



STRONGER TOGETHER

**CONGRESS**

Irish Congress of Trade Unions

# Bullying & Harassment

## Prevention Guidelines for Trade Union Activists



ICTU Health and Safety Committee

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## 1. Introduction

The Irish Congress of Trade Union's Health and Safety Committee has developed this booklet to assist Union Representatives in understanding what bullying and harassment is and secondly assisting them to provide practical support to members who feel that they are being bullied or harassed.

Bullying at work can never be acceptable. Congress believes that all workers have the right to be treated with dignity and respect at work. Any form of bullying or harassment is unacceptable and can never be condoned. Work-related bullying can lead to work-related stress and ill health.

This booklet recognises that unions are best placed to assist workers who believe they are being bullied or harassed by giving them the confidence to challenge anyone they believe is bullying them. Unions also have a significant role to play in ensuring that employers take action to protect workers and provide them with a safe and supportive working environment. Unions can do this by ensuring that there are robust policies and procedures in place to investigate claims of bullying and harassment.

This booklet will help Union Representatives understand the different definitions of bullying and harassment and assist them to recognise the different workplace behaviours that contribute to them. This document will outline the role of Union Representatives who are contacted by a member who is either the victim of alleged bullying or harassment or who is the subject of an alleged complaint of bullying or harassment. It will also assist in raising awareness of issues pertaining to bullying and harassment as well as the avenues for progressing complaints.<sup>1</sup>

## 2. Background

The Health and Safety Authority (HSA) and the Workplace Relations Commission (WRC) have recently completed a review of their respective codes of practice on bullying in the workplace and have developed one single code of practice entitled "Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work" which came into effect on the 23<sup>rd</sup> December 2020. The HSA and the WRC consulted with several representative organisations and stakeholders including the Irish Congress of Trade Unions and our input was considered as part of the review.

In addition, the Irish Human Rights and Equality Commission (IHREC) has also published a Code of Practice on Sexual Harassment and Harassment at Work. In developing this booklet, Congress has availed of the guidance contained within both Codes of Practice.

All unions should, in conjunction with the various companies where they have collective bargaining rights, develop and review policies for dealing with complaints of bullying and harassment. These policies should be reviewed in line with any changes to the relevant legislation and should reflect the new Code of Practice issued by the HSA. Furthermore, policies should also be reviewed in line with the experience of our members and Union Representatives who have utilised these policies in the past. Where such policies have been negotiated it is imperative that our Union Representatives become familiar with their own company policies and procedures and act within the confines of that policy.

Many Trade Unions as part of their education programme provide training courses for their activists on the difference between Bullying and Harassment and their role in assisting individuals involved in such cases. This booklet is intended to support these Education Programmes and to provide Union Representatives with the necessary skills to support members who are involved in such cases.

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<sup>1</sup>Throughout this document, unless the context suggests otherwise, the word "harassment" shall include "sexual harassment"

### 3. Trade Union Aims re Anti Bullying/Harassment Complaints

The ICTU believes that all workers are entitled to be treated with dignity and respect and to work in an environment which is free from all forms of bullying and harassment.

This also applies to members when accessing the services of their unions and to employees of those unions.

Workers should be assured by their employers that all complaints will be taken seriously, addressed promptly and will be followed through to a final resolution. In that regard all parties involved in the process are entitled to be treated with respect.

Trade Unions will support these aims by:

- ◆ contributing towards the provision of a working environment free from bullying and harassment.
- ◆ Negotiating and Agreeing “Dignity at Work/Anti-Bullying and Harassment Policies” with companies where we have recognition.
- ◆ Familiarising their members with such policies and work towards ensuring that their provisions are maintained.
- ◆ Promoting best practice in reducing and preventing inappropriate behaviour.
- ◆ Providing advice and guidance to individuals who are subject to inappropriate behaviour and to those seeking to prevent this behaviour.
- ◆ Training and educating our Union Representatives on such policies and providing them with the necessary information to support members who are involved in Bullying and Harassment cases

### 4. Definitions and Terms

It is important that cases of bullying and harassment are dealt with correctly from the outset. Union members will approach you on all kinds of issues and they will not always understand the various definitions of bullying and harassment. They may be seeking advice, looking for guidance or sometimes they will want advice on how to handle a particular issue. Sometimes a case may be neither bullying nor harassment such as a one-off incident and it may be more appropriate and quicker to have this dealt with as a workplace grievance.

It is important when giving advice to members that Union Representatives understand the difference between bullying and harassment. Members tend to use these in the same sentence and this interchangeability leads to a misunderstanding of what each one relates to. They are legally distinct concepts and therefore a behaviour can be either bullying or harassment but not both. It is important when advising members that we remember this.

Set out below are some of the definitions and terms used which Union Representatives should become familiar with.

**Workplace bullying** is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could be reasonably regarded as undermining the individual’s right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but, as a one-off incident, it is not considered bullying.<sup>2</sup>

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<sup>2</sup>Report of the Task Force on the prevention of workplace bullying 2001. Also used in the 2005 Report of the Expert Advisory Group on Workplace Bullying and in the survey conducted by the ESRI to determine the incidence of workplace bullying. The Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work also contains this definition.

**Repeated** – Workplace Bullying should meet the criteria of an on-going series or accumulation of seriously negative targeted behaviours against a person or persons to undermine their esteem and standing in a harmful, sustained way. Bullying behaviour is offensive, on-going, targeted and outside any reasonable ‘norm’. A pattern and trend are involved so that a reasonable person would regard such behaviour as clearly wrong, undermining and humiliating. It involves repeated incidents or a pattern of behaviour that is usually intended to intimidate, offend, degrade or humiliate a particular person or group of people.

**Perception** – It’s how the behaviour is perceived as opposed to the intention of the alleged perpetrator that is important; therefore, it is up to each individual to decide what inappropriate and unwelcome behaviour is.

**Harassment** for the purpose of the Employment Equality Acts 1998-2015 is any form of unwanted conduct, related to any of the nine discriminatory grounds which has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person.

**Sexual Harassment** Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature.

In both cases it is defined as conduct which has the purpose or effect of violating a person’s dignity and creating an intimidating, hostile, degrading, humiliating or offensive environment for the person and it is prohibited under the Acts.

**Nine Grounds** – the nine grounds under the Employment Equality Acts 1998 – 2015 are:

1. The gender ground: A man, a woman or a transgender person (specific protection is provided for pregnant employees or in relation to maternity leave);
2. The civil status ground: Single, married, separated, divorced or widowed, in a civil partnership;
3. The family status ground: refers to being pregnant, a parent of a person under 18 years or the resident primary carer or a parent of a person with a disability;
4. The sexual orientation ground: Gay, lesbian, bisexual or heterosexual;
5. The religion ground: covers different religious beliefs, background, outlook or none;
6. The age ground: This applies to all ages above the maximum age (16) at which a person is statutorily obliged to attend school;
7. The disability ground: This is broadly defined including people with physical, intellectual, learning, cognitive or emotional disabilities and a range of medical conditions;
8. The race ground: people of different race, skin colour, nationality or ethnic origin;
9. The Traveller community ground: People who are commonly called Travellers, who are identified both by Travellers and others as people with a shared history, culture and traditions, identified historically as a nomadic way of life on the island of Ireland.

