

# **FALSE AND DEFAMATORY ALLEGATIONS**

## **Members Subject to Complaints**

Local authorities, Colleges and Universities have a duty to investigate complaints. Members subject to such investigation are advised to co-operate and to seek early advice and support from their EIS Representative.

The following advice is for all members who are subject to complaints and to situations where the complaints are believed to be false, spurious, vexatious or malicious.

## **Legal Rights**

Members who are subject to false, 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.

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.

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.

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, Principals, Education Departments, MPs, MSPs or Councillors are liable to be covered by qualified privilege.

## 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.*

You should note that defamation actions are difficult to pursue successfully, and are likely to bring unwarranted media attention.

### **Contractual Advice**

Where you are advised that a complaint has been raised against you, you should immediately advise your representative who will advise the Local Association Secretary. If there is a likelihood of police involvement EIS HQ must 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.

Employers are under an obligation to investigate complaints. Therefore, even if you believe the complaint is false, 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.

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.

If, however, you do choose to meet the parents you are entitled to seek accompaniment by a member of the establishment's senior management team. If you are a Headteacher you can seek this support from the authority.

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.

You are entitled to be advised if complaints are dropped or proven to be unfounded. If you believe there is evidence of false, 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 if your employer fails to provide the necessary support.