



**THE PROFESSIONAL VOICE
OF YOUR FIREFIGHTERS**

ALL DIFFERENT
ALL EQUAL

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'Fire Brigades Union'

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FOREWORD

Trade unions – as the name suggests – are about unity. Workers join together in unions to fight to improve conditions. This means campaigning on pay, pensions, safety issues and all matters relating to work. It also means trying to improve things more generally, for example through legislation which favours workers, such as laws on working time or the minimum wage. By these various means trade unions have enabled workers to improve conditions and to challenge exploitation.

But this only works if unity is a reality. Workers are weakened if we are divided. So, in order to be effective we need to be genuinely united. That means opposing anything which seeks to divide us or undermine unity. That is why unions have to oppose and challenge racism, sexism or any other form of discrimination which seeks to target one group of people on the basis of a particular characteristic. It is this approach which forms the background to our policy on equality: All Different, All Equal.



Every worker within the fire and rescue service has, as elsewhere, the right to come to work and be free from feelings of discomfort or anxiety because they are different in some way.

The FBU is fully committed to the eradication of all discrimination in the workplace, from outright bullying and harassment to mockery and inappropriate 'jokes' or comments. Fairness at work must be a practice - not just a policy - so that all members can flourish and fulfil their potential in an environment free of prejudice.

What do we actually mean when we say 'all different all equal'? It means every single member has the right to be accepted and treated the same as everyone else, no matter in what sense they are different. Anything less isn't equality. The FBU will continue to be the lead organisation fighting to improve the working lives of members of the fire and rescue service.

Over the years we have made a number of important changes to our own organisation to embed equality into every single thing we do, every action we take and every policy we implement.

This commitment to change was the result of a growing realisation that many of our members were being subjected to discrimination, not just from the fire and rescue service employers but sometimes from in the workplace itself. We badly needed to change all that, and we believe that we have made some inroads.

During the course of debates on these issues, the union has made various changes to our structures and continues to monitor the impact of these so that we have an organisation fit for purpose and able to face the challenges of today's fire and rescue service. Our dedicated representatives provide invaluable support, advice and help to members, branch, brigade, regional and national officials. To further hammer home the equality message, we ensure that the issues that are deeply relevant to the various 'sections' within the FBU are covered in union

literature and internal publicity. The FBU has maintained its commitment to fairness at work training, at national and regional level, and through the annual schools it holds for women, black and ethnic minority members, and our lesbian, gay, bisexual and transgender members.

All members will be aware that in accordance with our rules 'it shall be the duty of every member to treat others with dignity and respect, and to challenge offensive behaviour of any kind'. This policy lays out the procedure to be followed in cases of discrimination, bullying or harassment. Let us all work together to ensure it is never needed.

A handwritten signature in black ink, appearing to read 'M. Wrack', with a stylized, cursive script.

Matt Wrack
FBU general secretary

FAIRNESS AT WORK IS A TRADE UNION ISSUE

Fairness at work is a human rights issue. It is about treating others with respect. The FBU has a clear policy on fairness at work (FAW) which has been agreed by FBU delegates over several years at conference, the policy making body of our union.

The FBU is opposed to discrimination on the grounds of religion, race, sex, sexual orientation, gender reassignment, marital status, disability, age and trade union activity. In Northern Ireland, it is also unlawful to discriminate on the grounds of political opinion. The FBU is opposed to this unlawful discrimination.

The FBU rule book makes it an offence if any member ***“discriminates against, harasses or bullies another whether on the grounds of race, creed, sex or sexual orientation or otherwise”***.

Also,

“It shall be the duty of every member to treat others with dignity and respect and to challenge offensive behaviour of any kind”.

OUR FAIRNESS AT WORK STRUCTURE – HOW WE WORK

BRIGADE LEVEL

To ensure that effective strategies are developed in regard to FAW, brigade committees shall appoint a brigade FAW official and establish a FAW sub-committee. This sub-committee will include the brigade FAW official, a brigade official and representatives from the brigade committee. This sub-committee shall report to the brigade committee.

REGIONAL LEVEL

The regional committee shall appoint a FAW officer to be responsible for the development of strategies designed to ensure fairness at work. The FAW officer will, if he/she is not already so, become a member of the regional committee upon appointment, and where possible should not have other responsibilities, e.g. regional official, health and safety representative, education officer.

