

GUIDANCE

Harassment – for employees and students

1. What constitutes harassment?

The legal definition of harassment is unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment. However, in reality harassment is difficult to define and may take many forms. It can range from violence and bullying to less obvious actions such as ignoring someone at work – a single act or comment can constitute harassment in certain circumstances.

A key concept is that harassment is defined by the perception of the victim (i.e. how it feels to the recipient) rather than by the intent of the person causing offence. It cannot, therefore be excused or justified by claiming that it was unintentional or humorous – action which would be acceptable, even welcome, to one recipient may be harassing to another. It is important to remember that in the University context, harassment is relevant to relations between staff and students alike.

Some examples are given below of behaviour which may constitute harassment. It is not exhaustive, nor does inclusion in the list mean that in all circumstances such behaviour is necessarily unacceptable; regard must always be had to the context in which it occurs.

Sexual Harassment: any unsolicited or unwelcome sexual advance; request for sexual favours; inappropriate comments; inappropriate physical contact.

(The above may be accompanied by the condition whereby submission to such conduct would lead to (or have a detrimental effect on) employment status, promotion, academic assessment, etc.)

Racial Harassment: abusive language or jokes; name calling or patronising remarks; display or circulation of offensive written or visual material, including graffiti; physical threats, assault, or insulting behaviour or gesture; open or organised hostility to staff or students; unfair allocation of work or responsibilities; exclusion from the normal social intercourse of the group concerned; inappropriate or intrusive questioning or pestering.

Harassment on grounds of sexual orientation: jokes about specific individuals or group of individuals; innuendo or gossip; expressing or acting on stereotypical assumptions; failure to accept that in appropriate circumstances, partners need to be recognised as such; exclusion from departmental activities; displaying offensive material on screen or in written form.

Harassment of persons with disabilities: impractical or unfair work expectations; undue pressure or intimidation; offensive language, name calling, or targeted jokes; failure to accept or work with any limitations the disability may cause; giving uninvited, patronising, or unnecessary assistance; making unsubstantiated assumptions about the disability and its implications and acting upon them.

Bullying

Bullying is a form of personal harassment which makes the recipient feel threatened, humiliated or patronised and creates an intimidating working environment. It can result in under-performance, absenteeism, stress-related illness and can damage or block career prospects. In the University context bullying can include:

- setting arbitrary or unreasonable workloads or deadlines;
- inappropriate and derogatory remarks in connection with performance;
- aggressive behaviour, physical or verbal;
- unreasonable conduct which interferes with dignity or privacy;
- unreasonable conduct, aggressive or otherwise, which over a period of time undermines an individual's self-confidence;
- an abuse of power by a superior in such matters as appraisal, promotion, discretionary pay and area of research.

2. Responsibilities of Managers in dealing with Harassment:

Heads of School and staff with responsibility for others are required to take appropriate action to ensure that harassment does not occur at the University.

Specifically:

- to inform all employees responsible to them on appointment that harassment will not be tolerated;
- to take early action to stop any apparent harassment and to warn employees whose behaviour might give cause for concern;
- to provide a supportive framework within the arrangements contained in the Policy Statement and the Notes of Guidance for those who wish to complain about harassment; in doing so they must however remain mindful of the rights of those against whom a complaint is made;
- to arrange appropriate advice and guidance, if necessary in conjunction with the Human Resources Office or Counselling & Wellbeing Services, for those whose actions, whether deliberate or not, may expose them to accusations of harassment.

3. Liability (the legal context):

In summary you should remember that:

- An employer can be held responsible for discriminatory acts of harassment by employees' during the course of employment whether these occur with or without the employer's knowledge or approval. However, if the employer takes all reasonable practicable steps to prevent its employees from committing discriminatory acts the employer will not be held to be vicariously liable;
- As well as an employer being liable for the acts of employees, employees may themselves be personally liable. It is open to a complainant to proceed separately against both the employer and the employee and if successful to recover compensation against both;
- There is no statutory limit to the amount of compensation which may be awarded against an employer or against an employee.
- Remember - if legal action is begun or threatened against an employee it is essential that he or she immediately consult the Director of Human Resources.

4. Advice to Students

Although harassment is a rare occurrence, you may encounter it in some form during your time at the University. As this may have a detrimental effect on your studies, you should feel free to discuss your concerns with someone at the earliest opportunity.

It is usually possible to resolve the situation informally (for example approaching the person causing offence and explaining why the behaviour is unacceptable) but there may be occasions where you need to speak to someone on a formal basis. This person may be your Personal Tutor, your Hall Warden, an officer from the Students' Union or one of the Harassment Advisers who will assist you in reaching a resolution and if necessary, arrange informal mediation.

