

# Harassment at work

A **UNISON** guide

Updated December 2016

UNISON

EQUALITY



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## Summary

Harassment and bullying at work have a devastating effect on an individual, often leading to ill-health and work-related stress and affecting both their work performance and personal life. Such behaviour is bad for the workforce and bad for the organisation, and needs to be challenged and eliminated.

### Definitions

UNISON has defined **workplace bullying** as **persistent offensive, intimidating, humiliating behaviour, which attempts to undermine an individual or group of employees.**

**Harassment** is defined in the Equality Act 2010 as **“unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.”**

Different types of harassment are set out in the Equality Act:

1. related to relevant protected characteristics (age, disability, gender reassignment, race, religion or belief, sex, sexual orientation)
2. sexual harassment (when a person engages in unwanted conduct that is of a sexual nature, whether verbal, non-verbal or physical)
3. less favourable treatment of a worker because they submit to, or reject, sexual harassment or harassment related to sex or gender reassignment.

Bullying could be a form of harassment. However it is not possible to make a direct complaint to an employment tribunal about bullying if it is not related to a protected characteristic.

### The law

Harassment can be recognised as a free standing form of discrimination. Unlike direct discrimination, harassment claims do not require any comparator – in other words it is not necessary for the worker to show that another person was, or would have been, treated more favourably.

Under equality law, an employer may be liable

for discrimination if the harassment or bullying is **sexual** in nature or **is related to one of the protected characteristics** (except pregnancy/maternity and marriage/civil partnerships). So this also means that employees are able to complain of behaviour that they find offensive even if is not directed at them.

Employees who are assaulted, threatened or abused at work also have legal remedies available to them under civil law. These can result in damages against the employer or individuals, the most common remedy for which is **a personal injury claim**. An employee may make a personal injury claim for stress-related illness caused by harassment.

In serious situations a worker may feel they have no choice but to resign because they are being bullied or harassed. Where a person feels they can no longer continue in work because they have been bullied or harassed, and a complaint does not fall within the equality legislation, they may have a claim for **‘constructive’ unfair dismissal** against their employer.

Under the Protection from Harassment Act, victims of harassment can seek a **civil injunction** against behaviour which has caused or may cause distress and claim damages. Historically the Act was used against stalkers, but has also been used in situations of workplace harassment where employees have suffered alarm, anxiety or distress, even where there is no allegation of discrimination (under the Equality Act) or psychiatric injury.

### Prevention

The first priority in dealing with harassment and bullying is to eliminate them from the workplace. Employers should have locally agreed policies for dealing with issues of harassment and bullying, discrimination and victimisation in the workplace. They should be dealing with workplace bullying and harassment in the same way that any other hazard at work is dealt with. This includes undertaking risk assessments to prevent harm occurring in the first place and not just focusing on the problem once it has occurred.

The UNISON guidelines to ‘Tackling bullying at work’ includes details of how the Health and Safety Executive’s Five Steps to Risk

Assessment can be applied to assessing the risks of bullying in the workplace (available to download from [unison.org.uk/onlinecatalogue](http://unison.org.uk/onlinecatalogue), stock number 1281).

Union representatives also have an important role to play in tackling harassment in the workplace. They should always take complaints seriously and make sure that the member feels supported. Branches can take steps to raise awareness which can help members to recognise the problem when it occurs.

Members experiencing harassment and bullying should be encouraged to:

- keep records of incidents, i.e. what happened, when, how and by whom
- keep written evidence that they have made a complaint
- identify any possible witnesses
- keep copies of any relevant documents such as letters, text messages, e-mails, etc.
- keep a record of any medical help sought.

**It is crucial that confidentiality is respected at all times. Lack of confidentiality can prevent workers from reporting harassment and bullying.**

Representing members who are accused of harassment, discrimination or bullying presents particular problems to UNISON representatives. It is important that our actions are seen to be consistent with our values. To achieve the balance of representing accused members and upholding UNISON principles, representatives need to demonstrate clear objectivity and give impartial advice focused on pursuing a fair hearing.

**If further clarity is needed, advice should be sought from your regional officer.**

**The model 'dignity at work' policy**, on page 27, can be used in the workplace to help promote a working environment free from all forms of harassment and bullying.

## Introduction

UNISON believes that everyone should be treated with dignity and respect at work. Harassment and bullying of any kind denies staff this right and should not be tolerated in the workplace.

But sadly, survey after survey continue to show how big a problem it remains. The TUC 11th biennial survey of safety representatives identified harassment and bullying as a particular problem in the public sector, where half of safety reps identify it as one of their top five hazards.

'Insight into ill treatment in the British workplace: patterns, causes and solutions', a 2011 report summarising a national study funded by the Economic and Social Research Council and supported by Acas and the Equality and Human Rights Commission, found that just under half the British workforce experienced unreasonable treatment at work over a two year period. It also found that workers in the public sector are particularly at risk of both incivility and disrespect as well as violence and injury. Within the public sector, employees in health and social care, public administration and defence, and education are especially affected.

The report also identified that employees with disabilities or long-term health problems, younger employees and lesbian, gay and bisexual employees are all more likely to experience ill-treatment at work. Trade union members are more likely to experience violence and injury.

The NHS staff survey in 2015 of doctors, nurses, healthcare assistants, ambulance workers and non-clinical employees found that, across all trust types, one in eight staff reported that they had experienced harassment or bullying from their manager one or more times. Similar findings for whether staff felt that they had experienced harassment or bullying by other colleagues were reported with 18% of all staff saying this had happened to them on one or more occasions.

UNISON's Local Government Membership Survey 2015 conducted by Incomes Data Research on behalf of UNISON found that incidences of abuse at work had increased since 2008 with 60% of respondents having been subjected to at least one form of abuse, either bullying/harassment, or verbal or physical threats as well as actual violence, with verbal abuse from service users being the most common.

A UNISON survey of 1,000 police staff published in February 2016 found that more than 67% of female police staff said that bullying is a problem at work. 72% were not confident that their employer would deal fairly with complaints. The research revealed that women who work as police staff – 999 call handlers, police community support officers, crime scene investigators, fingerprint experts and detention officers – are 28% more likely to be bullied than their male counterparts. Female respondents to the survey cited humiliation and being belittled or embarrassed as the main form of bullying (43%), followed by excessive criticism (37%), being excluded or victimised, and excessive work monitoring (29%).

UNISON's 2016 equality survey of over 4,500 members working across the different UNISON service groups identified that one in four members had experienced or had witnessed unfair discrimination in their workplace. However 40% of these members did not report the discrimination because of a fear of being victimised or bullied, and well over a third thought the issue would not be taken seriously.

Harassment and bullying at work have a devastating effect on an individual, often leading to ill-health and work-related stress and affecting both their work performance and personal life. Such behaviour is bad for the workforce and bad for the organisation, and needs to be challenged and eliminated. And as the UNISON 2016 equality survey found, where discrimination was reported UNISON representation played a key role in getting the issue resolved.

This guide can be used by UNISON branches and stewards to negotiate policies which prevent, tackle and deal with incidences of harassment and bullying in the workplace.

## What is harassment and bullying?

There are various definitions of harassment and bullying and it can take a number of different forms. As part of the survey carried out for the 2011 'Insight into ill treatment in the British workplace' report it was clear that regardless of what definitions were provided for bullying, the respondents "had made up their minds about what bullying meant to them" and it was interpreted "in wildly different ways" although the emphasis was on **ill treatment**.

The key is that the person being harassed or bullied sees the comments or actions or behaviour as **offensive, demeaning, disrespectful or unacceptable**. It does not need to be carried out face-to-face but can occur in writing, by telephone, text messaging, email or use of social media. Harassment may be persistent or an isolated incident and can also be unintentional. Bullying is always a pattern of behaviour perpetrated over time.

### Recognising bullying

UNISON has defined **workplace bullying** as **persistent offensive, intimidating, humiliating behaviour, which attempts to undermine an individual or group of employees**.

Bullying can occur in a number of different ways. Some are obvious and easy to identify. Others are subtle and difficult to explain. Examples of bullying behaviour include:

- ignoring views and opinions
- withholding information that can affect a worker's performance
- setting unreasonable or impossible deadlines
- setting unmanageable workloads
- humiliating staff in front of others
- spreading malicious rumours
- intentionally blocking promotion or training opportunities
- ridiculing or demeaning someone by picking on them or setting them up to fail
- overbearing supervision or other misuse of power or position

- deliberately undermining a competent worker with constant criticism
- cyber-bullying using email, text messages, camera phones, social media etc.

### Recognising harassment

**Harassment** is defined in the Equality Act 2010 as "**unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.**"

Bullying could be a form of harassment. However it is not possible to make a direct complaint to an employment tribunal about bullying if it is not related to **a protected characteristic** (see more in 'Types of harassment' on page 7).

In harassment cases, an employment tribunal will take account of:

- the perception of the employee in relation to the unwanted conduct
- the other circumstances of the case (such as the employee's mental health and previous experience of harassment)
- whether or not it is reasonable for the actions to be considered as harassment.

# Types of harassment

## 1. Harassment related to a protected characteristic

Under the Equality Act, the **relevant protected characteristics** are:

- age
- disability
- gender reassignment
- race
- religion or belief
- sex
- sexual orientation.

