



Law Society
of Scotland

Preventing Bullying and Harassment

Guidance for Individuals, Firms, and Organisations

March 2017



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This is the update of guidance first issued by the Society in 2011, with the assistance of independent consultants, EW Group. The first edition followed research the Society commissioned on the prevalence of bullying and harassment in the legal sector, and undertaken by EW Group. The research underpinning the first edition of the guidance is available here: "[Preventing Bullying and Harassment in the Profession](#)".

This edition has been updated by the Society to take into account developments in this sector and to reflect changes in the support and resources available since the first edition was published.

Overview: Bullying and Harassment in the Legal Profession

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Workplace bullying and the consequences of that for individuals and businesses in the UK can be severe. Legal excellence requires a well-motivated and fairly treated workforce. This guidance serves the needs of members by providing practical and relevant advice, and sources of support to individual and employers, so that they can prevent bullying and harassment occurring, and deal effectively with any instances which do occur.

What is bullying and harassment?

There are many definitions of bullying and harassment. These terms are used interchangeably and many definitions include bullying as a form of harassment.

Bullying is often described as the process whereby an employee is intimidated, mistreated or humiliated. It can be characterised by offensive, malicious or insulting behaviour which is designed to undermine the confidence and capability of the victim.

Harassment can be described as unwanted behaviour which affects the dignity of people at work. It may be persistent or an isolated incident. Either way, the key is that the actions or comments are seen as demeaning or humiliating and are unacceptable to the recipient.

In addition, "harassment" which is related to "a protected characteristic" is a form of conduct expressly prohibited by the Equality Act. S26 of the Equality Act 2010 provides that "A person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B."

The protected characteristics under the Equality Act are race, gender, age, disability, religion or belief, sexual orientation, gender reassignment, pregnancy and maternity, and marriage and civil partnership.

Examples of bullying/harassing behaviour include:

- ridiculing or demeaning someone in person or online;
- exclusion or victimisation;
- spreading malicious rumours or insulting someone either by talking about the person or posting comments online;
- inappropriate intrusive questioning, particularly into personal and domestic life;
- overbearing supervision;
- deliberately undermining an employee by overloading and constant criticism;
- unwelcome sexual advances – touching, standing too close, inappropriate language or behaviour, display of offensive material;
- preventing employees progressing by intentionally blocking promotion or training opportunities; and
- abusing a position of superiority to unreasonably cast doubt on ability.

Workplace bullying and harassment can occur in various forms. It can be face to face, occur in emails, comments posted online, comments or images posted on social media sites or visual images, through other written communications or over the phone. It can be hard to recognise. It may be carried out by an individual against another individual, by someone in a position of authority such as a manager or a supervisor or a third party such as a customer, client, supplier, committee member or panel chair. It may also involve groups of people for example, a group acting together to isolate another colleague.

A one-off incident can amount to bullying or harassment. There is no requirement that an individual explains to the other person that the conduct is unwanted.

It can occur during working hours or in other situations where there is a connection with the workplace or colleagues or has an impact on their relationship with colleagues or clients. For example comments posted online out of working hours may still amount to bullying or harassment. Similarly, conduct which occurs during work related social events may also come within scope.

What is the impact of bullying and harassment?

The impact of bullying and harassment to individuals and organisations are well researched. Bullying and harassment makes the victim anxious and humiliated. The individual may suffer stress, loss of confidence and self-esteem leading to illness, absence from work and even resignation. We are aware that bullying and harassment may lead people to leave the profession altogether, and the Society is keen to ensure this does not occur.

The costs to the business may include low morale, inefficiency, long term illness, potential recruitment and retraining costs due to the loss of staff. There may also be reputational damage to the organisation. Job performance is almost always affected and employee relations in the workplace suffer.

