

## Example of a discrimination claim in the sheriff court for compensation over £5000

In this example, Maria Kowal is taking legal action against her private landlord, Jessica Ball, who she claims would not rent a flat to her because Maria has a disability.

She can take legal action in the sheriff court because s114 of the Equality Act 2010 says it has jurisdiction to hear cases about discrimination relating to housing (premises). If the sheriff (judge) finds that Maria has been discriminated against, they can award her compensation (known as damages in Scotland).

If the claim was less than £5000 Maria could bring a claim under Simple Procedure.

Because Maria wants compensation and has valued her claim at more than £5000, she has to start the claim under ordinary cause. This is an example of an initial writ, the document setting out your claim under ordinary cause. Usually this is written by a lawyer.

Ordinary cause is a more formal legal action and it's normally better to have the advice of a lawyer to help you prepare the claim and represent you in court. This example shows what an initial writ looks like and there are explanations in blue throughout the example. Legal language is used – [check this glossary of Scots law terms if](#) you're not sure. There are more detailed notes for advisers below the example.

**WARNING:** The example below shouldn't be used when taking legal action. It merely gives an indication of the form of an initial writ. You must get legal advice for your particular circumstances.

## Example

SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY AT AIRDRIE

INITIAL WRIT

in causa

MARIA KOWAL, residing at 54 Merrydale Street, Coatbridge

PURSUER

against

JESSICA BALL, residing at 55 Prince Albert Street, Airdrie

DEFENDER

[This is where you tell the court what you want it to do if it upholds your claim. If she wins, Maria is asking for a declaration that the discrimination happened, compensation of £10000 with interest and for the landlord to pay her legal expenses.]

The pursuer craves the court:

(1) To find and declare that the defender has unlawfully discriminated against the pursuer, contrary to sections 13 and 33 of the Equality Act 2010.

(2) To grant decree for payment by the defender to the pursuer in the sum of TEN THOUSAND POUNDS (£10,000) STERLING with interest thereon at the rate of 8 per cent per annum from the date of citation until payment.

(3) To find the defender liable in the expenses of the action.

CONDESCENDENCE

[Condescence is the legal term for a written statement of the facts and legal grounds of a civil claim. This is where the person bringing the claim, the pursuer, sets out the main elements of their claim.]

1. The pursuer resides at the address stated in the instance. The defender resides at 55 Prince Albert Street, Airdrie. She has been resident there for more than three months prior to the raising of this action. She is domiciled there. This court accordingly has jurisdiction. There are no proceedings pending before any other court involving the present cause of action and between the parties hereto. There is no agreement prorogating jurisdiction over

the subject matter of the present cause to any other court. [This establishes that the Dumfries and Galloway sheriff court can hear the case because the defender, Jessica, lives in the area and there is no other ongoing legal action already between them.]

2. The pursuer is a 33 year old woman. She is visually impaired. She is a person with a disability, which is a protected characteristic for the purposes of section 6 of the Equality Act 2010 (“the Act”). The defender is the owner of a one-bedroom flat, Flat G/R, 5 Hunter Close, Airdrie (“the flat”) which she lets out. [This states that Maria is covered by equality law because she has a protected characteristic – she has a disability. This is essential to her claim.]

3. In May 2018, the pursuer and her boyfriend, Brian Smith, were interested in renting a property in Airdrie. On 4 May 2018, the pursuer learned from a friend that the flat was being advertised as available to rent by a local letting agent. The rent was £600 per calendar month. The pursuer made enquiries with the letting agents. They gave her the defender’s phone number to contact directly. The pursuer phoned the defender to arrange a viewing for the following day. They chatted. The pursuer explained that she was working in the Town Hall in Airdrie, very close to the flat. She indicated that the proposed rental payment was acceptable, subject to viewing. They agreed that the flat seemed ideal for the pursuer and Mr Smith. The defender’s tone was friendly. The pursuer did not disclose her disability, during this conversation. [These are the facts of the case, set out in date order. It establishes that Jessica was friendly and seemed keen to rent the flat to Maria when she didn’t know Maria had a disability].

4. On 5 May, the pursuer went to the flat with Mr Smith, at the time arranged with the defender. The defender was there with her husband, David Ball. The pursuer uses a white guide cane when walking outdoors. She had the cane with her. On arrival at the flat, the defender immediately asked the pursuer if she was blind. The pursuer explained that she was visually impaired. She briefly described the features of her disability. At this point, the defender said: “I don’t think this place would be right for you”. The defender stated that she would be concerned about the pursuer using the stairs to the back green at the rear of the building. The stairs do not have a handrail. The defender asked the pursuer whether she would want to make adaptations to the flat. The pursuer indicated that this was unlikely to be necessary. She informed the pursuer that she would, however, like to have a copy of any tenancy agreement in braille. At this, the defender’s husband said something about the cost of making a braille copy. Mr Smith asked if he and the pursuer could look round the property. The defender agreed, though with apparent reluctance. She did not go round the flat with

them, or give any further information about the property. Throughout the viewing, her manner was curt. She suggested that the pursuer and Mr Smith contact the letting agents, if they were still interested. [\[Jessica didn't say overtly that she wasn't going to rent to Maria because Maria has a disability. But Maria is asking the court to infer that because of the change in Jessica's manner and the things she said, that Maria was discriminated against.\]](#)