Unwanted or unwelcome conduct covers “a wide range of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person’s surroundings or other physical behaviour” (EHRC Equality Act Employment Code). It need not take place because of the protected characteristic as long as it is **related** to a protected characteristic (such as when a manager bullies his ex-girlfriend who is a staff member, because he suspects she is having an affair with another male colleague).

The conduct need not be repeated. A serious one-off incident could still be regarded as harassment. It is important to recognise when harassment takes a discriminatory form, as there are greater legal remedies available to someone subjected to this type of behaviour.

In addition, the Equality Act prohibits **harassment based on association** with someone with a protected characteristic (such as being the carer of a disabled person) **and perception** that someone has a protected characteristic (such as incorrectly thinking someone is undergoing gender reassignment when in fact they are not, or mistakenly thinking that a person is male or female, perhaps because they do not comply with what society normally expects of men or of women) or where the unwanted conduct is related to a protected characteristic although it is not directed at the individual (such as when a man is offended by his manager’s sexist abuse of a female colleague).

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In 2011, in the case of **Price v Action-Tec Services**, Mrs Price was a disabled telesales executive who took prearranged time off from work to accompany her husband who had leukaemia, to hospital for tests. His prognosis was not good and although Mrs Price returned to work, she was understandably upset and was signed off sick for seven days by her GP. On her return, a manager stated that he would not have taken her on had he known about her husband’s illness and she was dismissed that day. The tribunal found that the employer had unfairly treated the employee because of their association with their disabled husband. A fair dismissal procedure had not been used and the dismissal had been based on stereotypical assumptions about disabled people being unreliable and underperforming.

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### *Harassment related to age*

Both young and older workers have experienced harassment and discrimination at work.

The Department for Work and Pensions’ (DWP) In-house Research on ‘Attitudes to Age in Britain 2010/11’ found that one-third of respondents had been shown some age discrimination in the past year, and younger respondents aged under 25 were at least twice as likely to have experienced age prejudice than all other age groups. Experiences of age discrimination were also affected by other factors such as gender. It was found, for example, that the chances of a man experiencing age discrimination are about 8% lower compared to a woman.

Examples of age harassment include:

- making derogatory remarks, offensive comments or using age-related nicknames
- making assumptions about employee’s ability or competence
- overbearing supervision or unjust criticism
- pressurising employees to retire
- inappropriate initiations for new workers
- being ignored or being excluded from activities because of age
- a general work culture that appears to tolerate people telling ageist jokes.

A 2016 survey conducted by the Scottish young members' committee found that three quarters of young members experience bullying and harassment at work – with 7% of those experiencing violence. The survey also showed that over 50% of these cases were not reported – the most common reason being that members did not realise that what they had experienced was classified as bullying or harassment.

#### *Harassment related to disability*

The Equality and Human Rights Commission's 2008 Insight Report called 'Work fit for all – disability, health and the experience of negative treatment in the British workplace' concluded that disabled employees and employees with long-term illnesses experience disproportionate negative treatment in the workplace.

Examples of harassment of disabled workers:

- asking intimate questions about an individual's impairment such as how it occurred and what it is like to be disabled
- name-calling, jokes, taunts and use of offensive language
- excessive staring or mimicking
- unwelcome interference with personal aids or equipment
- assuming that an impairment means that the individual is inferior
- speaking to colleagues rather than the person with the disability
- uninvited physical contact
- exclusion from workplace events and social activities because of barriers.

#### *Harassment related to gender reassignment*

Transgender people are people whose gender identity does not match the gender they were assigned at birth. 'Transgender' is an umbrella term covering a diverse group of people. Many transgender people wish to change their name and personal details and live as the gender with which they identify. This is referred to as gender reassignment or transitioning. It may or may not

involve medical treatment. Some people do not transition from one 'binary' gender (female or male) to the other. Their sense of their own gender is more complex.

An evidence review commissioned by the Government Equalities Office, published by the National Institute of Economic and Social Research in July 2016, showed discrimination in recruitment and promotion, with many trans people working below the level of their education and qualifications. Many trans people (up to 50% of respondents) experienced harassment and bullying at work. They reported extremely poor service from HR departments, lack of understanding of trans issues by managers and little support when they faced discrimination and harassment. Consequences of this include restricted job choice, reduced progression and inability to be out at work.

A person's gender history is a personal and private matter. It must be treated with the same high level of confidentiality as any other sensitive personal information. Under the Gender Recognition Act, it is a criminal act to pass on information acquired "in the course of official duties" about someone's gender recognition, without the consent of the individual affected. "Official duties" include employment, trade union representation or supply of business or professional services. Trade union reps supporting trans members must demand high levels of confidentiality from the employer and be sure to practice these themselves.

Common forms of transphobic harassment related to gender reassignment may include:

- transphobic comments, taunting, jokes and name-calling
- verbal or physical abuse or intimidation
- refusing to treat a person as of their new gender when they transition
- failing to address a person by their preferred name and correct gender pronouns (he, she or they)
- denying people access to the appropriate single sex facilities such as changing rooms
- 'outing' a person as transgender without their consent or spreading rumours (this may also be a criminal offence)



- excluding a person from conversation and activities
- intrusive questioning.

### *Harassment related to race*

Numerous surveys and research has shown that racial harassment and discrimination continues to exist throughout many workplaces. A UNISON survey of Filipino nurses carried out in 2003 showed that over a quarter of those surveyed had been abused or harassed because of their race.

Both the 'Fair Treatment at Work Survey' 2008 (for the Department of Business, Innovation and Skills) and the 'Citizenship Survey' 2009/10 suggested that individuals from minority ethnic groups are more likely to feel that they have experienced discrimination on the grounds of their race than white people, with more people from minority ethnic groups reporting harassment and bullying than white British workers.

The NHS Equality and Diversity Council inaugural report of the NHS Workforce Data Equality Standard showing results of the experiences of BME and white staff from the staff survey 2015 at every NHS trust across England, found that 75% of all acute trusts showed a higher percentage of BME staff being harassed, bullied or abused by staff in comparison to white staff.

Examples of harassment related to race:

- refusing to work with someone or deliberately isolating them because of their race, colour, nationality or ethnic or national origins
- displaying racially offensive material including graffiti
- racist jokes, banter, insinuations, insults and taunts
- unfair work allocation
- verbal and physical abuse or attacks on individuals because of their race, colour, nationality or ethnic origin.

### *Harassment related to religion or belief*

The protected characteristic of religion or belief includes any religion and any religious or

philosophical belief. It also includes a lack of any such religion or belief.

Discrimination in the workplace related to religion or belief is also on the increase. A study carried out in 2001 included in the 'EHRC (Equality and Human Rights Commission) 2010 Triennial Review: Developing the Employment Evidence Base' found that a third of Muslim people and a quarter of Jewish and Hindu people felt that they had experienced unjust treatment in the workplace.

Although the number of employment tribunal discrimination cases in Britain on grounds of religion or belief remains relatively low, it is increasing.

Examples of harassment related to religion or belief include:

- remarks, banter or jokes about particular religious or philosophical beliefs or religious practices
- making assumptions about a person's religion or belief or non-religion or belief
- derogatory remarks made about a particular item of clothing or jewellery worn by someone as a symbol of his or her religion
- making it unnecessarily difficult for people to conform to their religious beliefs
- pressure to participate in religious or other belief groups.

### *Harassment related to sex*

5% of people who reported experiencing unfair treatment at work in the 'Fair Treatment at Work Survey' 2008, cited their gender as the reason. More women than men reported experiencing bullying or harassment (9% compared to 6%) or discrimination (9% compared to 6%) at work.

Other evidence indicates that women are vulnerable to discrimination at particular points in their life, especially when they are pregnant. The Department for Business, Innovation and Skills (BIS) and the Equality and Human Rights Commission 2016 research into pregnancy and maternity-related discrimination and disadvantage found that one in five mothers said they had experienced harassment or negative comments

related to pregnancy or flexible working from their employer and /or colleagues. If scaled up to the general population this could mean as many as 100,000 mothers a year.

The research also found that, whereas 84% of employers agree that supporting pregnant workers and those on maternity leave is in the interests of their organisation (mainly for staff retention purposes), there are issues including pregnancy discrimination and unfair dismissal during or after maternity leave (11% were either dismissed, made compulsorily redundant or treated so poorly they felt they had to leave), and there is evidence of verbal harassment, negative comments and discouragement from employers for women to attend antenatal appointments.

Examples of harassment related to sex include:

- refusing to work with someone or deliberately isolating her because she is a woman
- unfair work allocation
- treating someone as inferior or less skilled because she is a woman
- persistent unwarranted criticism because she is a woman
- intentionally blocking promotion or training opportunities.

#### *Harassment related to sexual orientation*

Harassment is probably the most common form of discrimination experienced by lesbian, gay and bisexual (LGB) workers.

This was confirmed by an evidence review commissioned by the Government Equalities Office, published by the National Institute of Economic and Social Research (NIESR) in July 2016. This found that levels of harassment and bullying experienced by LGB workers were more than double the levels for all people. Levels are particularly high for bisexual workers who often face additional misunderstanding, prejudice and isolation.

Persistent harassment commonly leads to poor work performance and attendance, which in turn may lead to dismissal, with the root cause – homophobia or biphobia – never acknowledged. Many lesbian, gay and bisexual workers seek to avoid harassment by concealing their sexual

orientation. The NIESR report found that only 70% of lesbians and gay men were out at work, with even lower numbers of bisexual people – only 23% of bisexual men and 30% of bisexual women out at work.