There will also be a direct cost to the business should an employee make a successful claim to the Employment Tribunal for constructive dismissal or for harassment amounting to discrimination under the Equality Act 2010, as well as any associated legal costs. A successful claim against an employer will also damage the reputation of the organisation as an employer and, potentially, to prospective clients. A claim

of harassment may also prejudice a firm's prospects when tendering for new business as those looking to appoint new providers will often ask for details about a firm's record of claims or complaints.

What can individuals and/or employees do?

1. **Identify early warning signs.** Some early warning signs may include:

- the working relationship feels different from any you have previously experienced;
- you are being persistently 'got at';
- your work is being criticised even though you know that your standards have not slipped; and
- you start beginning to question whether these mistakes you are supposed to have made really are your fault.

If this is an accurate picture of what is happening to you at work, reflect on what has happened in the recent past and consider the following:

- what has changed?
- do you have a new boss?
- do you work for two bosses and there is tension between them?
- has pressure on your current boss increased?
- have you recently changed jobs?
- are your objectives being repeatedly altered?
- have you been asked to do things outside your job description?
- are you under more personal scrutiny?
- are you feeling less involved?

2. **Identify options and decide on a course of action.** If you feel you are being bullied or harassed, there are a number of options to consider. It is always worthwhile trying to resolve a matter informally and at an early stage before the matter escalates. The most important issue is getting help and taking constructive steps through formal or informal routes. Writing a diary of problems and building up evidence is not recommended as a means of resolving conflict. The following steps should be considered

- if you are able to do so, tell the person to stop whatever it is they are doing that is causing you distress as they might not realise what effect their behaviour or actions is having on you - if you find this difficult you could ask someone else to act on your behalf
- talk to your manager or, if it is about your manager, speak to someone in HR or another manager or partner in the firm. We recognise this can be difficult, particularly if these people are seen by you as part of your employers' management structure, and that in smaller organisations you may feel that there is no one else you can talk to. In these cases we strongly recommend that you contact LawCare and ask them for help and support on resolving this matter informally.
- larger employers may have confidential employee support schemes you could access.
- find out if there is access to mediation or staff who are trained in conflict resolution or dealing with matters at an early stage;

- if you have exhausted informal options or you don't consider this can be dealt with informally and you decide to make a formal complaint, follow your employer's procedure. Your employer is required to have a grievance procedure, so this should be available to you.
- if you have raised a formal complaint then keep copies of anything that is relevant, for instance letters, memos, notes of meetings or emails.

3. **Be aware of and use available resources and support.** These include:

- **LawCare** is a free confidential helpline, entirely independent from the Society but funded by us to support our members. LawCare can also come to your faculty and provide CPD (at a small fee covering only transport and materials) on bullying and harassment, stress, and other issues. Contact: www.lawcare.org.uk, 0800 279 6888
- **ACAS** provides guidance for employers and employees on bullying and harassment at work. They also have trained mediators. Contact: 08457 47 47 47; www.acas.org.uk
- **Trainee Helpline** the Society runs a free, confidential helpline for trainee solicitors. Contact: 0131 476 8162

What can firms or employers do?

1. **Learn about the issue of bullying and harassment** in the legal profession. It is in the interest of firms and the legal profession to promote a safe, healthy and fair work environment. Bullying and harassment can create serious problems for firms and employers, including:

- increased use of sick leave;
- high staff turnover – increased recruitment and training costs, impact on products, services and clients;
- demoralising impact on rest of team;
- low morale and reduced productivity;
- poor performance and increased mistakes;
- direct and indirect financial costs, e.g. through employment tribunals; and
- damage to the organisation's reputation.

One of the particular problems in the legal profession is the reluctance to report bullying and harassment. The research conducted in 2011 into bullying and harassment in the Scottish legal profession found that a common theme was partners bullying lawyers and trainees on their performance. “In a high-pressured environment where many managers lack the time or skills to manage performance effectively, a bullying approach may seem like the best or only way to boost performance.” [Preventing Bullying and Harassment in the Profession study 2011](#)

One of the key measures to reduce bullying as a form of performance management is to ensure that lawyers who are promoted into roles involving supervision, should be given training in people management before they supervise staff.