The regional FAW officer will have the full support of the regional officials and the regional committee, to enable him/her to carry out their duties, which will include:

- Acting as the main point of contact in the region for brigade FAW representatives and members of the equality committees who are dealing with specific cases and implementing regional plans.
- Working with brigade and regional representatives of the fairness at work committees.
- Having access to a designated person from the union’s solicitors for quick legal assistance as and when necessary, as part of a support system which will include regular information from head office. This must be carried out in accordance with the union’s usual procedures and guidance for members accessing legal services.

- Liaising with and assisting brigade FAW officers and attending brigade FAW committees.
- Developing contacts with appropriate outside organisations, e.g. TUC regional committees, community relations councils, trades councils, antiracist groups etc.
- Being responsible for ensuring that an FBU representative speaks to all new trainees about FAW.
- Work with the education officer to develop training on stations and in branches on FAW policies and practices.

The names of the regional, brigade and branch FAW officials, and members of the equality committees should be publicised widely and given to all new members. This will be done in conjunction with information about the union's fairness at work policy.

NATIONALLY

The FBU has a national women's committee (NWC), a national black and ethnic minority members' committee (B&EMM) and a national lesbian, gay, bi-sexual and trans committee (LGBT). These committees are made up of a chair, a secretary and respective delegates from each of the FBU regions.

The FBU has a national officer who holds the remit and responsibility of FAW and who is the secretary to the fairness at work advisory committee. This committee is made up of regional fairness at work officers and representatives of the black and ethnic minority members' committee (B&EMM), control staff national committee (CSNC), lesbian, gay, bi-sexual and trans committee (LGBT), officers national committee (ONC), national retained committee (NRC), the national women's committee (NWC) and the vice-president.

The FAW committee has the responsibility for assisting the executive council in monitoring activity and progress on FAW in the FBU as well as in fire and rescue authorities. For example, this could take the form of working on initiatives with management and progressing matters with the government, the national joint council and other relevant forums.

When necessary and appropriate the executive council or conference shall instruct the committee to elect from within themselves a strategy group of four people. The FAW strategy group will be chaired by the vice-president and the national officer with responsibility for FAW will act as secretary to the group. This group will work with the LGBT, NWC and B&EMM to ensure that work on equality issues is monitored and developed.

All FAW committees will participate fully in all the structures and issues affecting all members of the FBU.

EQUALITY EDUCATION

The FBU will ensure that all courses provided at regional or national level will follow our educational aim of deepening an understanding, and the practical implications, of the equality agenda.

NATIONAL PROVISION

Appropriate FAW courses must be organised and provided nationally. An annual school for women members, an annual school for black and ethnic minority members and an annual school for lesbian, gay, bi-sexual and trans members will be provided nationally.

The FBU will continue to produce FAW material to assist in education.

FBU officials will be given the training necessary to enable them to carry out investigations under the representation policy.



THE WIDER TRADE UNION AND LABOUR MOVEMENT

TUC CONGRESS

The FBU remains committed to ensuring any delegations representing the union reflect as widely as possible the diversity of not only those we represent but also those who we seek to represent. The executive council will give consideration to the makeup of all future delegations at internal and external events.

TUC WOMEN'S, BLACK WORKERS' AND LGBT CONFERENCES:

A delegation will attend these conferences.

The appropriate national committee should recommend the names of the delegates to conferences. The executive council, as with all other FBU delegations to any conference, will make the final decision.

The national committees will recommend to the executive council for approval a nominee to the relevant TUC committee.

Upon their election they will assist in the effective prosecution and communication of work between the TUC and the FBU on behalf of our women, black and ethnic minority members and our gay, lesbian, bi-sexual and trans members.

The national committees should submit the requisite number of motions, which should be on issues primarily affecting their constituent group, to the executive council for submission by the FBU to the TUC women's, black workers' and LGBT conferences.

It is important to emphasise that the executive council will always be guided by the recommendations of the equality committees.

The composition of the delegations will be as follows:

- The chair, secretary and nominations from the appropriate national committees.
- The delegation for the WTUC will be made up entirely of women and should include at least one black woman and one lesbian woman.
- The delegation for the TUC black workers' conference will be made up entirely of B&EMM members and should include at least one woman member and one gay/lesbian member.
- The delegation for the TUC LGBT conference will be made up of LGBT members and should include at least one B&EMM member and one woman member.

Delegations to the Scottish, Welsh and Irish trade union conferences should be based on the same inclusive criteria for representation.

OTHER MATTERS

The executive council appreciates that it might not be possible to meet these criteria for delegations on every occasion, but, equally, every effort should be made to do so.

The composition of delegations must be monitored by the appropriate national officer to assess progress towards these targets.