Yet many employers' policies still do not refer specifically to harassment related to sexual orientation and LGB workers fear to complain, suspecting that if they do raise issues, their complaint will not be taken seriously. Any worker, whether LGB or not, may also fear reprisals if they complain about homophobia or biphobia. Studies of managers confirm their uncertainty about how to deal with homophobia or biphobia, seeing it as a more difficult issue to deal with, rather than accepting it alongside other forms of unlawful discrimination.

All too often, lesbian, gay and bisexual workers who do complain of harassment are accused of being over-sensitive, having no sense of humour, or of bringing it on themselves by not hiding their sexual orientation.

Common forms of sexual orientation harassment include:

- homophobic or biphobic comments, jokes and name-calling
- verbal or physical abuse or intimidation
- dissemination of homophobic or biphobic materials
- repeated references to a person's sexual orientation
- 'outing' a person as LGB without their consent or spreading rumours
- prejudiced myths such as that all gay men are HIV positive, bisexual people are attracted to everyone, lesbians don't have caring responsibilities or that LGB people are a threat to children
- excluding an LGB person from conversation and activities
- excluding a same sex partner when opposite sex partners are included
- intrusive questioning about an individual's personal or sex life

- assuming that everyone is heterosexual or that being heterosexual is normal.

## 2. Sexual harassment

Sexual harassment is when a person engages in unwanted behaviour that is of a sexual nature, whether verbal, non-verbal or physical, that creates an intimidating, hostile or humiliating working environment. The excuse given too often by perpetrators is that it is only 'banter' or meant as a joke or as a compliment, but this is no defence nor is it appropriate to dismiss such unwelcome behaviour as trivial.

Employers should have a clear zero tolerance approach to sexual harassment. The harassment does not have to be directed at the person complaining about it – it can still affect the working environment.

Sexual harassment is also defined under the Istanbul Convention (Council of Europe, Convention on preventing and combating violence against women and domestic violence) as a form of gender-based violence or violence against women, and a violation of human rights. Although anyone can experience sexual harassment, women are more likely to experience sexual harassment than men and perpetrators of sexual harassment are overwhelmingly men.

Its impact can be devastating, leaving the recipient feeling afraid, ashamed, humiliated, and undermined. Recent TUC research ('Still just a bit of banter? Sexual harassment in the workplace in 2016') found that whilst two fifths of women recipients of sexual harassment reported that they felt embarrassed, one in ten also reported a negative impact on their mental health, with many less confident at work, or avoiding certain work situations altogether.

It is difficult to gain a true picture of the extent of sexual harassment because levels of under reporting are extremely high with a large number of workers preferring not to pursue a formal complaint. The TUC research also found that over half of working women had experienced some form of sexual harassment. This proportion increases to nearly two thirds for young women aged 18-24.

But four in five women did not report the sexual harassment to their employer. Of the minority

who did report the unwanted sexual behaviour to their employer, very few saw a positive outcome. Nearly three quarters reported that there was no change and 16% reported that they were treated worse as a result.

Many of those providing anonymous testimony to the TUC cited the fear of losing their job or being victimised as a reason for not pursuing a complaint. While very few of the women polled had reported the behaviour to their employer, only 1% reported the incident to a union rep.

Examples of sexual harassment:

- unwelcome sexual advances, propositions and demands for sexual favours
- unwanted or derogatory comments about clothing or appearance
- leering and suggestive gestures and remarks or jokes
- displaying offensive material, such as pornographic pictures, page-three type pin-ups or calendars, including those in electronic forms such as computer screen savers or by circulating such material in emails or via social media
- physical contact such as the invasion of personal space and unnecessary touching through to sexual assault and rape (although rape is defined as a separate criminal offence).

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In the 2000 case of **Driskel v Peninsula Business Services**, the female manager's complaint of sexual harassment was upheld, even though the head of department considered his comments to be acceptable 'banter'. These comments included saying that she should wear a short skirt and see-through blouse in order to be successful during a promotion interview

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In the 2004 case of **Moonsar v Fiveways Express Transport Ltd**, the employment appeal tribunal held that male employees viewing pornographic images on the internet in the office where a female employee was present nearby could constitute sexual harassment, even though the images were not sent directly to her.

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### 3. Less favourable treatment for rejecting or submitting to unwanted conduct

The third form of harassment under the legislation is when a worker is treated less favourably by their employer because she or he submitted to, or rejected unwanted conduct of a sexual nature, or unwanted conduct which is related to sex or to gender reassignment, and the unwanted conduct has the purpose or the effect of:

- violating the worker's dignity or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for that worker.

Examples of such less favourable treatment include:

- intentionally blocking promotion or training opportunities because unwelcome sexual advances are turned down (whether by the harasser or someone else)
- derogatory comments or unwarranted criticisms as a result of refusing to go out with another member of staff who is a friend of the harasser.

### 4. Victimisation

If an employee makes a complaint, raises a grievance or supports a complaint or grievance by giving evidence or information or is believed to be supporting the complaint or grievance under the Equality Act 2010, s/he is also protected from victimisation under the legislation.

Examples of victimisation include:

- being denied a promotion or other benefits because of their involvement in such a complaint
- bullying, being picked on or belittled
- ostracised or excluded, having tasks removed
- given a poor reference.

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### Harassment of an employee by a third party

Originally under the Equality Act 2010 employers were also to be liable for harassment of their employees or job applicants by third parties (such as a customer or client) who are not directly under their control. However this provision was repealed in October 2013.

Although there is no longer a legal liability under the Equality Act, action to protect employees and deter potential harassment by third parties is still to be expected of employers and should be considered in any workplace policy, not least to cover any health and safety responsibilities. Employees can still bring claims under existing legislation, largely based on the employer's inaction, so employers will still need to take reasonable steps to prevent harassment.

In the 2011 case of **Sheffield City Council v Mr G Norouzi**, the employee successfully claimed against his public sector employer when he was racially abused by a child in the care home in which he worked. The child was racially offensive to Mr Norouzi who informed the council and went on sick leave when the council did nothing. The employment appeal tribunal found that because the council had not acted to stop the behaviour, it was liable for the acts of the child.

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## Harassment and bullying continue to be widespread

Workplace harassment and bullying can occur in a number of ways. Some are obvious and easy to identify. Others are subtle and more difficult to recognise. A harasser can be anyone an employee has contact with because of their work.

That person might be a:

- colleague/supervisor/manager/board member or trustee
- client/customer/service user
- patient
- contractor or someone making deliveries.

Work-related harassment may be in part a response to external pressures, job insecurity, a competitive environment, fear, envy and poor relationships at work. Its aim is to undermine and humiliate the person targeted.

Work-related harassment can be a problem in any workplace and can affect any worker, regardless of the organisation's size or activity. It can happen anywhere in the workplace such as the canteen, toilets, staff room, or in the office.

Work-related harassment can also occur away from the workplace for example at a client's home or meeting place, at conferences, seminars, on training courses, staff parties, or away from work but resulting from work such as a threatening telephone call to your home from a client. In addition, it is not unusual for large employers to have on its staff a number of members from the same family, or partners who work together. For this reason, harassment and bullying in relation to domestic abuse and violence should also be considered.

### Harassment of UNISON members by other members

Although bullying and harassment is often about power, it can occur at every level and in any relationship within an organisation, even including within the trade union itself.

Equality is at the heart of UNISON, and a priority of our work is challenging discrimination and winning equality in the workplace and beyond. Everyone shares responsibility for equality in UNISON, and any form of bullying, harassment,

victimisation, or intimidation is unacceptable behaviour and will not be tolerated.

In accordance with UNISON's rule book, rule 1.2.3.(i) harassment at any UNISON event, or within UNISON, will result in disciplinary action.

UNISON also has an anti discrimination policy, which is set out below:

"The union shall seek to ensure that discriminatory acts are not committed against any persons by the union, or by its organs, members, or officers, on grounds such as race, gender, sexuality, gender identity, disability, age, creed or social class."

It is therefore clear that any act of harassment or discrimination by a UNISON member is against the rules of the union, and firm action will be taken if these rules are broken.

**If you are concerned about the breach of this rule, or an incident occurs, please raise it with your regional organiser.**

## The effects of harassment and bullying

Harassment and bullying can have a significant effect on the physical and mental health of the workforce as it can be a major cause of work-related stress. The Health and Safety Executive (HSE) has identified that:

- it can result in psychological health problems such as depression, anxiety or low self-esteem
- it can result in physical health problems such as stomach problems, or sleep difficulties
- if you've witnessed the harassment or bullying of a colleague, this can also be very upsetting and can impact on your health
- your performance at work can be affected.

Those who experience harassment can feel anxious, intimidated, threatened and humiliated. Harassment can cause feelings of frustration and anger and can lead to stress, loss of self confidence and self esteem. Workers can also lose motivation affecting work performance and absence levels. In extreme circumstances harassment and bullying has led to self harm and even suicide.