For harassment to apply in any case then the individual must be able to demonstrate unfavourable treatment on one of the above nine grounds.

**Direct discrimination** is when a worker is treated less favourably than another worker in the same situation or circumstances under any of the nine grounds identified above. It can also be when a Manager instructs a worker to discriminate against another worker.

**Indirect discrimination** happens where a worker or group of workers or job applicants are treated less favourably as a result of requirements that they find hard to meet. For example, if a job advertisement states that applicants have to be of a particular height, this may put women at risk. An employer would have to prove that this requirement is necessary for the job in question.

**Discrimination by association** occurs when a person is treated less favourably simply because they are associated with or connected to another person who comes under the nine grounds. For example, if someone is being harassed at work because one of their family members is gay they are being discriminated against simply because they are related to a gay person.

**Discrimination by imputation** occurs when a person is treated less favourably because they are labelled as belonging to one of the categories covered by the nine grounds. For example, if it is incorrectly assumed that a worker is a member of the Traveller community and is treated less favourably on this basis.

**Victimisation** occurs if an employer penalises a worker because they have

- ◆ made a complaint or given notice of intention to do so.
- ◆ been involved in any discrimination proceedings
- ◆ helped a colleague to make a complaint

This is irrespective of whether the complaint was upheld or not. Victimisation is against the law and should be pursued through the employer's grievance procedures. An employer also has a duty under the Acts to protect their worker in relation to discrimination or harassment coming from third parties such as service users, contractors and suppliers.

**Vicarious Liability** means that the employer may be held liable for the actions of a worker in the course of his/her employment, regardless of whether the actions were carried out with the employer's knowledge or approval. Employers are legally responsible for their worker's actions unless the employer can prove that they took reasonable steps to prevent the discrimination. An employer also has a duty under the Acts to protect their workers in relation to discrimination or harassment coming from third parties such as service users, contractors and, suppliers.

**Vexatious Complaints** are a form of abuse. They have the potential to hurt and disrupt another person's life that could have a negative impact on them and cause them psychological injury. Complainants should not be penalised for making a complaint in good faith, however, if it is found that the complaint is vexatious then it could be treated as misconduct under a Company's disciplinary code.

## 5. What is Bullying at Work?

As detailed above, Bullying is repeated inappropriate behaviour, direct or indirect, against a person or persons, perpetrated by one or more person(s), which could reasonably be regarded as undermining their right to dignity at work. Bullying activities involve actions and behavioural patterns, directly or indirectly, spoken and/or written and could include the use of cyber or digital means for the goal of bullying.

Bullying can occur at every level within an organisation, and can happen to managers, supervisors, colleagues and subordinates. It is important to distinguish between such behaviour and normal social interaction that takes place between colleagues involving mutually acceptable behaviour, or which comes within the bounds of the normal exercise of management and supervisory responsibilities.

It's how the behaviour is perceived as opposed to the intention of the alleged perpetrator that is important; therefore, it is up to each individual to decide what inappropriate and unwelcome behaviour is. Furthermore, the fact that behaviour was once accepted and is now deemed unwelcome does not stop an individual from making a complaint.

Behaviour which makes for a bullying pattern will likely include not just one but a range of the following behaviour:

- ◆ Exclusion with negative consequences
- ◆ Private or public humiliation

- ◆ Repeated verbal abuse such as the use of offensive language directed at an individual or individuals
- ◆ Being treated less favourably than colleagues in similar roles
- ◆ Belittling a person's opinion
- ◆ Spreading malicious gossip, rumours or innuendo
- ◆ Socially excluding or isolating a person within the work sphere
- ◆ Intrusion – pestering, spying or stalking
- ◆ Threatening or aggressive behaviour
- ◆ Excessive monitoring of work and performance
- ◆ Withholding information necessary for the proper performance of a person's job
- ◆ Repeatedly manipulating a person's job content and targets
- ◆ Personal insults, such as name-calling, sneering, continued and deliberate staring, repeated put-downs, offensive jokes
- ◆ Undermining a person's role, dignity or respect e.g. removing areas of responsibility and imposing menial tasks
- ◆ Persistent negative attacks on personal or professional performance without good reason or legitimate authority
- ◆ Unreasonable and unfounded refusal of annual leave, training or promotion opportunities
- ◆ Abusing a position of power by unnecessarily undermining a colleague's work and/or placing unreasonable demands on a particular individual

The above list is not exhaustive.

Bullying can occur in any workplace regardless of employer, size or sector. While Managers and Supervisors are more likely to be the bully they can also be bullied. However, the most common form of bullying is by a manager against a subordinate. Workers can also be bullied by customers or by persons supplying goods or services to their workplace.

Good job design for all, adequate and effective training for all and proper supervision can help ensure a workplace where any conflict or issues around behaviours are dealt with fairly and effectively.

Workplace bullying negatively impacts performance and productivity at work and it is important that it is tackled at an early stage. It can have serious effects for the person being bullied and for those accused of bullying. For an employer it can result in dysfunctional work environments, low morale, lost time and possible litigation.

## 5.1 Effects of Bullying and Harassment

The effects of bullying and harassment are varied and can affect all concerned not only the individual being bullied but also work colleagues, others in the organisation and the person being accused of bullying. For the employer the effects can include reputational damage, absences of workers from the workplace, reduced productivity, increased costs, poor morale and loss of respect for managers and supervisors.

It may affect the individual through work related stress, associated physical and/or mental ill health. Low morale, reduced performance and low productivity. In some cases, individuals may decide to resign which exposes them to financial and other strains.

For an innocent party who is the subject of a complaint, or unaware of the effects of the behaviour (i.e. the person accused of bullying), the consequences can likewise be significant in terms of anxiety, panic, distress and potential social embarrassment/career damage.

Everyone involved will be negatively impacted and the spiralling negative consequences of

bullying claims cannot be overstated so it is in the best interests of all concerned to have robust preventative and effective procedures in place which are used effectively.