Other key themes identified in the research were:

- training by humiliation;
- repeat or patterned victimisation;
- bullying not addressed because senior people implicated;
- bullying under-reported because of fear of losing job/traineeship;

It may also be viewed as easier in some firms to turn a blind eye rather than address such behaviour, particularly if the person involved is seen as important in other ways, such as being senior or key to business development, or generation of fees. We would encourage firms and organisations to tackle all examples of bullying irrespective of the personalities involved and strongly believe that doing so will reap rewards in terms of positive engagement from all of your people, who will feel more secure in their work environment.

There are proactive steps which firms can take to discover whether there are problems around bullying or harassment which are outlined below.

- 1. Carry out confidential staff surveys on an annual or bi-annual basis.** Staff surveys can be an effective means of taking a temperature test within an organisation to understand whether there are any pockets of bullying or harassment within teams, or whether there are wider issues. Equally as important within this process is acting on problems reported from the survey information by carrying out action planning. Future surveys should review whether progress has been made in particular areas.
- 2. Conduct exit interviews with staff to understand why they have left.** This may be the only time a person is willing to divulge that they have left because of the behavior of a particular person. Think carefully about who can see these interviews and who may have the power to edit the details.
- 3. Create a formal policy or statement of commitment.** Employees do not always feel able or confident enough to complain, particularly if the harasser is a manager or senior employee in the business. It is, therefore, important for employers to ensure that employees are aware of the options open to them for dealing with bullying and harassment. A clear policy or statement on bullying and harassment is the first step.

Two policy models - one on "Dignity at Work " and another on "Bullying and Harassment " - are outlined below.

Creating a policy can and should be a simple process for all employers, whether a large or small firm, or a legal team.

It should include:

- a clear statement from senior management that bullying and harassment will not be tolerated, and/or a clear statement of the firm's commitment to working towards a work environment in which all employees are treated fairly and with respect and dignity by fellow employees, managers, partners and clients alike.
 - examples of unacceptable behaviour including treatment by clients and customers that will not be tolerated; and
 - a statement that bullying and harassment may be treated as disciplinary offences.
- 1. Provide clear guidance and/or procedures for the policy.** To ensure that the policy is implemented, firms should provide written guidance and/or procedures that include:
 - how to make a complaint and who it should be made to;
 - a statement that complaints will be dealt with promptly, sensitively and confidentially;
 - reference to grievance procedures (formal and informal), including timescales for action;
 - an explanation of the investigation process, outlining timescales;
 - be clear that unfounded allegations made maliciously will be investigated and dealt with in accordance with disciplinary procedures.

2. **Provide training especially to for managers.** Managers should always be chosen on the basis of their ability to manage rather than on, say, a time-served basis. Employers should provide appropriate training for managers not only regarding the policy and the process but also how to deal with the victim and the person accused of bullying or harassment. Training should cover the fact that employees may be held personally liable for harassment and named as a party in discrimination proceedings in the Employment Tribunal.

Effective training should build awareness, knowledge and skills around bullying and harassment and creating a workplace culture of dignity and respect.

An effective way to provide training in this area is to integrate the topic into other trainings such as:

- managing performance
 - effective communication
 - conflict styles
 - managing and resolving conflict
 - managing teams
 - unconscious bias
3. **Build a workplace culture of effective response to complaints.** An effective response to a complaint of bullying or harassment is critical to early resolution and minimising the destructive impact of the conflict. Firms should consider having a senior person available to deal with any complaints from all members of the firm. That person has an important role in generating trust in their role, and ensuring that it is understood they will be someone who will deal with all complaints fairly.

