



The Faculty of Advocates

Policy—Harassment and Bullying

1 The Faculty of Advocates' policy on bullying and harassment

- 1.1 The Faculty is committed to ensuring that all of its Members and staff are treated with dignity and respect and treat others in the same way. We believe that every Member of Faculty and every member of staff has the right to work in an environment which is free from any form of harassment and/or bullying. This policy therefore covers harassment and bullying that occurs:
 - 1.1.1 in the workplace; and
 - 1.1.2 outside the workplace in a work-related context, such as on business trips, client/ solicitor / supplier events or work-related social events.
- 1.2 This policy applies to all practising Members of Faculty
- 1.3 All Members of Faculty are required to read this policy and to ensure that they understand what types of behaviour are unacceptable. If you have any queries, please refer to the Dean's Secretariat.
- 1.4 All complaints of harassment and / or bullying will be treated seriously, promptly and sympathetically. Any Member of Faculty who feels they have been subject to harassment and/or bullying should not hesitate to use this procedure nor fear victimization for doing so. Retaliation against a person who brings a complaint of harassment and/or bullying is itself a serious disciplinary offence. Since malicious complaints of harassment and/or bullying can have a serious and detrimental effect upon a colleague and the workplace generally, any unwarranted allegation of harassment and/or bullying made in bad faith by a Member of Faculty may be dealt with via the Faculty's Disciplinary Rules.

2 Definition of Harassment

- 2.1 Harassment may take a number of forms (including bullying), can occur on a variety of different grounds and can be directed at one person or a number of people. Harassment need not be directed at the complainant and can occur if the complainant witnesses another person being harassed.
- 2.2 Harassment involves subjecting an individual to conduct which is unwanted and where the conduct has the purpose or effect of:
 - 2.2.1 violating the victim's dignity; or

- 2.2.2 creating an environment that is intimidating, hostile, degrading, humiliating or offensive to the victim
- 2.3 Harassment also occurs where the perpetrator engages in unwanted conduct of a sexual nature and that conduct has the purpose or the effect referred to above. An individual of any gender may be the victim of sexual harassment.
- 2.4 A person will also commit harassment if they (or anyone else) engage in unwanted conduct (of a sexual nature or otherwise) that has the purpose or the effect referred to above and the victim either rejects or submits to it and, because of that rejection or submission, that person treats the victim less favourably.
- 2.5 Conduct usually becomes harassment if it continues even though it has been made clear that it is regarded by the recipient as offensive or unwanted. A single incident may, however, amount to harassment if it is sufficiently serious.
- 2.6 The unwanted nature of the conduct distinguishes harassment from friendly behaviour that is welcome and mutual. Members must always consider whether their words or conduct may be considered offensive.
- 2.7 Harassment can occur whether or not it is intended to be offensive, as it is the effect on the victim which is important, not whether or not the perpetrator intended to harass them. Harassment or bullying is unacceptable even if it is unintentional. Harassment of a person includes causing the person alarm or distress, and occurs in circumstances where it would appear to a reasonable person that the conduct would amount to harassment of that person.
- 2.8 Harassment may relate (without limitation) to:
 - 2.8.1 age;
 - 2.8.2 disability (past or present);
 - 2.8.3 gender reassignment;
 - 2.8.4 race, colour, nationality, ethnic or national origins;
 - 2.8.5 religion or belief;
 - 2.8.6 sexual orientation
 - 2.8.7 trade union membership (or non-membership)
 - 2.8.8 part time or fixed term status
 - 2.8.9 power or hierarchy
 - 2.8.10 willingness to challenge harassment (leading to victimisation).
- 2.9 The phrase 'relate to' is wide, and covers *inter alia*:
 - 2.9.1 harassment based on a perception of another person - for example that the person is gay, or is disabled, whether or not this perception is correct - and even if the perpetrator knows that their perception is, in fact, wrong; and
 - 2.9.2 harassment that occurs because someone is associated with another person - for example, someone who is harassed because they care for a disabled person, or

who is harassed because they are friends with a transsexual person, or a white worker who sees a black colleague being subjected to racially abusive language which also causes an offensive environment for her.