Similarly, the aim should be to include a balance of experienced and new delegates to encourage participation and develop activists.

Every delegation will submit a report of their conference to the executive council, for circulation throughout the union.

Regions should participate in their regional TUCs and trades councils.

Where there are committees for women, black and ethnic minority members or LGBT members the region should nominate members to attend.



GUIDANCE

Discrimination, harassment and bullying are all constituent parts of the same monster – abuse. They are a perverted way of exercising power over others and have serious implications for the health and well being of the recipient. Such behaviour also undermines the effectiveness of teamwork which is so essential to the fire service and is founded on trust and professionalism.

This guidance applies to discrimination, harassment and bullying. It is not difficult to identify discrimination, harassment or bullying. It is behaviour which is unwanted and which offends and undermines the dignity of men and women at work.

DEFINITIONS

- **Discrimination:** Unfair treatment of a person, racial group or minority based on prejudice.
- **Harassment:** Unwanted conduct affecting the dignity of women and men at work. It may be related to age, sex, sexual orientation, gender reassignment, race, disability, religion, nationality or any personal characteristic of the individual and may be persistent or an isolated incident. The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient. (Harassment on the grounds of political opinion in Northern Ireland is unlawful and therefore included.)
- **Bullying:** Offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.

Discriminating against individuals, harassing or bullying them because of their disability, age, race or sex, because they are gay or lesbian, because you think they are attractive or unattractive, because they have an accent, or a different religion, political opinion in Northern Ireland or because you simply just do not like them, is not acceptable behaviour. It is the politics of the playground, which have no place in a modern, professional fire service and no place in the Fire Brigades Union. Employers are also legally responsible for preventing discrimination, harassment and bullying behaviour. It is in their interest to make it clear to everyone that such behaviour will not be tolerated.

The union rules are clear and state;

“It shall be the duty of every member to treat others with dignity and respect and to challenge offensive behaviour of any kind”.

A member commits an offence under the union rules if that member;

- Discriminates against, harasses or bullies another whether on the grounds of race, creed, sex or sexual orientation or otherwise.
- Acts contrary to or fails to carry out or comply with the policies and/or rules of the union;
- Acts in a way prejudicial to the interests of the union.

There is a world of a difference between having a laugh with colleagues and subjecting people to ridicule, which hurts physically, mentally or emotionally. Bullying can lead to illness and absenteeism.

It frequently forces people to leave their job because they cannot face the daily feelings of demoralisation, isolation and powerlessness, which results from not knowing where to turn for help. In some cases this can lead to suicide.

YOU SHOULD BE ABLE TO TURN TO ANY FBU OFFICIAL OR ANY FBU MEMBER.

It is the policy of the union to ensure all members are treated with dignity and respect and every action possible will be taken to ensure that this is the type of environment in which our members will work. The following guidance is designed to help members and FBU officials through what is often a very stressful time.

You may wish on the first instance to turn to someone you trust.

Steps to follow if you are enduring discrimination, harassment or bullying:

1. Don't doubt yourself.

2. Contact your union representative or a trusted colleague immediately for support.

If you are unable to contact your local or brigade FBU representative, immediately contact a **regional or sectional official**.

Contact details for officials are available on the union's web site **www.fbu.org.uk**

3. Collect evidence – the best way to do this would be to, discretely keep written records of incidents in a diary or notebook and, if you feel able, ask other colleagues to do the same, so that they can later act as witnesses. Make sure that you have a written record wherever possible, stating:

WHEN – the date of an incident

WHERE – where the incident took place

WHAT – the type of incident and what happened.

4. Make sure that you let the harasser know that their actions and/or remarks are unwelcome and unwanted. If you feel unable to do this, get a colleague, a friend or union official to do it for you or with you.
5. Take avoiding action wherever possible e.g. try to ensure that someone is with you when the harasser is present.
6. Speak to other people in the workplace and find out if they have been subjected to such discrimination, harassment or bullying. Seek support from colleagues in countering the harassment. Hopefully this will make you feel less isolated and you may discover that other colleagues have also been abused. This is important because other people in the workplace can be called as witnesses if the harasser is disciplined.
7. Always make sure you make a note of any witnesses and also any work that you were given and whether you completed it satisfactorily. Keep a record of favourable comments about your work. This can help in ensuring that your credibility cannot be attacked on the basis of your ability to carry out the job.