There are a number of factors which are known to signal a risk of bullying at work and Union Representatives should be mindful of such warning signs:

- ◆ High turnover of staff, high absenteeism or poor morale
- ◆ The type of employment contract - a bully may regard new, casual or contract workers as easier targets than permanent workers
- ◆ Management or poor management of relationships in the workplace – bullying is more likely to be a factor in workplaces that do not have an effective management system based on respect and awareness or sensitivity to the impact of behaviour on others
- ◆ Personality differences
- ◆ Gender/status imbalance
- ◆ Other factors can include the composition of the workforce, interface with the public, history of tolerance of unacceptable behaviour, lack of or inadequate procedures or disregard of procedures for dealing with bullying
- ◆ Absence of clear reporting structures and clear job/role descriptions

## 6. What is not considered bullying at work?

Union Representatives in addition to understanding the various definitions as detailed above should also be aware of what does not constitute bullying behaviour. It is important to distinguish bullying from other inappropriate behaviours or for that matter appropriate workplace engagement.

A once-off incident may be an affront to dignity at work and may be upsetting to one and/or both parties involved but as a once off incident it cannot be presumed to be done in a targeted, purposeful and unremitting way. An incident of this nature is not bullying but that does not mean that it should be ignored. Such incidents can result from a misunderstanding, a poorly judged comment or miscommunication of some form. It may be appropriate that complaints arising from once off incidents be dealt with under a Company's Grievance Procedures.

Apart from once-off behaviours, other ongoing behaviours which may upset or unsettle a person may not come within the bullying definition either. Behaviour considered bullying by one person may be considered routine interaction by another, so the 'reasonableness' of behaviours over time must be considered. Disrespectful behaviour, which is not ideal, is not of itself bullying. Conflicts and disagreements do not of themselves, make for a bullying pattern either. There are various workplace behavioural issues and relationship breakdowns which are troubling, upsetting and unsettling but are not of an adequate level of destructiveness to meet the criteria required for a bullying case.

The proper exercise of management and supervision, by a line manager/supervisor does not constitute bullying as long as it relates to work performance and is communicated in an open and transparent manner as part of a company's performance appraisal process. These comments must be made in an honest and constructive manner, be backed up by clear facts, and imparted in a respectful way that does not cause offence to the individual.

Objective criticism and corrections that are intended to provide constructive feedback to a worker are not usually considered bullying, but rather are intended to assist the worker with their work.

Bullying does not include:

- ◆ Expressing differences of opinion strongly
- ◆ Offering constructive feedback, guidance, or advice about work-related behaviour which is not of itself welcome

- ◆ Ordinary performance management
- ◆ Reasonable corrective action taken by an employer or supervisor relating to the management and direction of workers (for example managing a worker's performance, taking reasonable disciplinary actions, or assigning work)
- ◆ Workplace conflict where people disagree or disregard the others' point of view

This list is not exhaustive.

## 7. Rights and Responsibilities

Everyone in the workplace has a role in promoting a positive workplace free from bullying behaviour.

### 7.1 Workers

Workers have rights and duties as regards safety health and welfare at work under the Safety, Health and Welfare at Work Act 2005<sup>3</sup> and the Employment Equality Acts 1998 to 2015. They have the right to be treated with dignity and respect and not have their safety, health or welfare put at risk through bullying by the employer by other workers or other persons. They have a right to complain to the employer if bullied and not to be victimised for so doing. They have a right to be represented while raising this with the employer.

Workers also have responsibilities to behave and conduct themselves so as to respect the right of employers and other workers to dignity, courtesy and respect at work and the right not to be placed at risk as regards to their safety, health and welfare from bullying at work. This individual responsibility extends to an awareness of the potential impact of personal behaviour on others and how it may cause offence and make them feel uncomfortable or threatened. Workers both individually and collectively have a role in promoting positive behaviour to others.

Under Section 13 of the 2005 Act worker duties include to:

- ◆ comply with the relevant statutory provisions, as appropriate, and take reasonable care to protect his or her safety, health and welfare and the safety, health and welfare of any other person who may be affected by the employee's acts or omissions at work
- ◆ co-operate with his or her employer or any other person so far as is necessary to enable his or her employer or the other person to comply with the relevant statutory provisions, as appropriate, and
- ◆ not engage in improper conduct or other behaviour that is likely to endanger a person's own safety, health and welfare at work or that of any other person

### 7.2 Employers

Employers have a vicarious liability in regard to bullying and harassment matters. This means that the employer may be held liable for the actions of a worker in the course of his/her employment, regardless of whether these actions were carried out with the knowledge or approval of the employer.

Employers have a duty to manage and conduct work activities in such a way as to prevent any improper conduct or behaviour likely to put workers at risk. This duty means that employers must act reasonably to prevent workplace bullying patterns developing and where there are complaints, the employer must react reasonably, assess a complaint, record actions and put in place a suitable response based on each case arising.

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<sup>3</sup> Throughout this document the 2005 Act means the Safety Health and Welfare at Work Act 2005

Under Section 20 of the 2005 Act employers must prepare a Safety Statement. This should be based on the identification of the hazards to safety health and welfare at the place of work. An assessment of the risks involved and setting out the preventative measures necessary to protect safety health and welfare.

In the workplace and particularly where people work together the hazard of workplace bullying is a potential risk. Therefore, a proper workplace anti bullying and harassment policy should be developed, in consultation with workers, to ensure a system is in place for dealing with complaints and addressing them in a fair and equitable manner.

The culture of an organisation is an important factor in creating, establishing and maintaining a positive workplace environment free from bullying, intimidation or any on-going negative behaviour which might lay the foundation stone for a bullying culture. There are several elements important to a positive workplace including good leadership (leading by example), a culture of involvement and a proper flow of communication, intolerance of inappropriate behaviour, training of staff on acceptable behaviour or conduct, an open and transparent pattern of relating based on mutual respect and dignity for all. A positive culture is one in which workers are comfortable raising issues of concern to them, especially of inappropriate behaviours and where there are supportive, effective and fair processes underpinning this in place.

## **8. Responding to Workplace Bullying**

Any complaint about, or awareness of, alleged bullying requires quick, calm and consistent attention. Early intervention offers the best possible potential for a good outcome, particularly regarding restoring workplace relationships. However, this does not equate with a rushed approach. Each case should be treated on its own merit. A matter that is protracted, for whatever reason, becomes more difficult to resolve in a positive way. Set out hereunder is both an informal and formal procedure for dealing with a workplace bullying complaint.

Trade Unions believe that the preferred approach for dealing with complaints of bullying or harassment are either through the informal process or by the use of mediation whenever possible. The HSA in its code of practice advocates the same approach. The objective of the informal approach is to allow scope for resolving issues quickly and with the minimum of distress. An informal intervention could involve clarifying what bullying/harassment is, agreement to alter behaviour, agreement by the person complained of that the behaviour was inappropriate and that the conduct will not be repeated, or an explanation to the complainant about what occurred from the point of view of the other party which dispels the complaint.

### **8.1 Informal Process**

#### **8.1.1 Union Role in Informal Resolution**

The first step in any informal resolution of a complaint will be to get the facts of the complaint, the specific issues complained of, when they occurred and to judge whether or not they fall within the definition of bullying or harassment and thereafter to establish whether or not they are representative of the events complained of.