2.10 Whilst not an exhaustive list, forms of harassment can include:

- 2.10.1 physical contact;
- 2.10.2 'jokes' and 'banter';
- 2.10.3 offensive language, shouting or behaving in an intimidating manner;
- 2.10.4 gossip;
- 2.10.5 slander;
- 2.10.6 offensive, insensitive or sectarian songs or messages (including email);
- 2.10.7 displaying posters or pictures, graffiti, emblems, flags;
- 2.10.8 obscene or offensive gestures;
- 2.10.9 offensive email and screen savers etc;
- 2.10.10 isolation or non co-operation and exclusion;
- 2.10.11 coercion for sexual favours or sexually suggestive remarks;
- 2.10.12 pressure to participate in political/religious groups;
- 2.10.13 intrusion by pestering, spying and stalking;
- 2.10.14 continued requests for social activities after it has been made clear that such suggestions are not welcome; and
- 2.10.15 verbal, non-verbal or physical conduct of a sexual nature.

3 Definition of Bullying

- 3.1 Bullying may be described as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient. Bullying may be physical, verbal or non-verbal conduct.
- 3.2 Behaviour that is considered bullying by one person may be considered firm management by another. Most people will agree on extreme cases of bullying and harassment but it is sometimes the 'grey' areas that cause most problems. Within the Faculty of Advocates, unacceptable behaviour includes (without limitation):
 - 3.2.1 spreading malicious rumours, or insulting someone (particularly because of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, or sexual orientation);
 - 3.2.2 ridiculing or demeaning someone, picking on them or setting them up to fail;
 - 3.2.3 deliberately excluding a person from communications or meetings without good reason;

- 3.2.4 unfair treatment;
 - 3.2.5 overbearing or intimidating supervision or other misuse of power or position;
 - 3.2.6 making threats or comments about job security without foundation;
 - 3.2.7 deliberately undermining a competent worker by overloading and constant criticism; and
 - 3.2.8 preventing individuals progressing by intentionally blocking promotion or training opportunities.
- 3.3 Legitimate, reasonable and constructive criticism of a person's performance or behaviour, or reasonable instructions given to a person in the course of their work will not, of itself, normally amount to bullying.

4 Informal procedure

- 4.1 If an incident happens which you think may be harassment or bullying, you may prefer initially to try to resolve the problem informally, if you feel able to do so. In some cases it may be possible and sufficient to explain clearly to the person engaging in the unwanted conduct that the behaviour in question is not welcome, that it offends you or makes you uncomfortable and that it interferes with your work. You should make it clear that you want the behaviour to stop.
- 4.2 In circumstances where this is too difficult or embarrassing for you to do on your own, you may wish to consider seeking support from a colleague or from a Faculty Office Bearer.
- 4.3 If you are in any doubt as to whether an incident or series of incidents which have occurred constitute harassment and/or bullying, then in the first instance you should approach the Clerk of Faculty or a member of the Faculty's Equality and Diversity Committee on an informal and confidential basis.
- 4.4 If the incident concerns another Member of Faculty and is not amenable to informal resolution it should be raised through the formal process described at paragraph 5 below.
- 4.5 If the incident concerns someone who is not a Member of Faculty (such as a member of the judiciary, a solicitor, a client or other third party), you may wish to ask an Office Bearer to intervene for you on an informal basis. In such a situation, the Faculty will seek to provide such further assistance and support as may be considered appropriate in the circumstances.

5 Formal procedure

- 5.1 If the incident concerns another Member of Faculty and (a) informal methods of resolution have either failed or are not appropriate; or (b) serious harassment and/or bullying has occurred, you are advised to complain formally in writing to any Faculty Office Bearer. Your written complaint should set out full details of the conduct in question, including the name of the perpetrator, the nature of the harassment or

bullying, the date(s) and time(s) at which it occurred, the names of any witnesses and any action that has been taken to attempt to stop it occurring.

- 5.2 Once a formal complaint of bullying or harassment has been made against a Member of Faculty, the Faculty must refer the matter to the Scottish Legal Complaints Commission (“SLCC”) in terms of section 33 of the Legal Profession and Legal Aid (Scotland) Act, 2007 (“the 2007 Act”). If the SLCC determines (under section 6 of the 2007 Act) that the complaint is a “conduct complaint” and remits the complaint to the Faculty, the complaint will thereafter be dealt with by the Faculty in terms of the Faculty’s Disciplinary Rules.