



**National Union of Rail, Maritime and
Transport Workers**

Harassment and Bullying



A reps guide to harassment and bullying

Harassment and Bullying

— A reps guide

Many new reps are daunted by the prospect of representing or advising someone who is complaining of being harassed or bullied. Those on the receiving end of this behaviour can be made very stressful and emotional by the unpleasant experience. This in turn places a high degree of pressure on reps when advising and dealing with the case. Not all cases are clear-cut and other issues such as MFA or performance can sometimes confuse matters.

This guide will hopefully deepen your understanding of the issues involved and equip you with the basic information necessary to advise and assist our members through what will be a difficult time for them.

Let's start with the basics —

DEFINITIONS

There are many definitions of bullying and harassment and the two terms are often used interchangeably. ACAS characterises them as follows:-

“**Bullying** may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.”

“**Harassment**, in general terms, is unwanted conduct affecting the dignity of men and women in the workplace. It may be related to **age, sex, race, disability, religion, nationality or any personal characteristic of the individual**, and may be persistent or an isolated incident. The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient.”

Neither form of behaviour is acceptable. One thing however that the victims of both forms of behaviour have in common, is that they just want the behaviour to stop.

Keys to identifying harassment

Harassment and bullying have many forms. However, the key to recognising these sorts of behaviour is that it is considered offensive and unwelcome by the recipient and is often persistent. Examples of such behaviour include: sexually abusive language or 'jokes'; name calling; display of offensive written material, including graffiti; unwanted touching, leering or even physical assault; threats and insulting or abusive behaviour or gestures; overbearing supervision or other misuses of power; ridiculing or demeaning someone; public humiliation. This list is not exhaustive.

Key features of harassment and bullying:-

- ◆ can be about power
- ◆ it is unwanted
- ◆ it is the effect not the intention that is important
- ◆ whilst incidents may seem trivial they may be cumulative
- ◆ harassment or bullying often appears disguised as justifiable or innocuous behaviour
- ◆ social identity can often be critical in identifying such behaviour

Why harassment and bullying is under-reported:-

People subjected to bullying or harassment are often reluctant to complain. The reasons are varied but need to be understood. They can include:-

- ◆ the possibility of not being believed
- ◆ they will be seen as having a chip on their shoulder

- ◆ they will be accused of having invited the harassment or bullying
- ◆ they will be told they are over sensitive or have no sense of humour
- ◆ they will be ostracised by colleagues
- ◆ they will be victimised by management and branded as a troublemaker
- ◆ the issue will be taken out of their hands and handled in a way which makes their situation worse

People who have suffered harassment or bullying say they need someone:-

- ◆ who will listen
- ◆ to talk to at the earliest possible stage
- ◆ who will be completely independent and respect confidentiality
- ◆ who will understand what they are going through
- ◆ who can explain what the procedures are in the particular company and what they can expect
- ◆ who can help them think through what they want to do next

The role of the representative:-

- ◆ to show sensitivity by listening and maintaining confidentiality
- ◆ advise member of the importance of lodging a complaint in the appropriate company procedure
- ◆ to explain the procedures of the particular company and outline the options open to them to pursue their complaint
- ◆ to assist the member setting out clearly the allegations being made, e.g. who, what, where, when, witnesses, etc.
- ◆ to obtain copies of any relevant correspondence or any other material which may be helpful
- ◆ to accompany the member at meetings
- ◆ contact the Regional Organiser as quickly as possible. In serious cases, it may be that the Organiser will intervene.

Procedures

You will need to familiarise yourself with your company's procedures. Most procedures allow for both informal and formal means of addressing the harassment or bullying complained of.

Informal

It may be that the victim wishes to resolve the problem informally by speaking to the alleged harasser/bully but feels more comfortable with this approach if accompanied by their RMT rep. Alternatively, they may need advice on putting their complaint in writing to the alleged harasser/bully. If this course of action is taken, it is important that a copy of the letter is retained.

Formal

If the member feels unable to raise the matter informally or this approach has been tried but not worked, then the company's formal procedure should be used. It may also be the case that the complaint is viewed as very serious and should be dealt with through the formal procedure. You will need to advise the member of how to lodge a complaint. It is essential that all the incidents complained of are listed, giving dates, times, details of what happened (including the effect this had on the member) and importantly, the names of witnesses, if any.

The complaint should be investigated as quickly as possible. With serious complaints, consideration should be given by management to moving the alleged harasser/bully to another location or shift pattern to avoid contact with the complainant. It may also be necessary to consider suspension of the alleged harasser/bully on full pay whilst the investigation is in progress. Moving or suspending the complainant could be deemed an act of discrimination in itself and should be resisted.

Most companies offer harassment counselling support to those involved in such cases. Be prepared to explain how this can be accessed.

Both the complainant and the alleged harasser, will be entitled to trade union representation or to be accompanied by another employee. Where both are RMT members, it is important that both receive equivalent representation, e.g. both are accompanied by company/functional council reps. It should not be the case that one is represented by a Regional Organiser and the other by a lay rep.

Your role during the investigation will be to advise and support, making sure that our member clearly explains what has happened and how it has affected him/her.

There can be a range of outcomes at the conclusion of the investigation.

It may be that the problem can be resolved to everyone's satisfaction. If so, that is fine.

It may be that the investigation concludes that there was no case to answer. Most procedures allow for an appeal or review of the findings. Advise the member of how to do this and ensure that they are accompanied at any meeting.