Effective responses include:

- **taking the complaint seriously.**
- **investigating the complaint promptly and objectively.** A reasonable investigation would include the impact of the alleged behaviour and the perception of the complainant. Harassment/bullying may be perceived differently by different people. Behaviour which is considered bullying by one person may be considered firm management by another. It is, therefore, important for employers to gather and review the evidence and ask themselves whether what has taken place could reasonably cause offence.
- **if the complaint by your employee involves the employee of a client you will have to consider how to involve the client in investigating and resolving the issue.** For other third party harassment complaints, it will be necessary to consider how they can be tackled, for example by considering using their employers' complaints procedure, or by developing an "Unacceptable Actions by Service Users Policy". Such a policy can be used to manage the behaviour of and contact with third parties with whom your staff are required to interact.
- **exploring possible ways to resolve the issues.** In some cases it may be possible to deal with the issue informally. Sometimes people are unaware of the effect that their behaviour is having. An informal discussion with agreement that the behaviour will cease, may resolve matters.
- **where an informal resolution is not possible, the employer may decide that the matter is a disciplinary issue which needs to be dealt with in accordance with the organisation's**

disciplinary policy. As in any disciplinary issue, it is important to follow a fair procedure. ACAS publishes a Code of Practice for Discipline and Grievance which sets out basic and practical guidance to employers, employees and employee representatives. This can be found at: <http://www.acas.org.uk/index.aspx?articleid=1774>.

It is important to note that in any disciplinary procedure the employee must be given fair notice of the allegations and the evidence which supports the allegations.

- **providing appropriate resources and options such as mediation, counselling and training.** Employees may find counselling and mediation helpful and employers may wish to use the services of external companies and organisations who offer this service. Larger organisations may wish to consider training their own in house counsellor or mediator.
- **REMEMBER** – behaviour such as bullying and harassment can be viewed as professional misconduct. We would encourage anyone to report such conduct to the Scottish Legal Complaints Commission. The Commission has a role in acting as a gateway to the legal complaints system, and will refer complaints of professional misconduct to the Society to investigate and act upon if appropriate.

4. Additional sources of support and guidance for employers

- **ACAS:** Provides on-line guidance to employers as well as employees, and provides training for managers, supervisors and HR professionals to develop the necessary skills to deal with employment relations issues. www.acas.org.uk
- **Business Gateway:** Provides practical help, advice and support for new and growing businesses in Scotland. There is advice available on employing people. www.bgateway.com

Model Policies

Below are two examples of bullying and harassment policies adapted from Skills Development Scotland (Example 1) and CIPD (Chartered Institute of Personnel and Development) (Example 2).

- Example 1 is a typical policy that addresses bullying and harassment by focusing on defining negative behaviours.
- Example 2, Dignity at Work Policy, is an example of a policy that aims to identify positive behaviours and the benefits they can bring to organisations and individuals.

These policies are not intended to be prescriptive. Organisations should adapt these policies to take into account their own organisational size, structure and culture.

Example 1: Preventing Workplace Bullying and Harassment Policy

Introduction

Our organisation is committed to treating every member of staff with dignity and respect at work or in the course of their work. It is our policy to ensure, as far as reasonably practicable, that all employees are able to work in an environment free from bullying and harassment.

Unacceptable behaviour

There is no single definition of what constitutes unacceptable behaviour. What is acceptable behaviour to one member of staff may not be acceptable to another. We should all be aware of the effect that our behaviour or language may have on others.

There are various types of behaviour which are forms of, or could lead to bullying and harassment. They can have a detrimental effect on both individuals and the organisation, significantly lower staff morale and motivation, cause increased absenteeism and turnover of staff and, in some cases, end in legal proceedings.

Although unacceptable behaviour may be repetitive, a single incident may be serious enough to merit immediate disciplinary action. Bullying and harassment do not necessarily occur on a face to face basis. They might also be through written, email, text or telephone communication, social networking sites, comments posted online, downloading offensive materials or graffiti. Behaviour outside the workplace can fall within the scope of the policy.

Useful definitions and examples

Harassment

ACAS describes harassment as “unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

Examples could include:

- physical or verbal abuse or intimidation.
- jokes, banter, insinuations, insults and taunts based on a person's nationality, age, sexuality, religion etc.
- asking intimate questions about a person's disability.