8. You should also visit your doctor as soon as possible and copies of any certificates given by the doctor for time off as a result of what is happening at work should be retained.
9. Ask the FBU representative to tell the harasser that formal steps of complaint will be taken if they will not cease the conduct. Make sure that a note is kept of subsequent conversations with the harasser, where they took place, the date and time and what was said. If the above doesn't work, then on your behalf, your FBU representative or regional official should make a formal complaint, with your agreement, as quickly as possible to the appropriate manager.

WHAT SUPPORT CAN YOU EXPECT?

The FBU aims to equip all of its officials with the necessary skills to support all members to ensure that they are treated with dignity and respect.

Complaints will be treated in confidence and officials will discuss with you how you would like it to be dealt with. **Your wishes will be paramount.**

Officials dealing with your complaint will have access to legal advice. If appropriate and with your agreement, the union can then appoint solicitors to assist with your complaint to management and possibly to an employment tribunal. This will normally be done if the approach as described fails to bring a satisfactory end to the complaint.

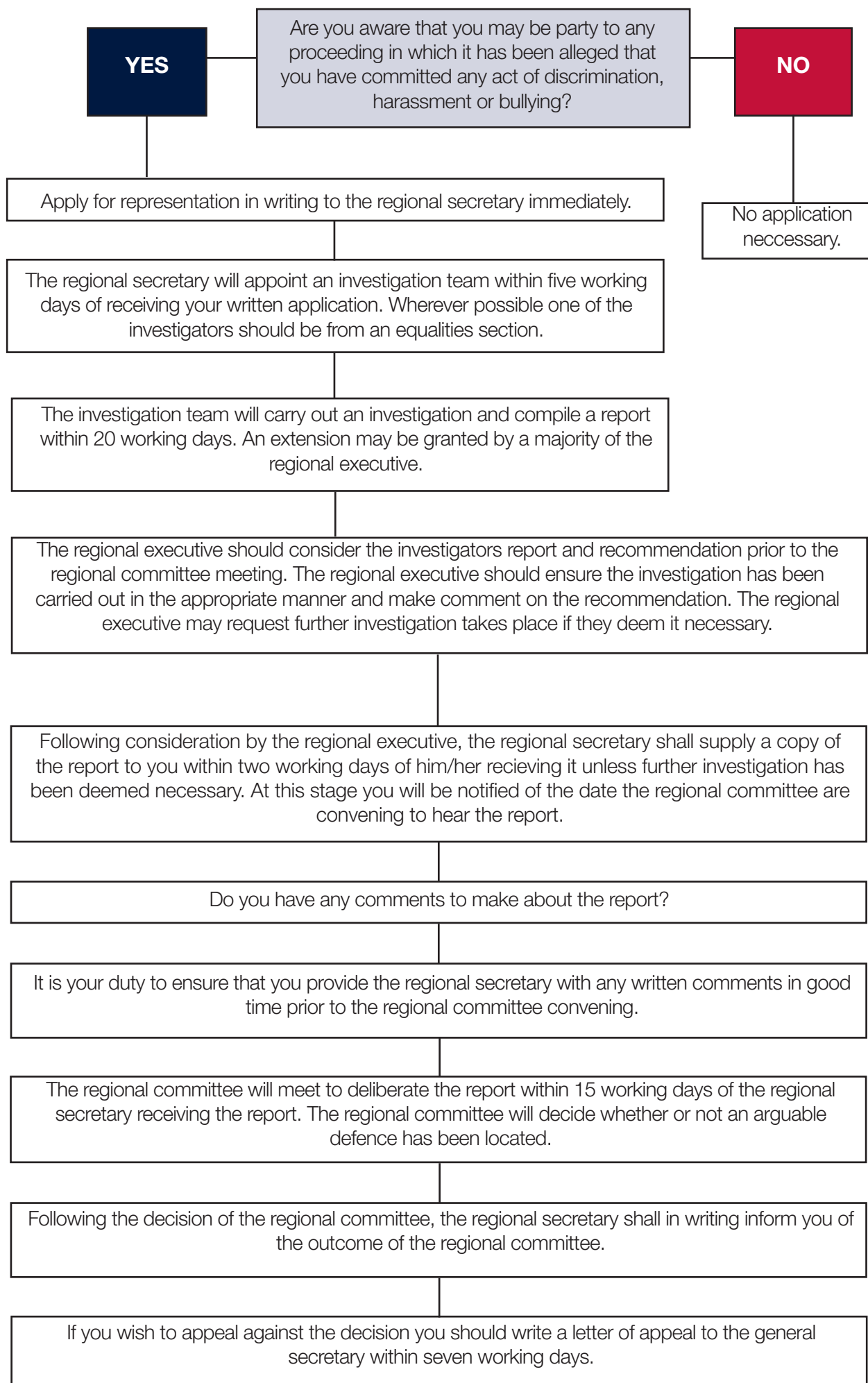
Should you feel unable to approach brigade, regional or sectional officials you should contact your executive council member or write to the national officer responsible for FAW at FBU head office for advice.