In addition to the effects on individual workers, harassment can also have a major effect on an organisation. The Acas 2015 policy discussion paper, 'Seeking better solutions: tackling bullying and ill-treatment in Britain's workplaces' outlines the cost of ill-treatment and bullying to organisations in addition to the human cost, which include the costs of:

- "sickness absenteeism (commonly, prolonged spells);
- labour turnover (including the loss of people who are trained and experienced, together with the costs of recruitment, training and development);
- lower organisational performance and quality of service (resulting from the impact on morale, motivation and commitment to the organisation);
- reduced productivity (including where lower work output results from disruption caused by staff transfers and the initially lower efficiency of replacement employees);
- employee assistance/counselling and

occupational health costs;

- industrial action and unrest (stemming from organisational bullying or a high number of bullying cases);
- loss of public goodwill and reputational damage;
- lost organisational resources and management time (spent on investigation processes and preparing for complex grievance, disciplinary or other procedures); and
- financial penalties and compensation costs, as well as the costs of litigation (incurred where bullying or harassment complaints progress to legal proceedings)."

## The law on harassment and bullying

### Discrimination law and harassment

Harassment can be recognised as a free standing form of discrimination. Unlike direct discrimination, harassment claims do not require any comparator – in other words it is not necessary for the worker to show that another person was, or would have been, treated more favourably.

Under equality law, an employer may be liable for discrimination if the harassment or bullying is **sexual** in nature or **is related to one of the protected characteristics** (except pregnancy/maternity and marriage/civil partnerships). So this also means that employees are able to complain of behaviour that they find offensive even if is not directed at them.

An individual can bring a claim in the employment tribunal where harassment occurs at work. All discrimination claims do not require any length of service and employees are protected from day one of their employment. Before a claim can be lodged, the ACAS Early Conciliation process must be triggered. If there is no scope for conciliation and the claim is heard by a tribunal, and facts are to be considered in the case, the burden of proof will fall on the employer to provide an explanation that the harassment did not take place.

#### *Time limits to lodge claims in the employment tribunal*

In discrimination cases, claims must be lodged within three months (minus one day) of the act or acts of discrimination (such as the incidents of harassment and bullying) about which you are complaining. Where there has been continuing discrimination or a series of acts, the date from which the time limit starts to run will differ. It can be difficult to determine if your case involves a series of linked acts or separate distinct acts, but this can affect the time limits so advice should be sought.

Normally, the employee would be expected to discuss the matter informally or raise a formal grievance (using their organisation's grievance or complaints procedure) with their employer to try to resolve the issue, before making a claim to a tribunal.

In harassment cases, the employment tribunal will take account of:

- the perception of the employee in relation to the unwanted conduct
- the other circumstances of the case (such as the employee's mental health and previous experience of harassment)
- whether or not it is reasonable for the actions to be considered as harassment.

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In the case of **Craddock v Fontoura t/a Countyclean** in 2010, the manager repeatedly suggested to a male worker that he should form a relationship with a new female colleague, including promising to send them on a course together so that "they could get to know each other better". Mr Craddock became increasingly embarrassed and uncomfortable in the female worker's presence due to these unrelenting remarks of the boss, which continued despite Mr Craddock's protest. The tribunal found that the manager's attempt to 'play cupid' still amounted to sexual harassment because Mr Craddock had not unreasonably perceived the conduct to have the effect of humiliating or intimidating him.

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## Health and safety

Employers have a responsibility under the Health and Safety at Work etc. Act 1974 to ensure, so far as it is reasonably practicable, the health, safety and welfare of their workers when at work, which includes protection from harassment and bullying at work.

The Management of Health and Safety Regulations also require employers to assess the nature and scale of workplace risks to health and safety, ensure there are proper control measures in place to avoid these risks wherever possible and reduce them so far as is reasonably practicable where not. Branches should aim to negotiate policies that cover all aspects of harassment in relation to health and safety.

In the case of breaches of health and safety legislation, the Health and Safety Executive or local authorities are responsible for enforcement.

Employees who are assaulted, threatened or abused at work also have legal remedies available to them under civil law. These can result in damages against the employer or individuals, the most common remedy for which is **a personal injury claim**. A personal injury can be:

- a physical injury, disease or illness, or
- a psychiatric injury or illness

and could therefore include an illness such as depression caused by bullying or harassment in the workplace.

An employee may make a personal injury claim for stress-related illness caused by harassment. Such claims for negligence have a time limit of three years from when the injury occurred and the court proceedings are issued.

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In the case of **Green v DB Group Services (UK) Ltd (QBD)** in 2006, which went to the High Court, a former employee was entitled to £852,000 damages for psychiatric injury and consequential loss and damage that she suffered as a result of harassment and bullying by her work colleagues. Ms Green had suffered a “relentless campaign of mean and spiteful behaviour” by four women who worked closely with her, and a male co-worker’s behaviour was found to be “domineering,

disrespectful, dismissive, confrontational and designed to undermine and belittle her in the view of others.”

Although each incident viewed separately was not major, it was their cumulative effect that was significant. The judge was clear about what the employee’s managers should have done: “By whatever means, the bullying could and should have been stopped.” He also emphasised that psychiatric injury is a reasonably foreseeable consequence of bullying, regardless of whether or not the employee had a history of mental health problems (in this case, the employee was known to have suffered from bulimia and episodes of depression).

Her employer, Deutsche Bank, was found liable for the bullying and in breach of its duty of care to their employee in failing to take any adequate steps to protect her from such behaviour.

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## Constructive dismissal

In serious situations an employee may feel they have no choice but to resign because they are being bullied or harassed. Where a person feels they can no longer continue in work because they have been bullied or harassed, and a complaint does not fall within the equality legislation described above they may have a claim for ‘constructive’ unfair dismissal against their employer.

If the mutual trust and confidence between employer and employee is broken so making it impossible for you to continue working, then an employee can resign and claim constructive dismissal on the grounds of breach of contract through an employment tribunal. However a constructive unfair dismissal claim linked to bullying or harassment is very risky and legal advice should always be taken. Such claims are very hard to evidence and win, and should be approached with extreme caution.



## Protection from Harassment Act

Under the Protection from Harassment Act, victims of harassment can seek a **civil injunction** against behaviour which has caused or may cause distress and claim damages. Historically the Act was used against stalkers.

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In 2006, in the case of **Majrowski v Guys & St Thomas's NHS Trust**, this Act was successfully used to bring a claim against an employer. Mr Majrowski claimed that he had been harassed at work by his line manager and the House of Lords ruled that the employer was vicariously liable for the behaviour of the manager who harassed him.

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Following this case, employees could bring harassment claims where they have suffered alarm, anxiety or distress, even where there is no allegation of discrimination (under the Equality Act) or psychiatric injury. The Act prohibits a "course of conduct that amounts to harassment of another" on at least two occasions, although there can be a reasonable gap between them. The course of conduct must be very serious, "oppressive and unacceptable" and also give rise to criminal liability.

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The Court of Appeal in the 2008 case of **Sunderland City Council v Conn** dismissed the claimant's claim as they felt that several of the acts complained of simply did not amount to harassment as they were not serious enough.

However in the 2011 Court of Appeal case of **Iqbal v Dean Manson Solicitors**, the three letters sent by the employer to the employee Mr Iqbal, making various allegations against him, were found to be a deliberate attack on his personal integrity and intended to pressure him to follow a particular course of action. Even had the first two letters not amounted to harassment, the court found that a course of conduct could be established by taking into account all three letters together.

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## *Time limits*

The Protection from Harassment Act also allows a six-year period for bringing claims, which contrasts with the three-year period for personal injury claims and the three-month period for the majority of employment tribunal claims.

**Always seek advice from your regional officer as soon as possible before advising in relation to any of these matters.**

**Because of the short time limits, it is important to act very quickly when a member seeks advice in relation to harassment and bullying.**

## Negotiating a policy on harassment and bullying in the workplace

A **model dignity at work policy** for your use is printed at the end of this document.

### Prevention

The first priority in dealing with harassment and bullying is to eliminate them from the workplace. Dealing solely with the consequences of harassment and bullying is not a solution because it wrongly focuses attention on individuals rather than concentrating on the culture that has allowed the behaviour to occur in the first place.

The TUC research ('Still just a bit of banter? Sexual harassment in the workplace in 2016') noted that "many of those responding to the TUC online survey identified workplace cultures that allowed sexual harassment to go unchecked and management failures to respond to complaints effectively or sympathetically. In order to tackle workplace sexual harassment, employers must ensure they adopt a top-down approach, working with all employees and managers and, where there is a recognised union, working in partnership with unions.

This is also highlighted in the 2016 UNISON survey of police staff, which found that respondents felt that poor management was the most common cause of bullying (73%), closely followed by workplace culture (47%) and staff cuts (36%). The 2016 Scottish survey of young members found that where cases were reported at work, only 5% of those people received any support from employers.

Employers should have locally agreed policies for dealing with issues of harassment and bullying, discrimination and victimisation in the workplace. But "if organisations have policies and complaint systems" concludes the 2009 report to UNISON on 'Workplace Harassment and bullying', "then the staff also need confidence that they will be used." The report found that employers should be dealing with workplace bullying and harassment in the same way that any other hazard at work is dealt with. This includes undertaking risk assessments to prevent harm occurring in the first place and not just focusing on the problem once it has occurred.

The UNISON guidelines to 'Tackling bullying at work' includes details of how the Health and

Safety Executive's Five Steps to Risk Assessment can be applied to assessing the risks of bullying in the workplace (available to download from [unison.org.uk/onlinecatalogue](http://unison.org.uk/onlinecatalogue), stock number 1281).