5. The pursuer contacted the letting agents on Monday 7 May. She was advised that there had been other viewers, and the defender had decided to let the flat to someone else. The defender did not indicate, during the telephone conversation on 4 May, or the viewing on 5 May, that there were other viewers interested in the property. The pursuer asked why the flat had not been let to her. The letting agent said that the defender thought the flat wasn't suitable for someone with her disability. On 19 May Mr Smith checked the letting agents' website. He found that the flat was still being advertised as available to let. [\[The dates are important as Maria has to bring her claim 6 months less 1 day from the discriminatory act\].](#)

6. Disability is a protected characteristic under section 6 of the Equality Act 2010. Section 13(1) states:

13 Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

Section 33(1) states:

33 Disposals, etc.

(1) A person (A) who has the right to dispose of premises must not discriminate against another (B)—

...

(b) by not disposing of the premises to B;

...

In the foregoing circumstances, the pursuer believes and avers that the defender decided not to let the flat to the pursuer and Mr Smith, because of the pursuer's disability. The defender thereby directly discriminated against the pursuer, contrary to sections 13 and 33 of the 2010 Act. [\[This sets out how Maria claims Jessica acted unlawfully\].](#)

7. In consequence of the defender's unlawful discrimination, the pursuer suffered loss, injury and damage. She felt upset and humiliated during the course of the viewing. On leaving the flat she burst into tears. She did not expect to be let the flat, but decided to call the letting

agents to make sure. She felt depressed after her call to the letting agents. She was upset to discover that the flat was still available for let, on 19 May. She took this to indicate that the defender would rather not let the flat at all, than let the flat to the pursuer. For several months, she lost interest in seeking a new flat to let. She seeks compensation for injured feelings under section 119(4) of the Act. She reasonably estimates her loss to be £10,000, the sum sued for. [\[This is how Maria has been affected by the discrimination. There are guidelines about calculating compensation for injury to feelings.\]](#)

8. The defender has been called upon by the pursuer to make reasonable reparation to her for her loss, injury and damage but she refuses or delays unreasonably to do so. This action is accordingly necessary. [\[The court will expect Maria to have tried to settle the matter out of court first.\]](#)

#### PLEAS IN LAW

1. The pursuer having suffered loss, injury and damage through the unlawful discrimination of the defender as condescended upon, is entitled to reparation from the defender therefor.
2. The sum sued for being a reasonable estimate of the pursuer's loss, injury and damage as condescended upon, decree therefor should be pronounced as craved.

IN RESPECT WHEREOF

#### Notes for advisers:

- i. This writ alleges a contravention of section 33 of the 2010 Act. Section 33 is in part 4 of the Act: "premises". Section 33 prohibits discrimination in the "disposal" of premises. Letting is a form of disposal.
- ii. In order to make out a claim of unlawful discrimination, the pursuer avers: (a) a protected characteristic; (b) prohibited conduct; and (c) the section of the Act under which the discrimination is unlawful. Here, the protected characteristic is disability (section 6), as averred in articles 3 and 6 of the condescendence. The prohibited conduct is direct discrimination (section 13). The discrimination is unlawful under section 33. The relevant parts of sections 13 and 33 are quoted in article 6.

- iii. As often happens in direct discrimination cases, the pursuer is asking the court to draw an inference, from the circumstances that she avers, that the defender probably treated her less favourably because of the protected characteristic. As these are civil proceedings, the standard of proof is a balance of probabilities. Also, under section 136 (“Burden of proof”): “If there are facts from which the court could decide, in the absence of any other explanation, that a person A contravened the provision concerned, the court must hold that the contravention occurred, [unless] A shows that A did not contravene the provision.” This means that if the pursuer is able to establish the facts that she avers at articles 2, 3, 4 and 5, the onus will fall on the defender to show that she did not contravene sections 13 and 33, which may be difficult.
- iv. This is an action raised in the sheriff court, under section 114 of the 2010 Act. Section 114(1)(b) states that the sheriff has jurisdiction to determine a claim relating to a contravention of part 4 (premises). Under section 119, the sheriff has the power to grant certain remedies, if she finds that there has been a contravention of the Act, in proceedings under section 114. Those remedies include an award for damages for injured feelings. Reference is made to the EHRC guide: “How to work out the value of a discrimination claim” (September 2017).
- v. Because this is a claim for damages exceeding £5,000, the action has been raised as an ordinary cause, in terms of rule 44.1 of the Ordinary Cause Rules. An action for damages not exceeding £5,000 would be raised under the Simple Procedure Rules. An action under section 114(1) which does not include a claim for damages would be raised as a summary application: see part XXXIII of the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999. In all of these cases, the relevant rules provide that a copy of the initiating writ must be sent to the Commission for Equality and Human Rights.
- vi. For the purposes of this template writ, the action runs in the name of Ms Kowal alone. However, it is possible that Mr Smith could make a claim, on the basis that he was also treated less favourably, because of a protected characteristic. This would be an example of associative discrimination. See paragraph 59 of the explanatory notes to the 2010 Act.
- vii. Claims under section 114 of the 2010 Act are rarely straightforward. The advice of a solicitor should normally be sought.