Harassment does not depend on the intention of the offender, but on the impact of their behaviour on the victim. What one individual may find acceptable may be unacceptable to another.

Bullying

ACAS describes bullying as: "Offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient". Examples could include:

- aggression or verbal abuse.
- withholding information from or deliberately excluding an individual.
- making others feel upset, humiliated, threatened or vulnerable.
- excessive or under supervision.
- overruling a person's authority or undermining skills and capabilities.
- setting impossible objectives.

The difference between bullying and legitimate exercise of management authority should be clear. Managers have to be able to manage their staff, for example by:

- issuing reasonable instructions and expecting them to be carried out.
- setting expected standards of performance supported by the performance management framework.
- giving legitimate, constructive and fair criticism of performance or behaviour at work.

Carrying out these duties in a fair, reasonable and consistent manner does not constitute an act of harassment, victimisation, discrimination or bullying. Managers should ensure that they perform these duties whilst upholding the principles of this policy and respecting the dignity of employees.

Procedures for dealing with inappropriate behaviour

The aim of this policy is to stop undesirable and offensive behaviour. Where appropriate, every effort should be made to resolve the situation informally, although it is recognised that some incidents, by their serious nature, will need to be dealt with under the organisation's formal procedure from the outset. Employees are encouraged to seek to resolve any issues on an informal basis as they arise. Where necessary, formal complaints should be made as soon as possible following the incident(s) and follow the organisation's complaint process and procedures. All complaints must be taken seriously and dealt with confidentially and promptly. Where formal disciplinary procedures are commenced as a result of an allegation made, information about the allegations, and the evidence supporting them will require to be

disclosed to those involved in the process. However any information disclosed must be kept strictly confidential, and must not be discussed outwith that process.

Policy responsibility

All employees

- be aware of their own behaviour and its effect on others, ensuring that they remain above reproach at all times.
- consistently demonstrate behaviour which is professional, conducive to team-working and respectful of colleagues and customers.
- support any colleague who feels they have been harassed or bullied and encourage them to seek help from an appropriate source.
- remembering that unless unacceptable behaviour is reported then no action can be taken to deal with it.

Managers

- proactively endeavour to ensure that their team works in an environment which is free from harassment, bullying, victimisation and discrimination.
- lead by example through a fair and open management style.
- ensure that all employees for whom they have responsibility are aware of and understand the policy and procedures in relation to dignity at work, diversity and equal opportunities.
- act upon any inappropriate behaviour (in line with this policy and the Disciplinary Policy and Procedure). It is not acceptable to do nothing as you and the organisation may later be held accountable for lack of action.

Employer

As an employer, the organisation must take all reasonably practical steps to ensure that:

- all employees are able to work in a safe and non-threatening working environment.
- all managers and other employees are equipped to identify and deal with issues related to harassment, bullying, victimisation and discrimination.
- all reasonable steps, including appropriate training and advice are in place to prevent the occurrence of harassment and/or bullying.
- all complaints are dealt with sensitively, effectively, professionally and quickly.
- incidents of unacceptable behaviour are monitored and issues arising addressed.
- policy and procedures are reviewed regularly.

Example 2: Dignity at work policy

Statement of commitment

Our organisation is committed to working towards creating a workplace in which all employees are treated with dignity and respect.

The aims of the Dignity at Work Policy are to:

- ensure the dignity at work of all our employees
- promote respect and value of differences
- make full use of the talents of all the workforce
- demonstrate our commitment to equal opportunities for all
- prevent acts of discrimination, exclusion, unfair treatment and other negative or demeaning behaviours
- promote effective and constructive communications
- support effective handling of conflict
- educate our workforce in the development of positive behaviours

Benefits of the policy

The organisation recognises that everyone benefits from a workplace that promotes a fulfilling and productive working relationship; encourages the constructive discussion of differences of views and approaches; and, deals firmly but fairly with negative behaviours, including bullying and harassment.

