



Members' guide

Harassment and bullying



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Introduction

Prospect promotes equal opportunities for all its members. In the workplace and society we seek to eliminate discrimination on grounds of gender, age, race or ethnic origin, disability, sexual orientation, gender identity and religion.

Successful equality and harassment policies have been negotiated in many workplaces, but harassment remains a widespread problem. Different groups of employees are harassed in different ways. Many incidents of harassment are targeted at individuals at times when there are no witnesses, and so are unreported or difficult to prove.

Bullying is an extreme form of harassment. At the workplace it is an abuse of personal power or official authority. It can humiliate people, destroy their confidence, have a detrimental effect on their health and hit attendance and job performance. Careers may be damaged long term, ultimately leading to resignation.

This guide seeks to raise awareness of what constitutes unacceptable behaviour; to help prevent it from occurring; and to advise Prospect members and representatives on how to deal with it.

1. What is harassment?

1.1 All employees have the right to be treated with dignity and respect, in a working environment free from discrimination and harassment. Actions or behaviour which interfere with that right, and which are unwanted and offensive to the recipient, can be construed as harassment. It is important to keep sight of this, since behaviour which is acceptable to one person may be offensive to another. Whether or not harassment is intentional, it is its effect upon the recipient which is important.

1.2 Harassment is used either to assert or to undermine power or for personal pleasure. Harassment cases which hit the headlines are usually of a sexual or racial nature, but anyone who is perceived as different can be harassed at work.

Kinds of harassment

1.3 Harassing behaviour can take many forms:

- comments, banter, jokes, insults and language related to gender, ethnic origin, disability, sexual orientation, gender identity or reassignment, religion, age or any other personal characteristic, which is offensive to an individual or group
- unnecessary physical touching, horseplay or assault, including sexual assault
- suggestive remarks, gestures and innuendo, uninvited and unwanted propositions for sexual activity, leering, whistling
- isolating colleagues, generalising or stereotyping them because of their gender, gender identity, disability, sexual orientation, age, colour, race or ethnic origin
- offensive or unwanted comments about dress or physical appearance which are unrelated to the requirements of an individual's job
- assuming that physical disability equals mental disability – for example, speaking to a disabled person's colleagues rather than to them, or imposing unwanted 'assistance' with work
- making assumptions about an individual's private life
- graffiti which is racially or sexually based or refers to an individual's personal characteristics or private life
- displaying offensive material, including pornographic or sexually suggestive pictures, pin-ups and calendars or racially offensive objects
- inappropriate use of email and internet sites
- encouraging others in any of these activities.

1.4 You may be a witness to an incident of harassment. It should be reported:

- if you feel harassed or offended by the behaviour
- because we all have a role in creating a working environment free from harassment – by ensuring that our own behaviour does not cause offence, by making it clear to colleagues that harassing behaviour is unacceptable, and by supporting others who suffer harassment.

1.5 A checklist of points on how to deal with harassment is included on page 15.

Bullying

1.6 Bullying can manifest itself in many obvious ways, such as shouting at staff in public and/or private, instantaneous rages, 'nit-picking', personal insults and name-calling, persistent criticism or public humiliation. There are also more subtle methods:

- setting objectives with impossible deadlines
- removing areas of responsibility
- setting menial tasks
- constantly changing working guidelines
- ignoring or excluding an individual
- turning down leave without good reason
- blocking a person's promotion.

1.7 Prospect representatives should ensure that bullying is included in harassment policies. Sometimes such policies are referred to in different ways – eg Dignity at Work policy.

1.8 Harassment and bullying are most often exercised by people in positions of power, such as supervisors or managers, who abuse their authority and impose their conduct upon others as a means of control. But they may also be used by colleagues of equal status, for example because of cultural differences, or because they are men assuming a higher status over women. They can also be used to humiliate and undermine the authority of a person of higher rank within the organisation.

1.9 Employees may suffer harassment from members of the public or customers with whom they are in contact in the course of their work. It is important that an employer's harassment policy covers this situation. Employers should take steps to minimise its occurrence, and assure staff that they will be supported if it does happen.

1.10 Members should ensure that they report all incidents of harassment by those they are in contact with in the course of their work.

2. A trade union issue

2.1 Harassment and bullying are unacceptable behaviour. They have a detrimental effect on the health, safety and performance of an individual or group.

2.2 For the individual it can result in lack of self-esteem and the destruction of confidence; stress-related illness may lead to sick absences; the quality of a person's work can decline, damaging their chances of promotion or leading to charges of inefficiency. These problems do not stop at the workplace but affect a person's private life, so personal relationships may suffer. In these circumstances a person may dread going to work and even resign.