The complainant can be empowered by their union to identify ways to stop bullying or harassment. However, many individuals find it difficult to communicate directly with the alleged offender and may request their Union Representative to speak to the alleged offender on their behalf. Once the Union Representative takes on the responsibility of addressing the alleged offender, communication should be made with due regard to the confidentiality and rights of all parties involved. A written record should be kept of any approach and also the response of the alleged offender. Written documentation does not make an informal complaint formal but is a safety guard for all those involved.

In other words, even if a complaint is in writing it can still be dealt [with as part of the informal process](#).

It is also important to remember that if the behaviour complained of cannot be defined as bullying or harassment then the matter should be addressed through the individual Company's Grievance Procedures. Furthermore, if there are no concrete examples given of the inappropriate behaviour, then it must be deemed that there is no complaint to be answered, as the alleged offender cannot defend an accusation that doesn't give any specific examples.

In its Code of Practice, the HSA advocates a two-stage informal process.

### 8.1.2 Initial Informal Process

A prompt and informal problem-solving approach offers the best potential for addressing allegations of bullying effectively. This collaborative and non-adversarial approach is particularly important in situations where people must continue to work together into the future. There are several elements to a good informal process:

- ◆ People being confident that they will be listened to, will be taken seriously and that their issues will be assessed fairly, quickly and effectively.
- ◆ Managers having the confidence and capacity to engage on such issues and to respond and consult appropriately.
- ◆ Confidentiality to be respected by all.
- ◆ A focus always on the future workplace relationship and a problem-solving orientation.

An informal approach may effectively address the unwanted behaviour without recourse to any other action. Sometimes the person who is alleged to be engaging in the behaviour is genuinely unaware that the behaviour being complained of is disrespectful or unwelcome/undermining and/or causing distress.

### 8.1.3 Steps in an Informal Process

The Code of Practice recommends the following steps in an informal approach: In the first instance, the unacceptable behaviour/acts should be raised by the complainant with the alleged offender but only if they feel comfortable in doing so. This should be done quickly and calmly, focusing on the facts regarding acts done and their consequences. As detailed above the complainant may request their Union Representative to speak on their behalf.

If it is more suitable, the individual who perceives that they are the recipient of unacceptable behaviour should put their concerns in writing, again focusing on the offending acts and their effects on them. This does not mean that they are making a formal complaint and again they can be supported by their Union Representative in detailing the unacceptable behaviour.

Where a worker perceives that the concerns relate to an immediate manager, the worker may wish to discuss the matter informally with their manager's manager or a person at the next level of management. They would be entitled to be accompanied by an Union Representative while doing this.

The focus of these steps is to seek to resolve the matter informally by agreement without recourse to any other step. An informal discussion is often sufficient to alert the person concerned to the effects of the behaviour alleged and can lead to a greater understanding and an agreement that the behaviour will stop. It can also lead to an explanation of the original intention of the behaviour and/or an agreement to modify the behaviour. On the other hand, it may be that the behaviour is valid

and reasonable, and the reaction of the offended party is at odds with the generally accepted understanding of the behaviour.

Management should keep a brief written record, in line with relevant data protection legislation, of the matter and agreed outcomes and dates noted by the relevant nominated person responsible for managing the complaint.

In smaller organisations, the employer, or person heading that organisation, should not try to informally resolve a complaint personally but should instead refer the matter for resolution/management to a senior manager, or such other persons as may be agreed. This is to prevent any bias, or perceived bias, on the part of the employer, should the issue be later on referred to them for a judgement/appeal.

In such organisations also, where internal structures are limited, if the complaint made is against a senior person within the enterprise, it may be necessary to use the expertise of an independent professional body to access mediation or conciliation or some other form of resolution. Such bodies may include the Mediation Services of the WRC. Even in larger organisations, external assistance may be required in order to initiate an effective early solution.

#### **8.1.4 Secondary Informal Process**

If the initial informal process is unsuccessful or if the complainant or the employer deem it inappropriate for the seriousness of the issues, a further, more protracted informal process could be put in place. This should be done in consultation with the complainant, their Union Representative and the worker.

- ◆ A separate person may be nominated who has the appropriate training and experience and who is familiar with the procedures involved to deal with the complaint on behalf of the organisation. They may be a supervisor/manager or someone in authority within the organisation. For each complaint that arises, a specified person should be assigned to deal with that particular case. This is a very important role and pivotal in altering bullying cultures and handling complaints effectively at the informal stage. Effective guidance and training should be in place for those who are engaged at this level with the process.
- ◆ The complaint may be verbal or written. If verbal, a written note of what is complained of should be taken by the nominated person and a copy given to the complainant.
- ◆ This specified person (who may be a manager), managing the complaint, should then establish the facts, the context and then the next course of action in dealing with the matter under the informal procedure.
- ◆ If the complaint concerns alleged bullying as defined and includes concrete examples of inappropriate behaviour, the person complained against should be presented with the complaint and their response established. They should be advised of their right to seek Union advice. (it is important in this regard that Union Representatives understand that they can only provide support and assistance to the member who first approached them. You should refer the second person to another Union Representative.)
- ◆ Thereafter a method should be agreed to progress the issue to resolution so that both parties can return to a harmonious working environment without bullying being a factor.
- ◆ If the behaviour complained of does not concern alleged bullying as defined, an alternative approach should be put in place and a rationale recorded. If there are no concrete examples given, it must be deemed that there is no complaint to be answered by the person complained of.

- ◆ Line managers and the Union Representative should be kept informed, as appropriate, about the process in train.
- ◆ Steps to stop the bullying behaviour, where it has been identified, and monitor the situation along specified lines should be agreed with both parties. This may involve a direct or indirect approach and possible resolution through a programme to change behaviour. It may also involve mediation by an agreed mediator who is practised in dealing with alleged bullying at work.
- ◆ Enough time needs to be allowed for the mediation or on-going monitoring process to be successful and behaviour change to be realistically achieved over the longer term. It may be necessary to consider if other working arrangements are required or feasible during this short-term phase. A proposal should be made, considered, and an action and time frame should be agreed, signed and dated, preferably by both parties.
- ◆ The specified person responsible for managing the complaint should keep a record of all stages; the complaint, the first meeting, action agreed and signed records of the final meeting. The purpose of the records, which do not include detail of discussions, is to provide evidence of the complaint having been met with an organisational response and attempt at resolution.
- ◆ Information disclosed in the course of mediation must remain within the mediation process and must not be given by the mediator to anyone or to an investigator if there is a subsequent investigation at formal stage.
- ◆ Confidentiality is crucial for this stage to be effective and breaches of confidentiality, where exposed, should be met with sanctions highlighted in advance.

