

COMPLAINTS: ADVICE TO MEMBERS ON CONTRACTUAL AND LEGAL RIGHTS

Introduction

- 1.1 The following resolution was approved by the 2005 Annual General Meeting:

“This AGM instructs Council to issue advice to all members on an individual basis on the contractual and legal rights of members who are subject to spurious, vexatious or malicious complaints.”
- 1.2 This paper complements the advice “Offensive or Abusive Parents – Advice to members”, which was approved by the 2004 Annual General Meeting.
- 1.3 This paper sets out the general areas of policy which provide a framework for Local Association Secretaries, Branch Secretaries and Officers and provides a summary which will be issued to members as a leaflet.
- 1.4 An advising solicitor has assisted in setting out the legal rights section.

Advice on the Contractual Position

- 2.1 Local Association Secretaries and Branch Officials should use the policy papers in discussion with employers to ensure that formal complaints procedures are clearly set out. Local authorities will be expected to have clear complaints procedures arising from the Parental Involvement Bill.
- 2.2 Local authorities and Colleges have a duty to investigate complaints. Therefore, Managers will normally be required to investigate complaints regardless of whether, at the outset, they consider such complaints to be well founded or not.
- 2.3 It should be noted that even where a complaint or allegation is dropped or not upheld it does not necessarily follow that the complaint has been spurious, vexatious or malicious. Indeed it is often difficult to demonstrate that this is the case.
- 2.4 Members should normally be advised of the nature of the complaint and should cooperate with any investigation. It should be noted that the details of complaints under child protection procedures may not be fully set out and Headteachers often do not have the details of such complaints. The EIS accepts that in the circumstances of child protection matters only a very general description of the allegation may be provided at the outset.
- 2.5 The 2001 National Agreement sets out that teachers have a contractual duty to work in partnership with parents. This contractual obligation is normally fulfilled during parental consultation meetings which are set out in a school’s working time agreement. Beyond that members may choose to meet with parents, on particular matters, on a voluntary basis.
- 2.6 Members in promoted posts may be required to meet with parents as part of their management function.

- 2.7 In circumstances where parents have submitted formal complaints the member may decline to meet the parent other than during a contractual meeting.
- 2.8 A member who is subject to a complaint by a parent or guardian can request accompaniment by an appropriate line manager at any subsequent meeting. In such circumstances the line manager is not an arbiter but is acting as an agent of the authority and has a duty of care to support the member.
- 2.9 Where a member is dissatisfied with the conduct of a meeting with a parent the member should withdraw from the meeting and advise the line manager of the reasons for doing so.
- 2.10 Where a member has been subject to a previous complaint that member can also request to be accompanied at contractual parents' meetings.
- 2.11 A member who is subject to spurious, vexatious or malicious complaints should expect support from the employer to ensure that the actions stop. In the first instance the Institute would expect the employer to write to the complainant setting out concerns about the complainant's actions and requesting that these cease. If that support is not forthcoming from the employer the member should contact her/his Local Association Secretary or Branch Secretary for advice.
- 2.12 If the employer fails to support members then the employer may be breaking his statutory duty and could potentially be sued if the member's health is affected by such omissions.
- 2.13 Often members will be told complaints have been dropped following an investigation. Where complaints have been dropped or found to be unsubstantiated members should have this confirmed in writing. However, the EIS also believes that members are entitled to be advised if the employer has found the complaint to be spurious, vexatious, or malicious and that the complainant should be advised of the employer's conclusions. In any discussion on complaints procedures at local level this objective should be sought by local negotiators.
- 2.14 In circumstances where an anonymous complaint has been lodged the employer will have to decide whether to investigate that complaint. It should be noted that the employer cannot disregard anonymous complaints which relate to child protection matters.
- 2.15 Where a complaint which is found to be spurious, vexatious or malicious has been lodged by a pupil it is expected that the pupil will be dealt with through the school's disciplinary procedures for pupils.

Advice on Legal Rights

- 3.1 Members who are subject to inappropriate behaviour from vexatious complainants may have a number of possible routes for legal remedy.
- 3.2 It is possible to seek an interdict to stop the parent coming to a school/college or otherwise approaching the member. To obtain an interdict the employer or member would have to persuade a sheriff that there was a course of conduct which was likely to lead to harm. An interdict is usually governed by the need for urgent action to

protect someone from harm. Therefore, interdicts are more likely to be granted in circumstances where there is perceived threat of violence.