2.3 When harassment is tolerated in the working environment every employee is affected. An atmosphere of hostility is created, undermining any sense of community and potentially the union's effectiveness. The union's credibility is determined by the way it deals with problems at the workplace, so it is important that incidents of harassment are dealt with sensitively and fairly.

2.4 Prospect representatives should ensure that their workplace not only has an equal opportunities policy, but a policy statement and procedures that deal specifically with harassment and bullying. If your workplace does not have such a policy, initiate

discussions with management. Don't wait until a case arises – when attitudes will be coloured by a single issue and arguments may ensue about what constitutes acceptable behaviour at the workplace. Employees have a right to know in advance what is expected of them and the consequences of harassment.

2.5 Many Prospect members have managerial responsibilities. It is important to ensure that your managerial style could not be construed as harassment or bullying.

2.6 Removing harassment from the workplace does not mean preventing people enjoying harmless social banter. It is to prevent offensive behaviour which hurts our colleagues.

Duties of employers

2.7 Employers should be wary of ignoring harassment and failing to have a harassment policy in place. Even if they genuinely believe harassment does not happen in their workplace, it may occur in future. If morale and job security are affected, this will have a detrimental effect on teamworking and impact upon efficiency and productivity. There are real costs associated with sick absence, high staff turnover, recruitment and retraining, and ultimately the legal costs involved in fighting tribunal cases.

2.8 Employers have a duty to provide a safe working environment for their employees. They would be clearly failing in this duty if they ignored or condoned harassment.

3. Negotiating a policy

3.1 Policy statements for the workplace should cover all forms of harassment but need not be contained in one document. The policy should provide:

- **commitment** to equal opportunities
- **definition** of harassment and **examples** of behaviour which will be regarded as unacceptable
- **statement** that harassment will not be tolerated, and is a disciplinary offence
- **procedure** for dealing with complaints, which should include:
 - assurances of confidentiality
 - a list of people to whom a complaint should be made (for instance harassment or equal opportunities officers)
 - the investigation process, which should be carried out by a panel
 - an assurance that the investigation will be prompt, quoting appropriate timescales
 - rights to union representation for both parties
 - rights for both parties to receive a copy of the report and reasons for the decision
 - an opportunity for both parties to appeal
 - explanation that if an investigation upholds the complaint, **disciplinary action** will be taken against the alleged harasser, reflecting the degree of offence

- an assurance that the complainant will not be required to continue to work with the harasser, and that it will be the harasser, not the complainant, who will be **transferred**
- an offer of **counselling** for the complainant
- awareness **training** for the accused if required
- an assurance that complainants and witnesses will not be victimised for **reporting** incidents
- vindictive or **vexatious** complaints to be dealt with under the disciplinary procedure
- procedures to be subject to periodic joint **review**.

3.2 Provision should be made for informal intervention at an early stage to enable counselling or follow-up action, before positions become entrenched and relationships break down.

3.3 It is the employer's responsibility to ensure that all employees are aware of the policy, and that incidents of harassment will be taken seriously. It is also the employer's responsibility to ensure that those dealing with complaints are properly trained.

Harassment within Prospect

3.4 Harassing behaviour is just as unacceptable within the union. It undermines

unity and brings Prospect into disrepute. If you have been subject to harassment at a Prospect function, conference or meeting, and this continues after you have asked the perpetrator to stop, report the matter to your full-time officer. If that is not appropriate you can contact Prospect's equal opportunities officer. Allegations will be treated in confidence, and an investigation made.

4. Harassment and the law

4.1 Harassment is a form of discrimination and is unlawful under the Equality Act 2010. It applies to the following protected characteristics covered by the Act: age, disability, gender reassignment, race (including colour or nationality), religion or belief, sex or sexual orientation. Harassment on grounds of pregnancy, maternity, marriage and civil partnership is excluded from protection.

4.2 There are three key definitions of forms of harassment under the law:

- harassment involving unwanted conduct which has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the recipient or which otherwise violates their dignity
- sexual harassment – unwanted conduct as defined above which is of a sexual nature
- harassment which is unfavourable treatment because someone has either submitted to, or rejected, sexual harassment or harassment which is related to sex or gender reassignment.

4.3 The person being harassed does not actually have to have one of the protected characteristics to be protected under the law, but will need to show that the unwanted conduct related to a protected characteristic.

For example, a heterosexual woman who is harassed because her son is gay, would be protected on the grounds of unlawful harassment on the basis of sexual orientation.