### 8.1.5 Closure of Informal Stage

The following are some of the steps that should be taken to close off informal proceedings:

- ◆ Both parties should be given support or periodical reviews, insofar as is reasonable, which, if necessary, could include counselling or other appropriate interventions or support services
- ◆ Where a complaint has been assessed as vexatious the matter should be progressed through other relevant procedures.

## 8.2 Mediation

Mediation is an important consideration for resolving issues at an early stage. It is an informal voluntary process where an impartial and competent third party enables individuals to work through conflict or disagreement, with a view to improving their relationship. It is a valuable tool at any stage in a procedure, but particularly beneficial at the earliest possible stage. It is established that the earlier a mediation process is used, the greater the potential for resolving the matter satisfactorily. It is important that suitably qualified mediators, whether internal or external, are used.

The mediator normally meets the parties separately to begin with and will then bring both parties together to discuss their areas of concern. The substance of the complaint will be outlined for the parties involved in advance of the mediation process.

Where it is considered that a complaint may be resolved by Mediation or a complainant specifically requests mediation, both parties should be written to offering them the opportunity to take part in Mediation and outlining the procedures for Mediation.

The mediator facilitates this process without taking sides, adopting a particular position or

making a judgment. The mediator assists each party to explain the problem to the other party with a view to reaching a common understanding and an agreed future behaviour.

The objective of mediation is to resolve matters speedily and confidentially without recourse to a formal investigation and with a minimum of conflict and stress for the individuals involved. Mediation cannot be imposed and can only proceed with the agreement of both parties. Either party can withdraw at any stage of the mediation process as it requires the voluntary co-operation of both parties to order to be successful.

Parties are normally seen together. However, in some cases the Mediator may consider it helpful to discuss an issue alone with either of the parties. While it is always at the discretion of the Mediator, either party may also request that the mediation be held in a separate room.

The information discussed at mediation remains between the parties involved and a mediated agreement will not result in the issues being dealt with under any company's disciplinary procedures. Any information exchanged during the mediation process remains strictly confidential and cannot be disclosed as part of any subsequent formal investigation.

### **8.2.1 Union Role in Mediation**

Where mediation is introduced or used it is important that Unions are involved in the design of the mediation process. Otherwise it could be seen as a means to undermine the role of the Union Representative in representing members with bullying issues at work. Unions are generally supportive and welcome mediation as an additional means of helping members which could be appropriate in some cases most particularly workplace bullying.

Workers may be suspicious of mediation and they will seek guidance from their Union Representative. Workers using mediation will feel that they should be supported and accompanied by a Union Representative. When a member is offered or is considering requesting mediation the Union Representative should explain the process to them. Ultimately it is the member's own decision whether to go ahead with mediation or not.

The Union Representative will play a key role in setting up any mediation. Ensure that you as well as the member are consulted about dates, so that you will be free to accompany the member if this would be helpful.

Union Representatives accompanying a member during mediation should be constructive and not interfere with the mediator's work in facilitating discussion and progress towards an agreement. Look out for your own member's welfare and if you feel that they are tired or emotional or indeed need a private discussion with you then call a break. Union Representatives may assist an individual to get a point across or remind them of something they may have forgotten but overall the purpose of the meditation is to get the two parties communicating and to agree a resolution between them. It is important to maintain confidentiality as the issues discussed cannot be disclosed in any other forum.

## **8.3 Formal Approach**

If the issue is not or cannot be resolved through the informal process, or through mediation or if the bullying persists, then the formal process should be invoked. It should not be an automatic first step and should only be done following a review of all of the circumstances of the case and should be an evidence-based decision of management.

A formal process involves a formal complaint and a formal investigation. The purpose of any investigation is to determine the facts and credibility or otherwise of a complaint of alleged bullying. It is a significant step and all parties involved need to be aware of the potential consequences. In particular it will make it more difficult to restore normal workplace relations

and may not solve the issue for the parties concerned.

The Code of Practice from the HSA recommends that where an investigation is carried out that the following procedures are carried out.

### **8.3.1 Formal Complaint**

The complainant should make a formal complaint in writing that should be signed and dated. Where this is not possible, a written record should be taken of the complaint by the assigned person and signed by the complainant and dated. The complaint should be confined to precise details of alleged incidents of bullying, including their dates, and names of witnesses, where possible.

### **8.3.2 Terms of Reference**

Once a complaint is received Management should appoint either a designated member(s) of management or, if necessary, (for example in the case of any possible conflict of interest) an independent third party to carry out any investigation. In either case, the person nominated should have appropriate training and experience and be familiar with the procedures involved.

An initial meeting should be organised by the employer at which each person is met with separately, starting with the person making the allegation. The other party, when met with, should be given a copy of the complaint in full and both parties should be given any relevant documents including the company Anti Bullying Policy.

The complainant and the respondent should be advised of the aims and objectives of the formal process, the procedures and approximate ideal timeframe involved, and the possible outcomes. Both parties should be assured of support as required throughout the process and advised of their right to Union assistance.

The investigation should be governed by terms of reference which should include the following and be outlined to both parties. They should be advised that

- ◆ The investigation will be conducted in accordance with the employment's Anti Bullying Policy which should reflect the Code of Practice from the HSA.
- ◆ An indicative timescale should be outlined for the completion of the investigation. This timeframe should explain the rationale behind the timeframe.
- ◆ The scope of the investigation indicating that the investigation team will consider whether the complaint falls within the definition of bullying at work.
- ◆ The confidentiality of the process should be emphasised to all concerned.
- ◆ Statements from all parties, including witnesses, will be recorded in writing as the use of written statements tends to make matters clearer from the outset and maintains clarity throughout the investigation.
- ◆ Copies of the record of their statements, should be given to and agreed with those who made the statements.
- ◆ Copies of all statements, including witnesses, will be shared with both parties
- ◆ Both parties will be advised of their right to seek Union assistance and advised that it would be in their best interests to avail of Union Representation.
- ◆ All parties should continue to work normally, if possible, during the investigation
- ◆ All parties to the process have a responsibility to participate without undue delay in any investigation initiated in response to an allegation of bullying.

### **8.3.3 Investigation**

The objective of an investigation is to ascertain whether, on the balance of probabilities, the behaviours complained of occurred, it having already been established that the behaviours come within the description of workplace bullying. Details of the complaint, responses of the person complained of, witness statements and other relevant evidence.

The investigation should be conducted thoroughly, objectively, with sensitivity, utmost confidentiality, and with due respect for the rights of both the complainant and the person complained of.

The investigator should meet with the complainant and the person complained of and any witnesses or relevant persons on an individual confidential basis with a view to establishing the facts. All parties in the investigation have a right to be accompanied by a Trade Union Representative if they so desire. They can also choose to be accompanied by a colleague of their choice but may not be accompanied by any other person unconnected with the enterprise.