Alternatively, the complaint may have been upheld. If so, it is normal for disciplinary action to be taken against the culprit. The usual range of disciplinary sanctions can be applied at the conclusion of the disciplinary process. Occasionally, the complainant may not be satisfied that the sanction reflects the gravity of the offence. Again, you should advise the complainant how to register their objection to the penalty awarded.

Whatever the outcome, there may be complaints about how the investigation was conducted. There should be provision in the procedure to lodge any such complaints, if not the grievance procedure could be utilised.

Again, whatever the outcome of the complaint, management have a duty to ensure that workplace relationships are normalised. It might be well to check with the member if this has happened, obviously allowing a suitable time frame to elapse. If any recriminations or other detrimental acts are aimed at the complainant, a further complaint to management should be lodged. Any such actions could be deemed to be victimisation and possibly unlawful.

The law

When there is a failure to resolve complaints of harassment or bullying, it is well to be clear about what legal remedies exist.

It is not possible to make a direct complaint to an employment tribunal about bullying. Should someone suffer either a psychological or psychiatric injury because of bullying, it may however be possible to bring a claim for damages case in the civil courts. In the case of bullying it may also be possible to invoke The Protection From Harassment Act 1997, more commonly known as the anti-stalking act. This prohibits a course of conduct which amounts to harassment of another, which the perpetrator knows or ought to know amounts to harassment. Unfortunately, there are less than a handful of cases where the use of this Act in the employment context has been successful.

However, protection from harassment on the grounds of **sex, race, disability, sexual orientation and religion or belief** is given under various Acts of Parliament or Statutory Instruments, such as the Race Relations Act or The Employment Equality (Sexual Orientation) Regulations 2003. Legislation giving protection to people against discrimination and harassment in the workplace on the grounds of age will come into effect in October 2006.

Amendments to discrimination legislation have provided a freestanding legal definition of harassment as applied to disability, sex, sexual orientation, religion or belief and race and ethnic and national origin. The definition is:-

“unwanted conduct that has the purpose or effect of violating people’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.”

Failure to deal with complaints of unlawful harassment as listed above, may be deemed to be discriminatory acts in themselves. As well as harassers, their supervisors and managers may be held personally liable in the event of any legal proceedings.

Legal remedies

If members believe they have been harassed on the grounds of sex, race, disability, sexual orientation and religion or belief, they may submit a claim to an Employment Tribunal. Since October 2004, the Dispute Resolution Regulations Employment Tribunals **will not register** such claims unless a written grievance (complaint) has been lodged with the employer and the complainant has waited 28 days. The written grievance **must** be submitted to the employer within three months of the incident complained of. However, we would recommend that it this done as soon as possible following the incident, whilst memories are fresh.

So what is the time limit? Bearing in mind that a written grievance must be submitted to the employer and 28 days must elapse before a claim is lodged with the Tribunal, the time limit is as follows:-

The normal time limit which is three months minus one day from the act complained of, is extended for a period of three months 'beginning with the day after the day on which it would otherwise have expired'. E.g. If the incident occurred on 6th June, the three months minus one day would expire on 5th September. To this, add a further three months and the extended limitation date would be 5th December.

If this procedure is not followed, individuals are in severe danger of losing their right to take their claim to an Employment Tribunal.

Legal representation

As stated earlier in this guide, it is of vital importance that you contact your Regional Organiser. If there is any question of a Tribunal application being made, the Regional Organiser should be advised. The L2 (application for RMT representation at an Employment Tribunal) form can be obtained from Regional Offices.

Once the form L2 is completed, it should be returned to the Regional Office, along with relevant papers, eg investigatory hearing notes, diary, etc.

The papers will be sent to Head Office, who will arrange for a Solicitor to assess the case. If the case has merits, it is likely that legal representation will be provided by the Union at Tribunal. Whilst legal representation is not automatic for any case, we do recognise how difficult harassment cases are to prove and therefore this is reflected in the decision on whether representation is to be provided.

If a decision to represent is taken, the Solicitor will lodge an application with the Tribunal on the member's behalf in accordance with the terms set out in the L2 Form.

Should the complaint be resolved by the company, the Tribunal application can be withdrawn.

It is helpful to remember that no matter how badly the union believes someone has been treated, it is very difficult to achieve justice at Employment Tribunals. For example, the Employment Tribunal Services annual report for 2004/05, shows that only 4 per cent of race discrimination cases were successful at Tribunals.

- ◆ 31 per cent of claims were withdrawn
- ◆ 20 per cent lost
- ◆ 40 per cent were settled via ACAS

These figures demonstrate it is essential to prepare a case thoroughly for it to have any chance of success.

Conclusion

As stated earlier in this guide, most individuals subjected to bullying or harassment just want it to stop. The quicker the problem is resolved, the better for all concerned. Most procedures set time limits for complaints to be dealt with — it is important that management stick to these. Delays can add to the anguish already suffered by the complainant.

In addition, failure to deal with complaints promptly can mean that by the time a legal remedy is sought, the time limit for registering a complaint with an employment tribunal has expired.

All cases are different and even the most experienced reps can be confronted with issues they have not come across before. Don't be daunted — there is always help and advice available from either the regional organiser or head office. It often helps to talk things through.



RMT Helpline

0800 376 3706

(For all work related matters)

Open six days a week

Monday to Friday— 8am to 6pm

Saturday — 9.30am to 4pm

Legal helpline

0800 587 7516

(For all non-work related matters)

Seven days a week

National Union of Rail, Maritime & Transport Workers,
Unity House, 39 Chalton Street, London NW1 1JD
Tel: 020 7387 4771 Fax: 020 7529 8808 e-mail: info@rmt.org.uk