4.4 A tribunal will only find that harassment has occurred if the conduct 'should reasonably be considered as having that effect', having regard to all the circumstances including the perception of the person alleging the harassment.

4.5 In law, employers are responsible for acts of harassment by employees at work unless they can establish that they took all reasonable steps to prevent them. Employers should ensure that all employees understand that harassment will be treated as a serious offence.

4.6 The provisions for protection against third party harassment within the Equality Act have been repealed. However, employers are still required to provide a safe working environment without discrimination for their employees. If you, or another Prospect member feels that members of the public, customers or clients or anyone else you come into contact with in the course of your work, behaves inappropriately, contact your Prospect full-time officer as soon as possible.

4.7 Victimisation of complainants and witnesses is unlawful under the legislation.

Employment tribunals

4.8 There are strict time limits for bringing a case to an Employment Tribunal. For most types of cases, including discrimination claims, the time limit is three months from the act complained of. This time limit can be extended but only in exceptional circumstances, so it is important to ensure that advice is sought in good time and that a claim is lodged within the three month limitation period. In all cases the employee should present a grievance in writing to the employer before making a tribunal claim. Failure to do so could result in a reduction of up to 25 per cent of any compensation awarded. The grievance process does not affect the time limits for starting the tribunal process.

4.9 It is mandatory to present a claim to ACAS for Early Conciliation (EC) before making the claim to the ET. This must be done before the usual three month time limit expires. Once the EC application is submitted it has the effect of 'stopping the clock' for the

tribunal claim. The rules are complicated so always contact your Prospect negotiator for detailed advice as soon as possible.

4.10 If an employee feels compelled to resign from their job because of harassment, they may be able to take a case of unfair constructive dismissal to an employment tribunal. This process should be started within three months of the last date of employment.

4.11 Where harassment cases are won at employment tribunal, compensation may be awarded for loss of earnings (and perhaps future earnings), medical expenses and injury to feelings.

4.12 A decision to take a case to an employment tribunal is not taken lightly. It can be a lengthy and harrowing experience, particularly in the case of sexual harassment. This is because cases of harassment are difficult to prove and a person's private life may come under public scrutiny in an attempt to discredit their evidence.

4.13 If harassment takes the form of physical assault, you should consider civil or criminal

action against the perpetrator, and the police should be notified as soon as possible.

Court action

4.14 Harassment is also outlawed by the 1997 Protection from Harassment Act. Although this Act was introduced to deal with the problem of stalking, it may also be a tool for dealing with harassment in the workplace. The Act covers harassment on any grounds and makes it both a civil and criminal offence. People who have been harassed can seek court orders to restrain the harasser and to claim damages. But Prospect would caution that use of this legislation in the workplace is very limited and should only be considered if there is no other remedy. It would normally only apply when it can be shown that the harassment is severe and intentional.

4.15 You may be able to bring a claim for personal injury if you can show you have suffered a health breakdown because of your employer's actions or failure to act in a harassment situation. You would need to show that your employer's negligence caused the injury to health and that it was reasonably foreseeable to them that the injury would occur.

Prospect advice

4.16 A Prospect full-time officer should always be involved if it seems likely that a case will proceed to an employment tribunal. Members are advised to contact their local rep and/or full-time officer at the earliest opportunity.

4.17 Workplace and other legal assistance is offered at the discretion of the union, and is decided on the facts and merits of each case. For full details see Prospect's guide to legal advice <https://library.prospect.org.uk/download/2015/01155>

5. Action for representatives

5.1 When Prospect representatives deal with cases of harassment it is important to ensure that all allegations of harassment are taken seriously, and that the person suffering harassment does not believe the union is siding with the harasser. Do not jump to a conclusion about whether or not there is a case.

5.2 Support the member and assure them of confidentiality. Remember that harassment can be extremely distressing so it may be difficult or embarrassing for them to seek advice. They may feel they will not be believed or that the issue will be trivialised. Colleagues may accuse them of not being able to take a joke or of upsetting an otherwise 'harmonious' atmosphere.

5.3 Encourage but don't force the member to take action.

5.4 Representatives should offer support and guidance if the member wishes to take informal action. They may wish you to accompany them to confront the harasser and ask them to stop the offensive behaviour. Alternatively, you could offer to help them write to the harasser, outlining the behaviour which caused offence and stating that it must not happen again.

Advice to members

5.5 When advising members, representatives should:

- keep copies of all correspondence
- give clear advice
- ask the member to keep a record of any incident
- explain the options open to members, the procedures for making a complaint and their rights.