The investigation will consider all material and evidence before it and a decision will be made on the balance of probability, as to whether the complaints are upheld.

### **8.3.4 Appeals**

Within the formal system, an appeals process for both parties should be in place. The reason for the appeal should be outlined in writing to management if such an option is being taken.

The appeal should be heard by another party, of at least the same level of seniority as - but preferably more senior than - the original investigator. This party should have had no involvement in the investigation. The appeal should focus on the conduct of the investigation in terms of fair process and adherence to procedure. The outcome of the appeal shall be final.

### **8.3.5 Management of Malicious Complaints**

A malicious complaint can be described as an allegation being made without foundation, and with malicious intent, where a person knowingly or without regard to whether it is true or not, accuses another person of allegedly bullying them. This could also apply to where one person maliciously complains of someone allegedly bullying a third party, without fully exploring the veracity of the claim.

A malicious complaint has the power to disrupt another person's life to a significant extent and the potential damage should not be underestimated. Being accused of bullying can have a serious impact on any person and reduce his or her reputation in the eyes of others, even if later shown to not have been proven. Those making complaints - and those involved in early assessment of the circumstances of a complaint - should always be mindful of the context and situational aspects of the event and accept the different perspectives and points of view different people bring to the same event.

A malicious complaint, if proven, can have serious implications for the employment of the person making such a complaint including disciplinary action, where established.

### **8.3.6 Investigation Findings and Action Arising**

At the completion of the investigation, both the complainant and the alleged offender will be informed of the outcome of the case.

Effective communication of any outcome is critical. In this regard employers should ensure that outcomes are communicated sensitively and fairly. All parties directly

involved in the complaint (i.e. complainant(s) and respondent are entitled to know whether the complaint is upheld in whole or in part, or if it is not upheld, the reason why). Specific details of disciplinary action to be taken against any party are confidential and other parties are not entitled as a matter of course to receive this information as part of the outcome.

Possible outcomes of the investigation could be:

- ◆ the complaint is upheld as bullying
- ◆ the complaint is not upheld as a bullying
- ◆ the complaint is deemed to be vexatious
- ◆ the complaint cannot be proven as there is not evidence to support the claim

## **8.4 Union Role in Formal Procedure**

Union representatives play an important role in the formal investigation process. There will be times when both the complainant and the alleged offender are members of the same Trade Union. It is important in such cases that you only represent one of the parties and this should be the first person to approach you. Ensure that the other party has similar representation from another Union Representative.

The following guidelines are the same irrespective of whether you are assisting the complainant or the alleged offender. In the first instance you should ensure that the member has copies of the Company policy document and that they fully understand its contents. You should also be vigilant of any specified time frames within the Company policy and included in the terms of reference. You should ensure that both the Company and the person you are assisting meet these time frames. All parties, including witnesses, the right to be accompanied to all interviews.

### **8.4.1 Before the Investigation**

You should meet the individual you are assisting at least a half hour before the investigation commences. This meeting should be conducted in a private area where you will not be disturbed. The individual may want to go through the complaint again. Do this by highlighting the key points that the individual may want to get across. Most of all do your utmost to keep them calm.

### **8.4.2 During the Investigation**

Your role is to ensure that there is a fair hearing. You are not there to defend the person you are with. Remember you are in a neutral position. You do not put words in the mouth of the individual and you do not make derogatory comment about the other party and/or the investigators.

In the investigation, you may assist the individual in getting their point across or remind them of something that they may have forgotten, and you may also ask for a break if required. Notes will be taken during the investigation so it is crucial that you pay attention to what is being said, and you may take your own notes to assist you.

At all times you must treat the investigators with due courtesy and respect. You do not interrupt the investigators, talk over them or interrogate them. You may not like their line of questioning, but it is important to recognise that they have a series of questions that they must put to the complainant and the alleged offender in order to achieve an outcome. Also do not contact the investigators during the investigation process as this may lead to accusations of lack of impartiality against you.

### **8.4.3 After the Investigation**

The individual may wish to discuss the investigation with you. Find a private place to

have the discussion. Ask them how they felt about the interview. They may tell you that they forgot to mention key points. You can advise them that these can be added to the notes that come back from the investigators. You may wish to take this opportunity to explain the next stage of the investigation as laid out in the company procedure or schedule a meeting for this purpose.

After the investigation the investigator notes will be forwarded to the interviewee within a set period. Once the notes are distributed, you and the individual that you are assisting should ensure that the notes accurately reflect what was said during the interview. You should also ensure that amendments are made as necessary and returned promptly to the investigators within any policy time frames. Any key points that the individual would like to include may be presented in writing as an appendix to the interview notes for inclusion to the investigation. These notes must be returned with amendments or points of clarification within a set period. The notes will be passed onto the other party for comment.

## 8.5 External Appeals

### 8.5.1 Workplace Relations Commission (WRC)

If following the completion of a Company investigation and the bullying complaint fails to reach resolution, the matter may be appealed to a WRC Adjudicator under Section 13 of the Industrial Relations Act, 1969.

The WRC's objective at all times is to achieve harmonious working relation between employers and workers. The Commission would always encourage local discussion on and resolution of disputes and issues which arise in the workplace including cases of alleged bullying.

The provision of Adjudication services under Section 13 of the Industrial Relations Act 1969 following the exhaustion of internal procedures (note: the grounds of a referral to an Adjudication Officer is around the conduct of an investigation in terms of fairness and adherence to fair process and procedure). The Adjudicator will not rehear the investigation.

A number of outcomes are possible; the Adjudicator may conclude that the investigation was conducted properly and fairly and hence its conclusions should stand; or the Adjudicator may, on the other hand conclude that the investigation process was flawed in some respect and could recommend, for example, that the investigation be reheard.

The Workplace Relations Commission delivers several other services which may assist.

- ◆ individual and collective workplace mediation focus on seeking to resolve the matter at an early stage locally before a formal process is initiated. This is dependent on the agreement of the parties concerned to participate and is provided by the WRC on an ad hoc basis.
- ◆ Workplace mediation provides a confidential, professional, efficient and effective process to assist all parties in reaching a mutually acceptable agreement or outcome to a dispute or claim. This approach often helps to avoid more formal processes.
- ◆ It is particularly suited to disputes involving individuals or small groups of workers who find themselves dealing with situations which may involve the following interpersonal differences, conflicts, difficulties in working together, breakdown in a working relationship.
- ◆ Reviewing overall workplace relations generally in organisations and assisting with the implementation of positive engagement measures.

## 8.5.2 Health and Safety Authority (HSA)

As well as engaging in promotion and awareness raising activities, the HSA provides a public facing phone and email Workplace Contact Unit (WCU), where workers who consider themselves to be bullied can report their issue. Workers can either report it as a complaint or, if they are seeking information about the topic and/or are unsure as to whether or not their experience is, in fact, bullying, they can contact WCU to make an enquiry.