Should the situation not be resolved by informal means, then you would be given advice on the most appropriate formal procedure for instance, through the Student Complaints Procedure (if the harassment involves a member of staff) or Regulations of Conduct (if the harassment involves a fellow student). In some cases you may also be advised to report the matter to the Police. The University has a duty to ensure that all the procedures are fair and if you make a formal complaint you will be asked to put your case in writing for transmission to all involved, including the person you feel is causing the problem.

5. Sources of information and support for employees and students

The remedies open to employees and students are described in the University's Policy Statement of Harassment. If at any stage you want advice on what to do or are uncertain as to where to turn, information and advice is available from the following sources:

Employee contacts:

- Harassment Advisers: (Names are published at http://www.reading.ac.uk/web/FILES/humanresources/humres-harassment_adviser_profiles_and_contact_details_January_2016.pdf and are also available from the Human Resources department)
- Human Resources Tel: 0118 3788751
<http://www.reading.ac.uk/internal/humanresources/>
- Trade Union Representative
<http://www.reading.ac.uk/internal/humanresources/WorkingatReading/humres-tradeunions.aspx>
- Your Manager

Student contacts:

- Harassment Advisers: (Names are published at http://www.reading.ac.uk/web/FILES/humanresources/humres-harassment_adviser_profiles_and_contact_details_January_2016.pdf)
- Personal Tutor
- Hall Warden
- Students' Union Officer
- To **report harassment** you can do so in confidence by emailing: harassment@reading.ac.uk

Any such approach will be treated in strict confidence unless there is an unacceptable risk to the complainant, another person or to the institution.

6. Mediation and Conciliation Guidelines

Whenever a person acts in an attempt at informal mediation and conciliation, they should as far as possible work within the following guidelines.

a) Your role as mediator

The role of a harassment adviser or any person attempting informal mediation and conciliation in response to an allegation of harassment is to listen effectively to the complainant, to clarify the options open to them, and to assist them towards a resolution insofar as is possible.

In so doing, they may be called upon to preside over a meeting attended by both the complainant and the person whose alleged conduct has given rise to the complaint. The spirit of any mediation and conciliation meetings should not be one of accusation, but of attempting to demonstrate why feelings have been hurt and exploring how such incidents might be avoided in future.

b) Conflict of Interest and Referral

An adviser, or any other person called upon to act, may not always be able to advise a particular complainant, especially where they have a line-management role in respect of the person about whom the complaint has been made (in which case they might subsequently have to take a different role should formal proceedings ensue). In these circumstances the adviser approached should refer the complainant to another adviser or appropriate person in the University.

c) Conducting the initial meeting with the complainant

i) Booking a room:

For initial meetings with complainants, advisers should ensure that they have a private room, free from interruptions, and can be available for such a meeting for at least an hour.

ii) Confidentiality and the caveat of 'unacceptable risk':

When first meeting a complainant the adviser should confirm that confidentiality will be maintained between them unless there is an unacceptable risk to the complainant, another person or to the institution. It is important that the complainant fully understands the implications of this caveat.

The complainant should also be advised that it will almost certainly be impossible to take a complaint any further without some disclosure of the identity of the complainant occurring. But it will be appropriate to reassure the complainant that confidentiality will be maintained within the institution as far as possible, and that no disclosure of identity will occur without the complainant's permission (subject to the caveat about unacceptable risk stated above).

iii) Clarifying the options available to the complainant:

Once the adviser has listened to and understood the problem raised, it may be appropriate to outline one or more of the following options available to the complainant:

- do nothing – it may be sufficient for the complainant to have talked to someone;
- self-referral to another, more specialist, source of help – e.g., counsellors;
- at this stage approach the alleged harasser personally to air the concern and distress felt;
- other informal action;
- attempt to arrange a mediation and conciliation meeting to be attended by the complainant and the alleged harasser with a view to resolving the problem;
- formal action by raising a grievance under the grievance proceedings.

The adviser should attempt to explain clearly all the options available to the complainant, and advise the complainant to think about these before deciding upon a course of action. Where the complainant determines to take no further action the adviser must respect this decision, even if of the opinion that further action would have been appropriate (unless there is an unacceptable risk as outlined above).

7. Arranging and conducting mediation and conciliation meeting between the complainant and alleged harasser:

In many cases the mere fact of bringing the matter to the attention of the person against whom a complaint of harassment has been made (the alleged harasser) will be sufficient to bring the problem to an end and to clear the air. Where it does not, a meeting between the complainant and the alleged harasser may achieve the same purpose.

i) Protecting the rights of the alleged harasser:

In arranging the meeting you must make every effort to protect the rights of the alleged harasser. After all, at this stage the complaint has not yet been substantiated. The efforts of the adviser must include the following:

Where the complainant agrees to the suggestion of such a meeting, the adviser should not arrange a meeting until he or she has raised the matter of the complaint with the alleged harasser, and given them time to collect their thoughts and prepare to respond.

