparing their submissions should seek legal assistance.

Discriminatory Advertising

The Acts prohibit a landlord or their agent from publishing an advertisement which indicates an intention to discriminate. These advertisements may be published, for example, on websites, on social media or in newspapers. The Irish Property Owner's Association suggest the following may be examples of discriminatory advertisements:

- *'Rent allowance/housing assistance payments not accepted'*
- *'Professionals only'*
- *'Would suit professionals'*
- *'Work/professional references required'*
- *'Singles only'*
- *'Over 25s'*
- *'Men only'*
- *'Traditional couples only'*

This is only a list of examples and not exhaustive. IHREC is the only organisation in Ireland that can refer complaints of discriminatory advertising to the WRC. Therefore, if you see an advertisement that you believe might be discriminatory, please send details to our Your Rights team at YourRights@ihrec.ie. In the event that the advertisement is or could be discriminatory, the Your Rights team will pass it to the IHREC legal team, who will take further action if necessary. Once you have reported the advertisement, you do not need to have any further involvement in the process.

In 2019, IHREC successfully brought a complaint against the property website Daft.ie, arising from advertisements on the website which were alleged to discriminate on grounds of housing assistance by containing phrases such as 'rent allowance not accepted.' The WRC ordered that Daft.ie refrain from allowing discriminatory advertisements to be published or displayed on its website, and that a filter be developed to identify keywords which could be in violation of equality legislation.

Time Limits

In advance of bringing a case to the WRC, a complainant must write to the landlord about whom they are complaining, within two months of the date of the latest incident of discrimination, outlining the nature of the complaint, and that they intend to seek redress at the WRC if they are not satisfied with the response their form receives. This

can be done via the ES1 Form available on the WRC website. It will be necessary for a complainant to be able to prove they have notified a respondent, for example, by showing a certificate of posting or proof of registered post.

For example, if a person is refused a viewing of a property by a landlord on the basis of their race on 1st January, they should make sure that a completed ES1 Form is sent to the landlord in question before 1st March that same year.

If there is no reply to the ES1 Form within one month, or if a complainant is unhappy with the response they receive, they can refer the complaint to the WRC within six months of the last date of discrimination. This can be extended by the WRC for another six months with "*reasonable cause.*"

Let's take again the example of a person who is refused a viewing of a property by a landlord on the basis of their race on 1st January and who has sent an ES1 form to the landlord in question before 1st March. If the person receives no response by 1st April, or if they are unhappy with the response they received before April 1st, they will have until 30th June to refer their complaint to the WRC (i.e. six months after 1st January).

A complaint must be filed with the WRC within six months of the last date of discrimination, and that deadline may start from one of the following:

- the date of the most recent instance of offending conduct;
- the date upon which the discriminatory regime ended; or
- the date of an isolated incident.

It is possible for the WRC to extend the time for the making of a complaint by a further six months (resulting in a total time period of twelve months). Information on the procedure to use when applying for an extension of time can be found on the WRC website. Once the six month extension period has passed, the WRC has no discretion to extend the time for bringing a claim.

Again, to take the example above, if the person who was discriminated against on the basis of their race on 1st January has been unable to make a complaint before 30th June because, for instance, they have been in hospital for that period, the WRC can extend the filing period for their complaint until 31st December of the following year.

What Does It Cost to Make a Complaint to the WRC?

There is no cost associated with submitting a complaint to the WRC. It is also not possible for the Adjudication Officer to order one party to pay another party's legal costs. This means that, regardless of which party wins or loses, they must both pay their own legal costs (if lawyers are employed).

Remedies

Where a breach of the Acts is found, the WRC can order that:

- Compensation be granted, up to a maximum of €15,000; and/or
- A specified person undertake a specific action.

An example of an order for a specified person to undertake a specific action might be an order requiring the landlord to undertake renovations to a property which they had refused to do on the basis of the tenant's status as a member of the Traveller community; or an order that a landlord must complete the paperwork necessary to access housing assistance.

The problem arising from not knowing the exact address of a landlord recurs when a remedy is granted by the WRC. If a landlord does not turn up to adjudication when properly notified that a WRC hearing is coming up, the Adjudication Officer will run the case, hear evidence from the tenant and make a decision. However, if the address of the landlord is not known, it is hard to inform them of their duty to comply with any order.

Where the WRC finds for a tenant, a landlord has 56 days from the WRC decision to comply with the order made. If it is not complied with – if, for instance, a landlord refuses to pay any compensation ordered by the WRC – the tenant can take enforcement proceedings, whereby the local sheriff can force the landlord to pay what is owed. However here again, the absence of a known address poses a problem. As a result, if a tenant does not have their landlord's full name or home address, it can be difficult to enforce a decision against them.

Can the Decision of the Adjudication Officer Be Appealed?

Both the complainants and the respondents are entitled to appeal an Adjudication Officer's decision, and to seek a fresh decision. The appeal must be lodged with the Circuit Court and this must be done within forty-two days of the date of the Adjudication Officer's decision being communicated to a complainant and respondent. Those wishing to appeal a decision of the WRC should attach a copy of the decision from the WRC.

An appeal to the Circuit Court will result in a full rehearing of the case – in other words the case is heard from start to finish again. The Circuit Court is more formal than the WRC, with three members sitting in a panel to decide on the complaint, as compared to one Adjudication Officer in the WRC.

For instance, where a tenant brings their landlord before the WRC because they allege they were discriminated against on the basis of their sexual orientation, and the WRC finds that no discrimination took place, the tenant can appeal this decision to the Circuit Court. The Circuit Court will hear all the evidence that was already heard at the WRC, and make a decision either agreeing with or overruling the WRC.

The Circuit Court decision can itself be appealed to the High Court, but only on a point of law. That is, only if one of the parties can demonstrate that the Circuit Court acted in a way which was outside of their statutory powers. For instance, taking the example above, if the Circuit Court makes a decision even though the tenant did not lodge their appeal within forty-two days of the decision of the WRC as required, then the Circuit Court has acted outside of its legal powers, and its finding can be reviewed by the High Court. This is therefore, a less frequent form of appeal than appeals of decisions of the WRC to the Circuit Court.

Further Information

The WRC will respond to general queries and explain how the system works. It is not possible for staff at the WRC to assist complainants in filling out the ES1 Form or to

advise them as to whether their complaint will be successful. Other bodies that may be able to provide assistance include:

- IHREC;
- Citizens Information;
- Community Action Tenant's Union;
- Mercy Law Resource Centre;
- Free Legal Advice Centres ("FLAC");
- Community Law and Mediation ("CLM"); and
- Solicitors and other professional advisors (legal aid is not currently available for claims under the Acts).