This latter approach will be recorded as a 'Request for Information (RFI)'. The WCU responds to RFIs by providing either a verbal or written answer to the individual, or, if they are not in a position to answer the query, they will forward the RFI to an appropriate person who will respond.

Where a complaint is made concerning bullying, it can be classified in various ways, depending on its content and the nature of the complaint. The first filter every complaint goes through is to assess whether or not, noting the behaviours complained of, the issue falls within the definition and scope of a bullying.

If the complaint concerns a person who feels they are being bullied, and what they describe falls within the scope of workplace bullying and they report that the employer is not taking any action, that matter will be recorded by WCU and the employer contacted to assess their response and follow up to the matter insofar as the employer's action is concerned.

Where the complaint is that the employer did take action, but the worker is unhappy with the action or the outcome of that action, the role of the HSA is to assess whether or not, insofar as is reasonably practicable, the employer's actions were adequate.

If the complaint is from a person accused of bullying, similarly, the HSA role is the same – to assess the employer's processing of the matter.

In each of the above scenarios, the HSA is a neutral party whose remit is to ensure the safety and health of the worker through the reasonable and practical actions provided for by employers in their systems of work generally and the management of the issue specifically.

The HSA has the statutory remit to ensure employer duties of care to all workers and their management of improper conduct at work, where the hazard of bullying exists, is upheld.

The HSA can, where an employer fails to act reasonably in an existing bullying matter, issue enforcement action in various forms, from verbal advice, written advice, Improvement Direction or Improvement Notice. The HSA can also, after investigation, forward a file, with recommendations, to the Director of Public Prosecution (DPP) for their decision as to the prosecution of employers where there is evidence that the employers have failed in their duty to protect a worker or workers from the harmful fallout of bullying.

The HSA has no role in the sanction or disciplinary actions taken in these matters and does not have a role in mediation, negotiation or conflict resolution between parties to a bullying case.

## 9. Harassment

As detailed in Section 4 the interchangeable use of the words harassment and bullying can lead to a misunderstanding of what each one relates. They are legally distinct concepts and therefore a behaviour can be either bullying or harassment but not both.

We have detailed above the procedures to be followed when investigating workplace bullying and the same procedures should be followed when investigating harassment. In terms of policy documents Companies can have one policy document which encompasses the procedures for processing both bullying and harassment cases. This can reinforce the fact that they are distinct legal concepts.

There are however some differences regarding the manner in which cases of harassment should be investigated and they are detailed below.

An employer is legally responsible for the harassment suffered by workers in the course of their work unless they took reasonably practicable steps to prevent harassment from occurring, to reverse the effects of it and to prevent its recurrence. Employers are expected to have in place accessible and effective policies and procedures to deal with harassment. These measures should be agreed by the employers with the relevant trade union.

As detailed under definitions Harassment is unwelcome behaviour, which can reasonably be regarded as offensive, humiliating or intimidating when such acts are conducted in relation to the nine grounds as stipulated in the legislation.

The Employment Equality Acts prohibits discrimination in all aspects of a person's employment including:

- ◆ Access to employment
- ◆ Conditions of Employment
- ◆ Training or experience
- ◆ Promotion or regrading
- ◆ Classification of posts
- ◆ Vocational Training
- ◆ Equal Pay

There are many forms of behaviour which may constitute harassment including:

- ◆ Verbal harassment - jokes, comments, ridicule or songs
- ◆ Written harassment - including faxes, text messages, emails or notices
- ◆ Physical harassment – jostling, shoving or any form of assault
- ◆ Intimidatory harassment – gestures, posturing or threatening poses
- ◆ Visual displays such as posters, emblems or badges
- ◆ Isolation or exclusion from social activities;
- ◆ Pressure to behave in a manner that the worker thinks is inappropriate, for example, being required to dress in a manner unsuited to a person's ethnic or religious background

The above list is not exhaustive.

#### **Examples of Sexual Harassment may include:**

- ◆ Unwelcome sexual advances;
- ◆ Lewd remarks or innuendoes;
- ◆ Unwelcome objectionable comments about person or dress;
- ◆ Displaying sexually suggestive objects, pictures, calendars, slogans, graffiti, written suggestive materials, pornographic material etc. through electronic mail or otherwise (including a display of pornographic or sexually suggestive pictures or objects)
- ◆ Sexual jokes, stories, comments, use of telephone (including text messages), fax or radio systems for inappropriate suggestive comments, unwelcome comments about dress or appearance
- ◆ Asking personal questions, telling lies or spreading rumours about a colleague's sex life

- ◆ Unwanted sexual advances including unwanted physical contact ranging from unnecessary touching to assault
- ◆ Persisting in unwelcome attempts to form or continue a relationship from which the consent of one party has been withdrawn

The above list is not exhaustive.

## 9.1 Time Scales for Making a Complaint

A complaint of harassment must be made within 6 months of the most recent occurrence of the alleged incident. This may be extended to up to 12 months where exceptional circumstances prevented the making of the complaint within 6 months.

If it is determined by the Company that exceptional circumstances prevented the complainant's case being referred within the time limit, then it may be extended to a period not exceeding 12 months again from the date of the most recent occurrence of the alleged incident.

## 9.2 External Appeals

If following the completion of a Company investigation and the harassment complaint fails to reach resolution, the matter may be appealed to a WRC Adjudicator under the Employment Equality Acts. Using a Company's complaint procedure does not affect the individual's right to make a complaint under the legislation. This is assuming that the individual making the complaint has established discrimination under the nine grounds as stipulated in the Act.

It is important when processing such a case that you remain aware of the timescales for referring to a third party.

# 10. Trade Union Role

Any Policy agreed between Trade Unions and Management should acknowledge the contribution made by Unions as regards the prevention of bullying and/or harassment in the workplace through their participation in the development and implementation of these policies and procedures, and through the collective bargaining process.

Unions also play a role in providing information, advice and assistance to workers who have been bullied and/or harassed at work, and to workers against whom allegations of bullying at work have been made.

## 10.1 Union Representative Role and Responsibility

### 10.1.1 On a day-to-day basis:

It is important that Union Representatives remain aware of what constitutes bullying and harassment and challenge it in the workplace when they see it. They should be vigilant of:

- ◆ Shouting, offensive language, screaming abuse, inappropriate comments about a person's lifestyle or appearance.
- ◆ Individuals who have been isolated.
- ◆ Display of offensive or pornographic material.
- ◆ Derogatory graffiti.
- ◆ Individuals being the butt of practical jokes.
- ◆ The spreading of malicious rumours.
- ◆ Demands for sexual favours, lewd remarks.

- ◆ Shoving, jostling and other unnecessary physical contact.
- ◆ Tampering with a person's personal property or workstation.