It may help in negotiations to point out that in undertaking risk assessments and fully implementing an anti-harassment and anti-bullying policy, the employer will help to protect themselves by showing that they have taken all reasonable steps to prevent bullying or harassment in the workplace. As the UNISON 2009 report pointed out "in health and safety law, employers are treated more seriously if they know about a situation and failed to do anything."

Employers should recognise that tackling harassment and bullying will also help ensure that the workplace is more productive and employees are engaged. Therefore any policy needs to be pro-active in preventing bullying behaviour and harassment in general as well as reacting to individual situations where it occurs.

The TUC research ('Still just a bit of banter? Sexual harassment in the workplace in 2016') also notes that "employers should ensure that everyone working within their organisations can use grievance procedures to raise concerns about discrimination and harassment at work, including those on zero hours or casual contracts, agency workers and contractors who may be employed by another organisation.

Often policies on harassment and bullying are negotiated together, frequently called 'dignity at work' as in the model policy on page 28. The UNISON 2009 report included clear feedback from members that legislation is needed to protect workers from bullying in addition to the Equality Law legislation covering harassment.

## What the policy should include

A policy on tackling harassment and bullying in the workplace should include the following:

- **A statement of commitment**, demonstrating a clear commitment on the part of the employer to tackle harassment and bullying. It should stress that harassment and bullying are serious problems that will not be tolerated in the workplace and complaints will be taken seriously, will be dealt with quickly and will be treated as serious disciplinary offences and in most cases will be considered as gross misconduct. It should spell out the right of all staff to be treated with dignity and respect at work. This statement must be endorsed by those at the top of the organisation if it is to be taken seriously.
- **A commitment to adopt a zero tolerance approach** to all unacceptable behaviour and should include examples of such behaviour. It also needs to clarify that bullying and harassment can take place at any level and within any relationship and is not confined to management or supervision roles, and can also be carried out by third parties (such as a customer, patient or client). It can be one-on-one or be carried out by groups of workers. It can take place on or off the workplace premises, and can include online bullying or 'cyberbullying'.
- **A definition of harassment (and a definition of bullying)** should it also be addressed in the policy).

The Equality Act definition of harassment and the UNISON definition of bullying, mentioned above, would be good starting points.

- **Consequences of unacceptable behaviour** such as bullying behaviour and harassment.
- **Prevention measures**, outlining the steps employers will take to prevent harassment and bullying at work, including how bad management practices are to be tackled and good practice encouraged. It should also describe the steps to be taken when bullying or harassment occurs, who to contact and what process will be followed. It should also include how to proceed if the harasser or bully is the line manager.

- **Duties of managers and supervisors**, including their responsibilities for eliminating and preventing harassment. Managers and supervisors should be specifically trained to detect and handle harassment and bullying.

The 2011 'Insight into ill treatment in the British workplace' report stressed that "employers should not assume that all employees, including those with managerial responsibilities, will understand what fairness and respect mean if this is not spelled out to them... [It] will take much more than those well-intentioned statements about the standards of behaviour expected of all employees." The report suggests that "tailored multimedia packages" alongside "compulsory training programmes" can help "ensure staff have to engage with what ill-treatment looks like, feels like and what effects it has upon people."

As the 'Insight' report also points out: "Altering the behaviour of managers is the key to the adoption of successful solutions to ill-treatment because they are responsible for so much of it, and because it is managers that leaders will use to help them extend the requirement to promote fairness and respect throughout the organisation."

- **Trade union involvement**, it is important that workers are involved in the development of the policy and the role of trade union representatives is crucial to this. Stewards should be consulted and involved in the development of the policy, investigate any complaints or concerns, and consult with members.

The policy should acknowledge the dual role of stewards which includes educating members about harassment and bullying as well as receiving complaints. Because of their role in potentially representing the harasser and the harassed, stewards should also be given training equal to that of managers and sufficient time to carry out their duties. Giving them equal status to managers will promote partnerships and build confidence among staff.

Where the public sector equality duty is relevant, it could be used to provide opportunities for involvement and consultation exercises with the employer.

Branches should actively encourage members

to get involved when employers are reviewing policies and procedures associated with harassment and bullying.

- **Contact officers/anti-harassment officers**

Some employees may find it difficult to raise concerns about harassment and bullying. This may be because they are frightened, distrustful and embarrassed, or the feelings they experience make it hard to speak out to anyone. It may also be because the person doing the harassment is their manager or supervisor. For this reason, the policy should ideally include details of an independent contact officer to provide help and support to those being bullied or harassed. These officers should be specifically trained to deal with harassment and bullying complaints.

- **Information and training** are crucial to the success of policies on harassment and bullying. It is particularly important where harassment is common practice and seen as part of the organisation's general culture.

Following agreement the policy should be widely publicised to both new and existing staff. It should also be placed in areas accessible to staff and visitors, e.g. intranet, notice boards, etc. It should be brought to the attention of contractors, agency staff, visitors, clients etc. and form part of any contract specification.

Information about the policy should also be included in any staff/induction training.

Training programmes should include:

- details on the policy, its implementation, and promotion
- what harassment and bullying mean, their effects and consequences
- how to report incidents and unacceptable behaviour
- how to get support
- the help available to those being bullied or harassed.

Employees should also be encouraged to help each other either by lending support or informing management of their concerns through the appropriate channels. The

procedure should also make it clear that staff have a right to be accompanied by a trade union representative at all stages.

- **Procedure for handling harassment and bullying complaints**

Bullying or harassment should not be treated as just another standard grievance; it is a serious issue and must be treated as such. Ideally the procedure for complaints relating to harassment and bullying should be separate from the usual grievance or complaints procedure for a number of reasons. Firstly, the normal procedure will not always be sufficient as the facts of each case will need to be identified in an extremely sensitive way. In addition, the harassment may be from the members' line manager who is often the person a problem is raised with in the first instance in a grievance procedure.

Complaints of bullying or harassment, or information from staff relating to such complaints, must be dealt with fairly and confidentially and sensitively.

## Informal approaches

Both informal and formal resolution routes should be included in the procedure. In some circumstances, informal approaches can be used in the first instance or where the harasser is not aware that their behaviour is unacceptable. However this will not be appropriate in all cases as the member may not feel able to make an informal approach, for example where other attempts to stop the bullying or harassment have failed, or if the harassment is too serious.

In some cases an informal approach may be enough to make the harassment stop, especially where it is unintended. Sometimes people are not aware that their behaviour is unwelcome and an informal discussion can lead to greater understanding and an agreement that the behaviour will change.

## Formal grievance or complaints procedure

Where an informal resolution is not possible, or when the seriousness of the action is such that only formal action is appropriate, the formal

grievance or complaints route may be pursued by an employee, either through the organisation's grievance procedure or one specifically designed to address complaints of harassment or bullying. It must be emphasised that the route taken is the complainant's choice, and a decision to undertake formal action must be respected. The employer may decide that it may be necessary to suspend the individual accused of harassment whilst the complaint is under investigation. Only in exceptional circumstances should the person making the complaint be moved, and only when they request such a move.

Whatever procedure is used it should give the harasser an opportunity to change their behaviour, as some people are unaware that their behaviour is interpreted as harassment.

As with all grievance procedures, it should follow the Acas Code of Practice on Disciplinary and Grievance Procedures ([www.acas.org.uk/dgcode2009](http://www.acas.org.uk/dgcode2009)), otherwise the employer could face having to pay an increased award at an employment tribunal if a successful claim is made. The Code also similarly suggests that "organisations may wish to consider dealing with issues involving bullying, harassment or whistleblowing under a separate procedure" recognising the seriousness of these types of complaint.

The quicker incidents are dealt with, the better. This is especially important in maintaining trust in the procedures. Sometimes HR professionals are mistrusted by complainants, but a procedure that has timescales set out in it, and that are followed, may help maintain confidence in the process.

## **Access to counselling**

Harassment can affect a person's mental and physical well-being. Access to counselling should be included in the policy to help workers cope better with the negative effects of harassment. Counselling services should be funded by the employer as part of their occupational health scheme and time off to attend counselling sessions should be paid and not counted as sickness absences. Counsellors must be trained and independent and the service must be strictly confidential. The availability of counselling and the

procedure for referral should be widely publicised.

Counselling is usually helpful in supporting the complainant, but could also assist anyone accused of harassment. For this reason it is important that counselling is offered to those alleged to have been carrying out the harassment. This can be particularly useful in helping them to understand why their behaviour has been found to be unacceptable.

## **Monitor and review**

In common with all workplace policies, the policy should be monitored and reviewed on a regular basis to ensure that it is achieving its objectives and is effective. Where the employer has duties under the public sector equality duty, systematic evidence should be collated and analysed by employers to identify any cases of institutional discrimination and policies reviewed to ensure that such discrimination is eliminated. Indeed UNISON believes that all cases should be monitored and analysed, whether or not the equality duty applies.

## What can union reps do?

Union representatives have an important role to play in tackling harassment and challenging bullying behaviour in the workplace. They should always take complaints seriously and make sure that the member feels supported.

It is therefore key that all reps undergo training to understand discrimination issues and what harassing behaviour and its impact are. The training should also cover how best to support and represent members in cases of harassment, ensuring they are dealt with sensitively and confidentially. Because of the serious nature of the issue, sometimes the member might prefer to raise the matter first by contacting the branch equalities officer or branch secretary.