- 3.3 Under the Protection from Harassment Act 1997 a person must not pursue a course of conduct which amounts to harassment of another and (a) is intended to amount to harassment of that person or (b) occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of the person. To satisfy the requirement that there is a “course of conduct” there would have to be at least two occasions when harassment is said to have occurred. It should be noted that conduct includes speech. The most likely defence to a claim of harassment is that the conduct was reasonable in the circumstances. However, breach of a non harassment order is a criminal offence.
- 3.4 A member may be able to pursue an action for defamation for verbal injury. Defamation requires the member to prove that a statement made, orally or in writing, is false. However, it should be noted that those who complain, in writing or at a meeting, may be covered by qualified privilege. For example, a parent who makes a statement in the interests of her/his child is protected if the parent honestly believes the statement. In a case in which the Institute received an Opinion from a QC a statement made by a parent at a School Board meeting regarding a Head Teacher was considered to be covered by qualified privilege and not capable of being challenged. When qualified privilege obtains the member would have to have evidence that the statement was malicious.
- 3.5 The Institute’s advising solicitors have recommended caution on actions relating to defamation. Any such action would inevitably attract press coverage and that brings unwarranted pressure on the member involved. Complainants who make allegations in a vexatious way may welcome the oxygen of publicity given to them by court proceedings. Often these cases involve parents/students who have little or any assets against which an order for damages can be enforced. The Institute would therefore look particularly carefully at prospects of success in any court action, including the prospects of recovering an award of damages. The Institute would be unlikely to pursue an action solely on the matter of principle, if there was little prospect of a financial recovery being made in the event of success. Legal Aid is not, as a matter of public policy, available to either pursue proceedings for defamation or to defend them.
- 3.6 Any legal support for members in pursuing vexatious or malicious complainants is subject to the EIS Case Handling Protocol, and decisions of the Employment Relations Committee.

Advice Leaflet to Members

Members Subject to Complaints

- 4.1 Local authorities and colleges have a duty to investigate complaints. Such complaints will be investigated. Members subject to such investigation are advised to co-operate with their employer and seek advice and support from their EIS Representative.
- 4.2 The following advice is for all members who are subject to complaints and to situations where the complaints are believed to be spurious, vexatious or malicious.

Contractual Advice

- 4.3 Where you are advised that a complaint has been raised against you should immediately advise your representative who will advise the Local Association Secretary. If there is liable to be police involvement EIS HQ will be informed. In Further and Higher education you are advised to contact your Branch Secretary. It is expected that employers will have explicit complaints procedures. Investigations should be conducted in accordance with such procedures.
- 4.4 Employers are under an obligation to investigate complaints. Therefore, even if you believe the complaint is spurious, vexatious or malicious, you should cooperate. When being interviewed you should seek to be accompanied by your representative or by a colleague. Where a complaint moves beyond investigation to disciplinary procedures you are entitled to be advised and represented by EIS.
- 4.5 In circumstances where parents have submitted complaints you can decline to meet the parent unless the meeting is a parental consultation meeting set out in the school's working time agreement. It is not appropriate for members to meet with parents who have initiated formal complaints through an employer's complaints procedure in relation to that complaint.
- 4.6 If, however, you do choose to meet the parents you are entitled to seek accompaniment by the school management team. If you are a Headteacher you can seek this support from the authority.
- 4.7 You may withdraw from any meeting with a parent if you are dissatisfied with how the meeting is being conducted. If you do so you should advise your line manager of your reasons for doing so.
- 4.8 You are entitled to be advised if complaints are dropped or proven to be unfounded. If you believe there is evidence of spurious, vexatious or malicious complaints you should ask your employer to protect you from future complaints. You should raise this with your Local Association Secretary or Branch Secretary.

Legal Rights

- 4.9 Members who are subject to spurious, vexatious or malicious complaints may have legal remedy. However, the legal routes outlined below are complex and should not be considered lightly. Furthermore, any request for legal representation can only be approved by the Employment Relations Committee. Requests for legal advice should be discussed with your Local Association Secretary/Branch Secretary.

- 4.10 It is possible for employers to seek an interdict to stop a complainant coming to a school/college or otherwise approaching a member. An interdict is likely to be granted only where there is a risk of harm, normally arising from a threat of violence.
- 4.11 Under the Protection from Harassment Act 1997 a person must not pursue a course of conduct which amounts to harassment of another and (a) is intended to amount to harassment of that person or (b) occurs in circumstances where it appears to a reasonable person that it would amount to harassment of the person. There would have to be at least two occasions when harassment has occurred. In such actions it is necessary to demonstrate beyond doubt that the action was unreasonable in the circumstances. A non-harassment order may be made by a Sheriff.
- 4.12 A person may be able to pursue an action for defamation for verbal injury. Defamation requires a complainant to prove that a statement made, orally or in writing, is false. Complaints made to Headteachers, Education Departments, MPs, MSPs or Councillors are liable to be covered by qualified privilege and the complainant would be required to prove malice. Qualified privilege can be summarised as follows: *Privilege is a legal right to do or say something unrestricted and without liability (e.g. a witness in Court or a Member in Parliament). Qualified privilege will apply to individuals who make statements in the discharge of private or public duties. This covers parents, guardians and students.*
- 4.13 You should note that defamation actions are difficult to pursue successfully, and are likely to bring unwarranted media attention.

Recommendation

- 5.1 The paper should be issued to Local Association Secretaries.
- 5.2 Section 4 should be issued to members as a leaflet.