### You should also

- ◆ Ensure that you and union members fully understand your company's bullying and harassment procedures.
- ◆ Set a good example by treating all staff and customers with dignity and respect
- ◆ Be alert to unacceptable behaviour.
- ◆ Remember that it is the impact of the behaviour, not the intent that determines harassment.

If you have been approached by either the complainant or the alleged harasser seeking your support, then the single most important message is that all complaints of bullying and harassment must be taken seriously.

### 10.1.2 Some key points to remember:

Some Union Representatives involved in bullying and harassment cases, believe that they are there to defend the person that they are representing. This is not the case. The role of a trade union representative in bullying and harassment cases is as a contact for support and the source of advice the duties of which are as follows:

- ◆ Assist (if required) in formulating complaints or responses to complaints.
- ◆ Ensure that the Company abides by its policy.
- ◆ Accompany the complainant /the alleged offender to the investigation.
- ◆ Assist the complainant/alleged offender in getting across relevant points.
- ◆ Put forward any points that are relevant to the investigation that may have been omitted.
- ◆ Make sure that the investigator's notes are accurate and reflect what was said in the investigation.
- ◆ Attend any re-interviews or appeals.

### Keep Strict Confidence

You should always maintain confidentiality in relation to all matters on behalf of the member. Any breach of confidence on your behalf and/or the individual that you are representing may leave you both subject to the company's disciplinary procedures and may even worsen the situation that the complainant has brought to your attention.

### Act Quickly

There should be no delays, as prompt action must be taken for the sake of the individual you are representing.

### Provide Support

If a Union member comes to you with a complaint always remember that they are entitled to your support throughout the process of dealing with their problem. It may take a great deal of courage for them to arrive at the stage where they have approached you. You must put this individual's complaint at the top of your agenda as once trust breaks down it can rarely be regained.

### Keep Notes

You should keep detailed notes of any meetings and the details of the complaint on behalf of the complainant or the alleged offender. Ask the person you are assisting

to do the same. Bullying for example as opposed to harassment often operates in a cumulative fashion and individual incidents may, when taken in isolation, seem trivial but it is vital that every incident is logged in order to build up the bigger picture. You will need to record not only who was involved but also, what allegedly happened, where the incident took place, when (date and time) and what (if any) witnesses were present.

### **Maintain a Neutral Position**

It is important to remain impartial so that there is no conflict of interest within the Union. Your role is primarily to provide information and support in a confidential, non-judgemental manner to any member who believes they have been the subject of bullying or harassment, or a person against whom a complaint has been made. Taking sides and acting accordingly may put you and the individual you are assisting in a vulnerable position and may even compromise any subsequent investigation.

### **No Conflict of Interest**

You can only support the person who has first approached you and refer the second person to another Union Representative. If for example, you are already supporting the complainant and the person against whom the allegation is made applies to you for assistance, you can neither advise nor support that individual. Instead, refer them to another Representative. This does not mean that you are taking sides.

#### **10.1.3 Guidelines for assisting the complainant:**

- ◆ Inform the complainant of the ways that complaints can be handled.
- ◆ Inform the complainant of the correct procedures for making a formal complaint and ensure that they have a copy of any policy document.
- ◆ Ensure that you and the complainant follow the procedures as stipulated in the policy *verbatim*.
- ◆ Assist if required in compiling the complaint but you do not write the complaint on behalf of the individual.
- ◆ Treat the alleged incident as serious.
- ◆ Support the complainant by being generous with your time and by showing your willingness to actively listen to their issues.
- ◆ Set up confidential meetings with the complainant to discuss the situation.
- ◆ Keep an eye on the deadlines as stipulated throughout the Company procedure.
- ◆ Attend the investigation, any subsequent interview or appeal with the complainant.

#### **Tips for assisting in putting together a complaint:**

- ◆ Allegations should be clear and specific against a named individual.
- ◆ All incidents should be recorded with relevant times and dates of each alleged incident.
- ◆ List the alleged incidents chronologically. Don't skip back and forth.
- ◆ If there are any, put together a witness list to the alleged incidents.
- ◆ Where possible the complainant should submit direct quotations in relation to the alleged incidents.
- ◆ Don't get personal; no derogatory comments should be made about the alleged offender.
- ◆ Don't put words in the mouth of the complainant. This complaint is coming from them not you.

- ◆ Submit any relevant corroboratory evidence with the complaint, this may include, performance appraisal sheets, time sheets, derogatory material etc.
- ◆ State how the alleged behaviour is being perceived as bullying or harassment.
- ◆ Look to the procedures for guidance on the definitions.
- ◆ Ensure that the final statement is signed and dated by the complainant.

#### 10.1.4 Guidelines for assisting the alleged offender:

- ◆ If an informal complaint has been made, advise the alleged offender that it is the perception of the complainant that is important and advise on how to proceed from there.
- ◆ All allegations should be treated seriously.
- ◆ Ensure that the alleged offender has a copy of and fully understands the policy and investigation procedure document.
- ◆ Ensure that you and the complaint follow the procedures as stipulated in the policy *verbatim*.
- ◆ Go through the complaint with the alleged offender and if required assist in putting together a response to the allegations made.
- ◆ Attend the investigation, any subsequent interview or appeal with the alleged offender.
- ◆ Keep an eye on the deadlines as stipulated throughout the formal procedure.
- ◆ Offer your full support to the alleged offender throughout the formal process.

#### Tips for assisting in a response to a complaint:

- ◆ The alleged offender cannot make a response unless the complainant has mentioned specific incidents, e.g. "X has been bullying me for the last two years" cannot be validated.
- ◆ Check if the complainant has set out relevant times and dates of each alleged incident. If they haven't, then bring it to the attention of the investigators when you go into the investigation interview.
- ◆ Prepare a response to each alleged incident.
- ◆ If there are any, put together a witness list of those who may be able to assist the alleged offender.
- ◆ Determine if the behaviour is repetitive, as per the definition of bullying.
- ◆ Don't get personal; no derogatory comments should be made about the complainant or any past behaviour in any form.
- ◆ Don't put words in the mouth of the alleged offender; you're not there to put together their defence.
- ◆ Ensure that the alleged offender signs the final statement.
- ◆ Do not contact the investigators during the investigation process.

#### 10.1.5 Ten Guidelines for the Trade Union Representative

##### You do not:

1. Judge the complainant or the alleged offender.
2. Comment on the allegations or display your feelings.
3. Make decisions for the complainant/alleged offender.
4. Write the complaints or defence for who you are assisting.
5. Adopt a position in relation to the party you are assisting.

6. Criticise or intimidate the investigators.
7. Approach witnesses, investigators or the other party's union contact for feedback.
8. Discuss the case, gossip or breach confidentiality.
9. Trivialise the case.
10. Give up or let the member down.