This approach benefits the organisation and the employee by:

- providing clear examples of the positive behaviours that it expects from all its employees
- providing training and support in resolving difference and conflict
- monitoring the organisational culture and climate
- providing effective and fair processes and procedures for dealing with negative behaviours including bullying and harassment.

Principles of the policy

Our organisation will:

- protect the dignity of all our employees.
- review all policies and procedures so that they are consistent with the principles of justice, fairness and respect for employees and the organisation.
- ensure that there are appropriate procedures, systems and campaigns in place to promote the dignity of the employee at work.
- educate all employees on their personal responsibility to behave in a way that respects the dignity of fellow workers.

- audit and review the key indicators of adherence to the dignity at work standards.
- provide advice, information and support that protects the dignity of our workers.
- raise awareness of the Dignity at Work Policy and Procedures, making training and education available at all levels in the organisation.
- develop systems to assess the effectiveness of our actions and intervention.

Resources

The Law Society of Scotland: Trainee Support

The Society provides a dedicated help and support service specifically aimed to meet the needs of trainees. Trainees can contact the Society to discuss any issue they might have with their traineeship on a confidential or anonymous basis with an experienced member of staff who can offer guidance, advice and assistance for individuals who need help in dealing with issues or difficulties affecting their traineeship.

The service is there to assist trainees whether they are seeking formal intervention or simply looking to be able to discuss the issue without formal action being taken.

Contact Details:

Website: www.lawscot.org.uk/traineesupport

Email: katiewood@lawscot.org.uk

Tel: 0131 476 8162

LawCare

LawCare is charity which promotes and supports good mental health and wellbeing in the legal community. Its website is a resource for advice, and it runs a free confidential helpline, which is available to Society's members, trainees and registered paralegals.

Contact details:

Website: www.lawcare.org.uk

Tel: 0800 279 6888 (9am – 7.30pm Monday to Friday, 10am – 4pm at weekends)

Stonewall

Stonewall is an organisation dedicated to supporting lesbian, gay, bi and trans people. It can provide help and advice to individuals and to organisations.

Contact details:

Website: www.stonewall.co.uk

Info Line: 08000 50 20 20

Equality Advisory & Support Service (EASS)

The EASS runs a helpline which provides advice and assistance to individuals on issues relating to equality and human rights, across England, Scotland and Wales. The service can also accept referrals from organisations which, due to capacity or funding issues, are unable to provide face to face advice to local users of their services. The website also has template letters and advice and information for individuals, employers and organisations.

Website: www.equalityadvisoryservice.com

Helpline: 0808 800 0082 and Text phone 0808 800 0084 (open Monday – Friday 9am to 7pm, Saturday 10am to 2pm)

Bully OnLine

Bully OnLine is an online resource centre covering bullying in the workplace and other related issues.

Contact details:

Website: www.bullyonline.org

ACAS

ACAS provides guidance for employers and employees on all aspects of a working relationship, including bullying and harassment at work.

Contact details:

Website: www.acas.co.uk

Tel: Helpline on 0300 123 1100

Trades Union Congress

Trade Union Congress provides information on bullying and harassment for employees, trade union representatives and links to other sites and campaigns, including details of unions specific to work sectors.

Contact details:

Website: www.tuc.org.uk

Tel: 020 7636 4030

Business Gateway

Business Gateway is an information service for businesses in Scotland. It provides details of support around finance, premises, training, tendering and free business workshops, along with information resources, link directories, business news and events. This includes information on all aspects of managing employees, including tackling bullying and harassment.

Website: www.bgateway.com

Tel: 0300 013 4753

Age UK

Age UK is a charity dedicated to helping everyone make the most of later life. This includes information about employment rights and discrimination.

Website: www.ageuk.org.uk

Tel: 0800 169 8787



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of Scotland

For further information, please contact:

Elaine MacGlone
Education, Training and Qualifications
Law Society of Scotland
DD: 0131 226 8887
elainemacglone@lawscot.org.uk