Investigation process

5.6 In handling a case representatives should:

- ensure that a thorough investigation is carried out by the employer, and that procedures are followed fairly and consistently
- ensure that the investigation and any disciplinary action are carried out quickly, and that all those involved are informed of the outcome without delay
- if the investigation upholds the complaint and the member does not wish to continue working with the harasser, make sure it is the harasser and not the complainant who is transferred
- ensure that the employer offers the complainant counselling, if requested

- be aware of time limits – both for internal procedures and for employment tribunals
- monitor the situation to ensure that the member and any witnesses are not victimised for reporting harassment
- review the case to see if further action is needed to prevent a recurrence, including counselling, training and improvements to procedures.

5.7 If you are not confident about dealing with harassment issues, contact your full-time officer immediately. Once a formal complaint is made you should keep the officer informed.

5.8 If there is no satisfactory outcome to the investigation, or the employer has not taken appropriate action once a complaint has been upheld, the member will need your support in considering what further action to take. This may be an internal appeal, or a legal remedy such as taking the case to an employment tribunal. You should set out the options open to the member and the procedures surrounding employment tribunals.

Policy and the branch

5.9 Union representatives are the key to effective action to tackle harassment and bullying at the workplace. You can ensure that members know about Prospect policy, their rights and who to contact by displaying posters and leaflets on noticeboards. ‘Don’t suffer in silence’ posters and postcards are available from Prospect headquarters and to download from the website.

5.10 You should consider raising the issue at branch meetings (though not specific cases) and nominating someone from the branch committee as a contact for people suffering harassment. That person should receive appropriate training in dealing with cases – ask your full-time officer for details or consult the Prospect website.

5.11 Prospect representatives should press management to ensure that all staff – including new entrants and not just those who may have to deal with the issues – receive appropriate training on equal opportunities issues and the appropriate workplace policies.

5.12 Representatives should ensure advice is available for any member who feels they are being harassed or is accused of harassment.

Sample letter to a harasser

Dear...

I am writing to complain about what you (did/said) to me on (date/over the previous months/weeks) when you (you have)...

I want you to stop this behaviour now/I want you to stop calling me... as I find this offensive and unacceptable.

I am keeping a copy of this letter and shall take further action if you do not stop immediately.

Yours sincerely

6. Checklists

What to do if you are accused of harassment

- listen to the allegations. Be prepared to acknowledge that your behaviour may have caused offence and apologise
- seek advice from your Prospect representative as soon as practicable
- you have the right to be informed of the allegations and of any formal complaint
- once a formal complaint has been made you have the right to a full investigation, fair application of the procedures and prompt action
- you have the right to representation throughout the process.

How to deal with harassment

- don't suffer in silence
- don't feel guilty – you are not responsible for someone else's behaviour
- seek advice and assistance from your Prospect representative at the earliest opportunity. Don't feel isolated – the union is there to help
- confront the harasser if you feel able to do so. Explain to them what behaviour caused you offence and ask them to stop. Your Prospect representative can accompany you. Alternatively, write to the harasser – your representative can help you draft the letter. Remember to keep a copy. An informal approach such as this will often have the required effect and the harassment will stop
- keep a record of the incident – dates, times, what happened, how you felt, if there were witnesses. If the harassment continues, keep similar records
- if the harassment does not stop after your informal approach, consider making a formal complaint. Again, your Prospect representative will be able to advise you on the procedures, and may accompany you throughout the process.

7. Conflict between members

7.1 If the person suffering harassment and the harasser are both Prospect members, the union's role will depend upon the circumstances. If the member accused of harassment admits the charge they are in breach of the union's policy and rules. But they are entitled to representation at interview and to ensure that procedures are fairly carried out.

7.2 If the charge is denied, the case should be referred to your full-time officer so that both members can be represented separately. It remains the employer's responsibility to ensure that harassment does not occur. It is not for Prospect to carry out the investigation. This is the employer's duty within the agreed procedures.

8. Resources

Prospect guides and resources

You can find all Prospect resources at:

<https://members.prospect.org.uk/library>

See also: <https://prospect.org.uk/get-support/>

Prospect contacts

Equal opportunities officer: Andrew Pakes

email: andrew.pakes@prospect.org.uk

Tel: 0330 600 1878

External contacts

- **Equality and Human Rights Commission**
Arndale House, Arndale Centre, Manchester
M4 3AQ
www.equalityhumanrights.com
- **ACAS (National head office)**
Euston Tower, 286 Euston Road,
London NW1 3JJ
Tel: 0300 123 1100
www.acas.org.uk



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