Members experiencing harassment and bullying should be encouraged to:

- keep records of incidents, i.e. what happened, when, how and by whom
- keep written evidence that they have made a complaint
- identify any possible witnesses
- keep copies of any relevant documents such as letters, text messages, e-mails, etc.
- keep a record of any medical help sought.

Union reps should:

- discuss with the member what steps are available to them, and seek her/his agreement before reporting the incident to management
- listen carefully to what the member says and make it clear that you don't consider her/his reaction to be over-sensitive nor the incident to be too trivial, and that UNISON is prepared to help
- remember that harassment or bullying often takes place without witnesses. When the member comes to you, it may be because of the 'last straw' so you will need to supportively encourage the member to tell you if there have been previous incidences. Sometimes the member may be afraid to complain for fear of reprisal or embarrassment
- advise the member to ask the harasser to stop and explain that the conduct is unwelcome.

Ask whether you should accompany your member to see the harasser or whether you should see the harasser yourself

- if the member agrees, find out whether other workers have experienced similar problems. This can be done by using a confidential survey, organising meetings so that members can talk together about harassment and bullying, and by including articles on harassment and bullying in branch magazines and newsletters. Where bullying or harassment is occurring, find out the details and dates when it occurred
- discuss with the member how s/he wishes the case to be pursued. Support the member through the relevant grievance or complaints procedure. If the member agrees, seek the support of other workers
- advise the member to report the incident to management in writing. Help the member to do this if s/he so wishes. Take all written information about the case with you when you discuss it with management
- offer to represent and/or support the member at any stage of the enquiry into the allegations
- ensure the member is aware of others who can give emotional support alongside you, such as the branch equalities officer, or a relevant self-organised group member
- ensure that the case is dealt with as quickly as possible by management, that each step is followed up promptly, and press for a deadline to complete the enquiry. Whilst any subsequent disciplinary action against the harasser will be private and subject to a separate disciplinary procedure, you should ensure that any solution leaves the member vindicated and feeling reassured of employer support and that the conduct will not be repeated
- ensure that the needs of the member are respected once the complaint has been resolved, for example a phased return to work if relevant. The member should not suffer any detriment and any loss should be restored
- if the complaint is not resolved, advise the member to complete a case form and forward it immediately to the branch secretary who

should send it on to the regional office so that a legal assessment can be made by UNISON's solicitors and an employment tribunal application lodged if appropriate

- advise the member that an application to an employment tribunal for discrimination must be made within three months of the date of the last incident. This may mean that you should not wait for the internal grievance or complaints procedure to be completed to complete and send the case form
- ensure that your members are kept informed as much as possible, and get their agreement before taking any course of action.

**It is crucial that confidentiality is respected at all times. Lack of confidentiality can prevent workers from reporting harassment and bullying.**

## Representing the harasser

Representatives need to act fairly and be consistent with the union's rules and policies. Branches should develop appropriate procedures for these situations. Advice can be sought from the regional office.

If the alleged harasser is a UNISON member they are entitled to UNISON representation. They should be provided with a representative who has had no involvement in the complainant's case, and who is of a similar status to the person representing the complainant, so that accusations of favouritism cannot be brought and both reps are able to carry out their role effectively. It is particularly important for reps to be sensitive of this need, given that there is often a power dynamic involved in harassment cases, with the harasser often abusing the power of their status, job role, length of service or age in their treatment of the victim.

It should be remembered that, although very rare, false allegations of harassment are sometimes made for malicious purposes or prejudiced reasons. However, in representing anyone accused of harassment, representatives should ensure they remain objective and also avoid 'character assassinations' of the complainant.

There may be occasions when we cannot provide representation to a member. These occasions will be few and exceptional, but could occur, for example:

- if the member does not accept the union's advice
- where the member refuses to cooperate fully with us (for example, you find that the member has not been honest and frank in telling you the facts of the case)
- the representation being sought is outside the services provided by UNISON rule
- where the member has also asked someone else to make representations to the employer
- where a member appears as a witness
- in a grievance hearing, a member who is the manager whose decision gave rise to the grievance. (Managers cannot expect representation when they simply carry out their functions as a manager. However, managers who themselves have a grievance or face disciplinary proceedings are, of course, entitled to assistance on the same basis as any other member)
- where a member is named as a co-respondent in a case brought by UNISON.

Representing members who are accused of harassment, discrimination or bullying presents particular problems to UNISON representatives. It is important that our actions are seen to be consistent with our values. We cannot condone or defend such actions, whether or not the complainant is also our member. Nor can we ignore or refuse outright to hear or assist a member accused of such actions. Representatives must be careful not to presume guilt and must not ignore our obligation to advise the member and ensure a fair hearing. (It is also not in our interests that a harasser might win a subsequent appeal on the grounds of some technicality arising from not being represented.)

To achieve the balance of representing accused members and upholding UNISON principles, representatives need to demonstrate clear objectivity and give impartial advice focused on pursuing a fair hearing.

**If further clarity is needed, advice should be sought from your regional officer.**

Please find more information on this issue in UNISON's 'Member Representation Guide' available to order or download from the online catalogue at [unison.org.uk/onlinecatalogue](http://unison.org.uk/onlinecatalogue), stock number 2426.

## What branches can do

Branches can take steps to raise awareness of harassment and bullying in the workplace. This can help members to recognise the problem when it occurs. It can raise the profile of the union, help in identifying the extent of the issue in the workplace, and help to change the workplace culture, making people aware of the policies and procedures and their behaviour. It can also be useful in recruiting new members.

The TUC research ('Still just a bit of banter? Sexual harassment in the workplace in 2016') points out that "awareness raising campaigns might have different audiences. For example a poster campaign might be aimed at deterring perpetrators by highlighting the consequences of disciplinary action, it might be aimed at members experiencing sexual harassment, encouraging them to speak to their rep about it, or it could be aimed at the wider membership."

Branches can consider:

- organising a confidential survey of the workplace or branch on the extent of harassment and bullying
- organising meetings on the issue
- raising awareness through posters and leaflets
- ensuring awareness is incorporated in appropriate training
- using a health and safety risk assessment approach to tackle harassment and bullying in the workplace
- encouraging members to keep written records of all harassment and bullying incidents
- informing employers in writing that incidents are occurring. This must be done in a general way if a member has raised the issue in confidence
- including articles on harassment and bullying in branch magazines and newsletters
- ensuring all branch representatives have been trained in dealing with harassment and bullying cases.

A survey could be jointly run with management or organised by the union alone. However to ensure confidentiality, identifying details of individuals

should not be included in the information requested. You might want to highlight a particular problem you have become concerned about, for example racial harassment, and draft a questionnaire on that alone. Alternatively, the survey could cover general issues of harassment and bullying in the workplace.

A general survey should however, include specific questions on harassment related to protected characteristics.

Questions could include:

- Have you ever been bullied or harassed at work?
- Are you currently being bullied or harassed?
- How often does this happen?
- Who is doing the harassment?
  - supervisor
  - manager
  - colleague
  - the public (clients, patients, customers, contractors, etc.)
  - others?
- What form does the bullying or harassment take?
- Is it related to:
  - age
  - disability
  - gender reassignment
  - race
  - religion or belief
  - sex
  - sexual orientation
  - other characteristics?
- Have you ever taken time off work due to bullying or harassment?
- Have you ever witnessed anyone else being



bullied or harassed?

- Do you know of anyone who has had time off work due to bullying or harassment?
- Do you know of anyone who has left their job due to bullying or harassment?
- If you have been bullied or harassed, have you raised the problem with your:
  - colleague
  - manager
  - union representative
  - other?
- What action was taken?
- Have you lodged a complaint or grievance?
- When was the last act of bullying or harassment? (An employment tribunal claim must be lodged within three months of the last act of harassment if such a claim has merits.)

## Further Information

**UNISON** has produced a number of publications that may be useful to branches dealing with workplace harassment. The following are available online at [www.unison.org.uk/onlinecatalogue](http://www.unison.org.uk/onlinecatalogue). Or by emailing [stockorders@unison.co.uk](mailto:stockorders@unison.co.uk) quoting the stock number.

UNISON's Guide to Representation – (stock no 2426)

Bullying at work – (stock no. 1281)

Stress at Work – (stock no. 1725)

Making sickness absence policies work better for us – (stock no. 2594)

Violence at work – (stock no 1346)

The Health and Safety six pack – UNISON's guide to health and safety law – (stock no. 1660)

Introductory guide for trade union reps supporting trans members – (stock no 2726)

Additional equality information can be found on the UNISON website at: [www.unison.org.uk/equality](http://www.unison.org.uk/equality)

Additional health and safety information can be found on the UNISON web site at: [www.unison.org.uk/safety](http://www.unison.org.uk/safety)

The Scottish Regional Young Members guide on bullying 'Gonnae No Dae That' is at: [www.unison-scotland.org/2016/02/27/young-members-launch-bullying-and-harassment-guide/](http://www.unison-scotland.org/2016/02/27/young-members-launch-bullying-and-harassment-guide/)

**The TUC** has produced a range of information dealing with harassment and bullying available from their website at [www.tuc.org.uk/publications](http://www.tuc.org.uk/publications) and from [www.worksmart.org.uk](http://www.worksmart.org.uk)

They also produce Risks, a weekly e-mail bulletin covering health and safety matters.