It must be made clear to the alleged harasser that participation in an attempt at mediation and conciliation is entirely voluntary. In the event of any formal grievance or disciplinary proceedings no adverse inference will be drawn from a refusal to participate in any informal mediation.

It would usually be appropriate to indicate to the alleged harasser and the complainant that by accepting the recommendation for an informal mediation and conciliation they are demonstrating a willingness to seek an amicable solution, which will enable the working relationship between the two parties to be restored.

ii) Deciding who should be present at the meeting:

According to the response of the alleged harasser in communications prior to the meeting as detailed above, the adviser should choose between slightly different formats for meetings:

Option 1:

The more informal, and so probably more appropriate where there is a strong likelihood of an amicable resolution, would involve bringing the two parties together in the presence of the adviser and nobody else;

Option 2:

The less informal, and so probably appropriate where there is a potential for differences between the parties to become heated in the course of the meeting, would involve the adviser, the two parties, a representative of the Human Resources Office, and 'friends' of the parties such as Trade Union representatives. A student may wish to bring someone from the Students' Union, their Personal Tutor or Hall Warden.

iii) Booking a room:

Advisers must ensure that they have a private room, free from interruptions, and which is available for at least an hour.

iv) Conducting the meeting:

Regardless of whether options 1 or 2 (as above) are used, the adviser should enable each party to give his or her version of events in a non-prejudicial way, and by so doing should endeavour to enable the other party to understand the first party's point of view.

Where such mutual understanding can be reached, the adviser should endeavour to get the parties to identify actions or agreed standards of behaviour which both parties agree would help to avoid problems in future, and which both parties are willing to accept. Where agreement on such actions or agreed standards of behaviour can be reached they should be recorded in writing.

8. Next steps following a successful mediation and conciliation meeting:

After the meeting, the adviser should write to the two parties (with copies to any other people present) noting that the meeting took place, and recording the agreed actions and standards of behaviour. The situation should be reviewed after a certain period of time, perhaps 4 – 6 weeks, to check that the agreement is being adhered to and that no further issues have arisen.

You should notify Human Resources that the meeting has been successful and forward all confidential paperwork to be stored securely.

9. Next steps following an unsuccessful mediation and conciliation meeting:

As soon as it becomes apparent that this informal method of mediation is unlikely to produce a satisfactory resolution then the adviser should terminate the meeting.

The adviser should subsequently meet with the complainant again, and clarify the options open at that point, which would include making a formal complaint through the University's Grievance Procedure for a member of staff or for a student through the Student Complaints Procedure or through Regulations for Conduct.

In these circumstances there is no obligation for the adviser to seek further contact with the alleged harasser, but it is not unlikely that he or she will seek advice from the adviser about what further consequences there may be, and the adviser must be willing to provide such advice.

The adviser should inform the alleged harasser of the options open to the complainant, and reassure him or her that if a decision is taken to take the matter further he or she will be informed. In some cases the complainant may be advised to report the matter to the Police.

The adviser must notify Human Resources that the meeting has been successful and forward all confidential paperwork to be stored securely.

Human Resources will then liaise with the relevant bodies within Academic Services or Student Services (as appropriate to the case) to begin formal proceedings as appropriate. It may be that as an adviser you should be called upon during formal proceedings to give evidence, but it would not be your responsibility to take the lead with regards to formal proceedings.

10. Responsibilities of Advisers on keeping records:

Advisers should not attempt to make comprehensive transcripts as this may impede your contribution as an effective listener. However, it is essential that advisers take brief notes and make a record that the meeting took place. The record should be shown to the complainant and their confirmation of its accuracy obtained. It is important to keep notes of all meetings and correspondence (e.g. e-mail) so that there is a good record of all conversations.

Complainants may provide (or you may ask the complainant to provide) a written statement detailing alleged incidents of harassment. You may also advise the complainant to keep records of any future incidents. If possible, such records should include: dates, times, places, details of alleged incidents and names of any witnesses. Records should as far as possible be factual, and should avoid inclusion of opinions and suggestions; a complainant may, however, be advised to record feelings at the time of the alleged incident.

Where the complainant determines to take no further action, the adviser should write to the complainant clarifying the situation and confirming that responsibility for taking no action rests with the complainant. A copy of this letter must be kept by the adviser.

Where mutual understanding is reached between complainant and alleged harasser and the parties have identified actions or agreed standards of behaviour which both parties agree would help to avoid problems in future, and which both parties are willing to accept, they must be recorded. After the meeting, the adviser must write to the two parties (with copies to any other people present) noting that the meeting took place, and recording the agreed actions and standards of behaviour. A copy of this letter must be kept by the adviser.