TUC, Congress House, Great Russell Street, London, WC1B 3LS  
Tel: 020 7636 4030  
Email: [info@tuc.org.uk](mailto:info@tuc.org.uk)  
[www.tuc.org.uk](http://www.tuc.org.uk)

### **The Equality and Human Rights Commission (EHRC)**

[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

The EHRC is an independent statutory body with the responsibility to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote the human rights of everyone in Britain.

### **Equality Advisory Support Service (EASS)**

[www.equalityadvisoryservice.com](http://www.equalityadvisoryservice.com)

The Helpline advises and assists individuals on issues relating to equality and human rights, across England, Scotland and Wales.

Telephone number: 0808 800 0082  
Textphone number: 0808 800 0084  
Opening Hours: Monday - Friday 9am - 8pm and Saturday 10am - 2pm  
Post: FREEPOST Equality Advisory Support Service FPN4431

### **Labour Research Department (LRD)**

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

An independent research organisation which has been providing information for trade unionists for over 100 years.

LRD, 78 Blackfriars Road, London SE1 8HF  
Tel: 020 7928 3649

Guidance includes: 'Bullying and harassment at work – a guide for trade union reps'

### **Advisory, Conciliation and Arbitration Service (Acas)**

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

Providing free and impartial information and advice to employers and employees on all aspects of workplace relations and employment law.

Helpline: 0300 123 1100  
Text Relay : 18001 0300 123 1100  
Monday-Friday, 8am-8pm and Saturday, 9am-1pm

Guidance includes 'Bullying and harassment at work' which can be downloaded from their website.

### **The Health and Safety Executive (HSE)**

[www.hse.gov.uk](http://www.hse.gov.uk)

HSE is the national independent watchdog for work-related health, safety and illness. It provides information and advice and also produces leaflets and detailed guidance on health and safety law.

There is a section on bullying and harassment at [www.hse.gov.uk/stress/furtheradvice/bullyingharassment.htm](http://www.hse.gov.uk/stress/furtheradvice/bullyingharassment.htm)

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### **UNISON welcomes comments from branches on this guide.**

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## Model dignity at work policy: preventing harassment and bullying at work

The following model policy can be used in the workplace to promote a working environment free from all forms of harassment and bullying.

### Statement of commitment

The parties to this agreement fully support the right of all people to be treated with dignity and respect at work. They are committed to promoting a working environment free from all forms of harassment and bullying. They agree that appropriate steps should be taken to achieve this.

..... (the employer) values the contribution all its employees make to the provision of quality services. We recognise that such a contribution is most effective in conditions which are free from unnecessary anxiety, stress and fear and where employees are able to work in an atmosphere which values them as individuals. We have therefore resolved to create a working environment that supports the dignity of all employees and is free from any form of bullying or harassment.

..... (the employer) believes that any form of harassment, bullying, victimisation, or intimidation is unacceptable behaviour, undermines the dignity of an individual, is morally wrong and has a detrimental effect on the provision and delivery of services. For this reason it will not be tolerated.

All employees will be made aware of ..... (the employer's) policy forbidding the bullying or harassment of any employee by another employee and will be expected to comply with this policy. Harassment and bullying will be treated as disciplinary offences and appropriate disciplinary action, including warnings, compulsory transfers (without protection of wages or salary), and dismissal for serious offences, may be taken against any employee who violates this policy.

..... (the employer) also recognises that it has a responsibility to protect employees from bullying or harassment at work by members of the public and contractors. All staff have the right to be treated with respect by the public they provide services to or work with. Harassment of staff by members of the public and contractors are dealt with in a separate policy [state name of policy and

where it is found, for example "The Violence to Staff policy, found within the staff handbook"].

All employees have a clear role to play in helping to create a work environment in which bullying or harassing behaviour is unacceptable. In particular, employees should be aware of their own conduct, avoid colluding with inappropriate behaviour and co-operate fully in any complaints procedure. Managers and supervisors have a responsibility to raise awareness of the issue, respond positively to any complaints and challenge and stop unacceptable behaviour in the workplace.

This policy applies to all employees on and off the premises, including those working away from their main office or normal place of work.

This policy is supported by and developed with the trade unions representing the employees. It will be communicated to employees using a variety of methods including training, information and publicity, team briefings, departmental meetings and in-house publications.

### What is workplace harassment and bullying at work?

**Harassment**, in general terms is unwanted conduct which has the purpose or effect of violating the dignity of the employee, or creating an intimidating, hostile, degrading, humiliating or offensive environment for that employee, provided that it could reasonably be considered to have that effect.

What is important is not necessarily the action, but how the recipient feels about what has been done.

It may be related to age, disability, gender reassignment, race, maternity, pregnancy, marital or civil partnership status, religion or belief, sex, sexual orientation or any personal characteristic of the individual, and may be persistent or an isolated incident.

**Sexual harassment** is unwelcome sexual advances and/ or comments, requests for sexual favours or other unwanted behaviour which is of a sexual nature, which result in the individual feeling intimidated, degraded, humiliated, threatened or offended. It includes:

- Non-verbal sexual harassment such as offensive gestures, staring/leering, pin-ups or calendars, sexually explicit materials or offensive publications, computer pornography, unsolicited/unwanted gifts.
- Verbal sexual harassment such as suggestive/explicit language (including by email or on social media), unwanted propositions, sexually explicit or suggestive jokes, 'pet' names, personal or invasive comments or questions, cat calls and whistling, patronising or derogatory comments.
- Physical sexual harassment such as deliberate body contact (brushing against another's body, pinching, touching), indecent exposure, groping, fondling, sexual assault.
- asking intrusive questions, making unwanted insinuations
- using unwelcome or offensive imagery, graffiti, physical gestures, facial expressions, staring, mimicry, jokes, pranks
- ridiculing or demeaning someone
- racist, sexist, homophobic, ageist or disablist jokes, banter, insinuations or insults
- taunting an employee, picking on them or setting them up to fail
- making assumptions about an employee's ability or competence and treating them as inferior

**Bullying** is persistent offensive, intimidating, humiliating behaviour, which attempts to undermine an individual or group of employees.

Bullying or harassment may be by an individual against an individual or involve groups of people. It can occur at any level within the organisation and within any relationship – it is not confined to management or supervision roles. It may be obvious or it may be subtle and more difficult to recognise. It can happen anywhere in the workplace such as the canteen, toilets, staff room or office. It can also occur away from the workplace such as at a client's home or office, at conferences, training courses, staff parties. It may be face to face or in written communications, email, phone, social media etc. Whatever form it takes, it is unwarranted and unwelcome to the individual. It may take place in private or in public.

The list below shows some examples of common forms of harassment and bullying but is by no means exhaustive.

### **Examples of bullying behaviour and harassment include:**

- repeatedly shouting or swearing at staff in public or private
- spreading malicious rumours or prejudiced myths
- insulting someone or using derogatory or abusive language, nicknames or banter
- refusing to work with someone, exclusion, isolation, ignoring or shunning someone
- unfairly excluding someone associated with the employee or making offensive remarks about them
- making it unnecessarily difficult for someone to do something
- outing a person as LGB or as transgender without their consent or spreading rumours
- refusing to treat a person as of their new gender when they transition
- making assumptions about what is 'normal' such as assuming everyone is heterosexual, or of a particular religion or belief
- intrusive questioning about an individual's personal or sex life
- making threats or comments about job security without foundation
- deliberately undermining a competent worker by overloading and persistent unwarranted criticism
- unfair work allocation
- preventing individuals progressing by intentionally blocking promotion or training opportunities
- overbearing supervision or other misuse of power or position

- unwanted pressure to do or not do something or use of intimidation or coercion
- the display of sexually explicit or suggestive materials such as pornographic pictures, page-three type pin-ups or calendars, including those in electronic forms such as computer screen savers or by circulating such material in emails
- victimisation as a result of refusing to accept or collude with bullying or harassment whether directed at the employee or others
- physical contact such as the invasion of personal space and unnecessary touching
- physical abuse, attacks or violence.
- work within the policy guidelines including co-operating fully in any investigation undertaken
- be aware of harassment and bullying, and challenge unacceptable behaviour where appropriate.

However, if it is found that an employee has made a deliberately false or malicious complaint against another person about harassment or bullying, disciplinary action will be taken against that employee.

### **Duties of managers and supervisors**

Managers have a particular responsibility to ensure that within their area of control, everyone has the right to be treated with dignity and respect. They should

### **Prevention measures**

..... (the employer) recognises that there are many organisational measures that can help prevent harassment and bullying in the workplace. These include:

- good management practice, including competent, respectful people management, undertaking risk assessments, recognition of harassment and bullying behaviour and appropriate intervention
- appropriate induction and training on harassment and bullying for all staff
- ensuring employees have somewhere to go for a confidential discussion of their situation, signposting ways of taking further action, or help with mediation at an early stage.
- respond to complaints of harassment and bullying swiftly, sensitively and objectively and be aware of behaviour that would cause offence, if necessary reminding employees of expected standards
- deal explicitly with third party perpetrators (such as service users, visitors or contractors) with a view to withdrawing service or ending a contract or banning from the premises if behaviour is not moderated
- ensure that this policy is followed and that there are thorough investigations if required. The Contact Officer will assist any line manager in dealing with complaints of harassment or bullying.

Managers have an additional responsibility to be exemplars of acceptable behaviour. They should be aware that an abuse of their positional power will send mixed messages about what is acceptable behaviour, and will only serve to condone harassment and bullying.

A line manager's failure to actively implement the dignity at work policy within their area of responsibility or to fail to deal with harassment and bullying when they become aware of it could constitute a breach of the policy and disciplinary action may be taken.

### **Individual responsibilities**

All employees have a duty to assist in the creation of a safe working environment, where unacceptable behaviour is not tolerated. Every employee has a personal responsibility to:

- ensure they understand the nature of harassment and bullying
- be aware of how their behaviour may affect others, and to uphold the standards of behaviour set within the team

## Contact officers

..... (the employer) recognises that there can be difficulties in raising the issue of harassment and bullying, particularly if:

- the immediate manager is doing the bullying or harassing
- the employee is reluctant or too embarrassed to raise the matter with their manager, or feel the manager may lack the skills, knowledge or sensitivity to deal with complaints of harassment
- the employee finds the prospect of using the formal procedure intimidating.

..... (the employer) is concerned to ensure that such potential difficulties are overcome and that allegations of harassment are raised so that they can be acted upon.

To help ensure this a specially trained officer(s) – the Contact Officer(s) – has been designated to deal with complaints of harassment and to offer advice to employees who believe that they or their colleagues have experienced harassment.

The main role of the Contact Officer(s) is to:

- provide sympathetic assistance to employees with complaints of harassment
- explain to them how the procedures for making a complaint operate
- establish the main details of any complaint
- channel the complaint to the appropriate manager for action if the employee decides to take the matter further.

..... (the employer) will ensure that Contact Officers receive special training in carrying out their role.

Contact Officers will discuss cases in complete confidence and will not divulge information to any other person without the agreement of the employee.

An employee who comes to a Contact Officer to talk about harassment is under no obligation to take further action. The Contact Officer is there to help employees decide what they want to do. Employees who have been harassed are

not obliged to refer their complaints to Contact Officers. It is entirely up to them whether they do so. However, the nomination of Contact Officer(s) is an additional means of ensuring that such employees are not discouraged from bringing forward complaints.

A list of Contact Officer(s) can be found

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## Trade union representatives

Trade union representatives are able to assist their members who have been the targets of harassment, including supporting them in making complaints.

..... (the employer) encourages all members who are concerned about harassment to speak to their trade union representatives.

..... (the employer) will allow trade union representatives and members paid time off to attend union provided training courses on harassment at work.

..... (the employer) will support the union's activities on raising awareness and tackling the issue of harassment amongst their members.

..... (the employer) recognises that stress at work in general can contribute to workplace harassment and bullying, and is committed to jointly agreeing with the trade union ways of tackling work-related stress.

..... (the employer) will consult with the trade union in good time over any proposals, for example on changes to staffing, job descriptions, tasks, workloads, hours, procedures on sickness and so on, that could increase the potential for stress, harassment and bullying at work.

..... (the employer) is committed to preventing any harassment or victimisation of trade union activists or members because of their trade union activities.

## Procedures

An individual can deal with bullying or harassment in various ways, ranging from asking the person to stop the behaviour, to informal discussions with the Contact Officer, or to making a formal complaint.

You do not have to be a recipient or target to make a complaint about bullying or harassment. If you see it happening you have the right to complain. If you become aware of the problem you have the right to complain about it. Tackling harassment and bullying is everybody's responsibility.

Some people are unaware that their behaviour in some circumstances is bullying or harassment. If it is clearly pointed out to them that their behaviour is unacceptable, the problem can sometimes be resolved. With this in mind, this policy includes informal as well as formal action to deal with complaints of harassment.

### **Informal action**

1. If possible, an employee who believes that he or she has been the subject of bullying or harassment should, in the first instance, ask the person to stop the behaviour and make it clear what aspect of their behaviour is offensive and unacceptable, and the effect it is having. This can be done either verbally or in writing. If the harassed person feels unable to approach the person responsible directly, the Contact Officer, a friend, colleague or trade union representative can make this initial approach.
2. If an employee is approached informally about stopping her/his unwelcome or upsetting behaviour they should not consider the reaction to be over-sensitive nor the incident to be too trivial but should remember that different people find different things acceptable and everyone has the right to decide what behaviour is acceptable to her/him and to have her/his feelings respected by others. An apology and assurance that the behaviour will not be repeated may be enough to end the matter.
3. Mediation may also be a way of dealing with harassment or bullying situations depending upon the nature of any allegations. It is a voluntary process where the mediator helps two (or more) people in dispute to find a solution to the issue that they can both agree to. The mediator does not take sides or tell those in dispute what to do. Both parties must enter into the process voluntarily and be aiming to repair the working relationship.

4. If an employee who believes that he or she has been the subject of bullying or harassment is unable to adopt the above approach, or the harassment is of a very serious nature, they can approach a Contact Officer who can provide informal advice in confidence. No further action will be taken without the consent of the employee making the complaint.

Confidential advice is also available to other employees who themselves may not be the subject of harassment but are concerned about the harassment of others.

### **Formal action**

If informal action does not stop the bullying or harassing behaviour, or the issues raised are too serious to be suited to mediation, or the victim wants a full investigation of the incidents and has raised a formal complaint, the complaints procedure should be initiated and a formal report should be made. Throughout this procedure, the complainant and the person against whom the complaint is made has the right to be accompanied by a trade union representative or by a friend or colleague, and to seek informal advice from the Contact Officer.

1. An employee who believes that he or she has been the subject of bullying behaviour or harassment should formally report the alleged act or acts to their line manager, or if the person doing the bullying or harassment is the line manager, a more senior manager. The employee should set out details of the complaint in writing with specifics as to dates and times and an account of what the harassment or bullying is alleged to consist of.
2. All complaints will be handled and investigated in a timely and confidential manner. Confidentiality will be maintained at all times. Employees shall be guaranteed a fair and impartial hearing whether they are the harassed or the harasser. The senior manager will be responsible for ensuring a thorough investigation of the complaint.
3. As a first stage in the investigation, the a senior manager will arrange to interview separately both the complainant, and the person against whom the complaint has been made, with a representative if requested.



4. Wherever possible, ..... (the employer) will try to ensure that both the complainant, and the person against whom the complaint has been made are not required to work together while the complaint is under investigation. In a serious case, the person against whom the complaint has been made may be suspended while investigation and any subsequent disciplinary procedure are undertaken. Such suspension will be for as short a time as possible and will be on full pay.

5. Following the investigation, the senior manager will give a detailed response in writing to the complainant.

6. If the investigation reveals that the complaint is upheld, prompt action designed to stop the harassment or bullying immediately and prevent its recurrence will be taken. In such circumstances, if relocation proves necessary, the alleged harasser and not the complainant will be relocated unless the person complaining requests otherwise.

7. Where disciplinary action is considered necessary such action will be considered strictly in accordance with the staff disciplinary procedure.

8. Employees shall be protected from intimidation, victimisation or discrimination for filing a complaint or assisting in an investigation. Retaliating against an employee for complaining about or assisting in an investigation of harassment is a disciplinary offence.

9. Any decisions taken under this procedure do not preclude any employee from pursuing a grievance in the usual way under the staff grievance procedures.

10. The complainant has the right to appeal against the decision following the investigation within ..... [specified time limit] of receiving the decision from the senior manager. Any appeal must be made in writing, stating the reasons for the appeal.

11. An appeal meeting will be arranged with a more senior manager not previously involved in the procedure who will consider the appeal. The employee will be given the opportunity to put forward her/his case and explain why s/he is not satisfied with the outcome. The meeting may be adjourned by the person hearing the appeal, if it is considered necessary to undertake further

investigation. The meeting will be reconvened as soon as possible.

12. The decision of the person hearing the appeal shall be final.

## **Information and training**

All staff will be informed of this Dignity at Work Policy and Procedure. A copy of the policy will be made available to staff on the intranet, and a copy will be provided to new employees on induction.

In addition, training about harassment and about this policy will be given to all employees, including supervisors, managers and new staff. This will include information on what constitutes harassment and, for managers, on what their responsibilities are. Trade union representatives will be invited to speak at training sessions on harassment and bullying.

Contact Officers and all managers potentially responsible for investigating complaints will be given specific training for this role.

The policy will also be brought to the attention of contractors and agency staff who will be required to comply with the policy as part of their contract.

## **Support for staff who experience bullying or harassment**

..... (the employer) recognises that bullying and harassment can affect job performance and cause stress. Where bullying or harassment causes deterioration in job performance, this will be treated as a health problem and the person will be encouraged to seek help under the terms of this policy. There will be no discrimination against individuals suffering from stress caused by bullying or harassment.

Access to independent and trained counsellors will be available to all staff. This service will be strictly confidential between the counsellor and member of staff. No details or records will be disclosed without the written permission of the member of staff concerned.

Employees who have been bullied or harassed will be offered paid time off to attend counselling sessions. Contact details of stress counsellors will

be publicised in ..... [state where], so that staff can make arrangements for counselling as and when they wish.

### **Review and monitoring**

This policy will be reviewed jointly by unions and management, on a regular basis. The initial review of effectiveness will take place six months after this policy comes into effect. Thereafter, reviews will be carried out at intervals of not more than 12 months.

..... (the employer) will also periodically monitor how successful it is being in creating a workplace free of harassment and bullying by other means which may include confidential staff surveys, training, raising awareness of harassment and bullying in general and undertaking risk assessments.



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