Guidance for members who are or believe that they may be the subject of allegation/s of discrimination, harassment or bullying

The union agreed at its annual conference in 2004 that given the experience of vexatious allegations against FBU members by others, including management, that members accused of discrimination, harassment or bullying would be afforded an interim period of representation between the time the allegation is made and the time it takes for an investigation to be carried out and a decision to be taken by a regional committee (the representation appeals committee in the case of union officials). The only objective of the investigating officials is to 'locate' an arguable defence.

Therefore any member who considers or is informed that he or she may be party to any proceedings in which it is or may be alleged that he or she has committed any act of discrimination, harassment or bullying, will not automatically qualify for union or legal assistance. Any such member who wishes to apply for any assistance ("the applicant") should do so as soon as practicably possible to the regional secretary outlining the reason for the application. Failure to apply as soon as he or she is aware of any allegation is likely to be seen as a breach of rule.

"A member of the union commits a disciplinary offence if that member: acts contrary to or fails to carry out or comply with the policies and/or rules of the union".



Following receipt of your application the regional secretary shall cause an investigation to be carried out as soon as reasonably practicable thereafter and shall require a written report to be provided by the investigators. The investigators shall be officials of the union and shall be appointed by the regional secretary. Representation will be granted until the regional committee have considered the report from the investigators and determined if an arguable defence exists or not.

Note for officials: – If an official is approached to represent a member on an issue which would require the member to make such an application then they should inform the regional secretary immediately. If the regional secretary has not received such an application he/she should write to the member advising them of the procedure.

Guidance for members who believe they are witness to any act of discrimination, harassment or bullying

Members who believe they have witnessed an act of discrimination, harassment or bullying are reminded of the responsibility of all members under the unions rules i.e.

“It shall be the duty of every member to treat others with dignity and respect and to challenge offensive behaviour of any kind”.

If you witness such an act it is possible that by acting immediately you may prevent the situation developing and stamp out such behaviour most effectively. Please remember it is likely that the ‘recipient’ will already feel isolated!

As previously outlined, discrimination, harassment and bullying are all constituent parts of the same monster – abuse. By early action we can stamp it out. You should if possible challenge the harasser or bully and let them know you do not find their behaviour acceptable and advise them that if it does not stop you will report the matter to management. You should inform an FBU official immediately, they will provide you with support, advice and assistance.

It is often difficult for some people to take this approach as they may also feel threatened. If this is the case, you should make it known to the individual on receipt of the unacceptable behaviour, that you witnessed the behaviour and offer whatever support you can.

It is also important to keep a note, including as much detail as possible about the event i.e. time, place, who was involved and who said or did what. This may be useful at a later date.

Guidance for officials on dealing with complaints of discrimination, harassment or bullying

Complaints of discrimination and harassment may provoke strong reactions.

It is important, primarily, for the member who has plucked up the courage to approach you, as a fellow member or as an official, but also for the credibility of our union, that all complaints are dealt with as quickly as possible and treated:

- **Swiftly**
- **Sensitively**
- **Seriously**

As with union issues which relate to personal matters or individual grievances, remember that confidentiality and tact are essential at all times.

It is a sign of the union's strength that most members of the fire service are members of the FBU.

This can however cause difficulties when pursuing a complaint, whether this is against someone in their managerial role, as a colleague in the workplace, or against another member for their behaviour during trade union activities.

It is the union's duty to try and educate all members to be alert to the problems of discrimination, harassment and bullying and to be prepared to confront the perpetrators.

Too often members who are not comfortable with the behaviour of a colleague stay silent out of fear of becoming another victim.

It takes real courage to speak out.

The FBU is committed to creating a climate of confidence so that members do not feel they have to suffer in silence or isolation but that their complaint will be treated seriously.

THE INFORMAL APPROACH

Try to deal with a problem informally first.

(You should include an 'informal' stage in your agreed procedure for dealing with discrimination, harassment and bullying). An informal approach is usually the preferred option for someone on the receiving end of ill treatment.

THE MOST EFFECTIVE WAY OF DEALING WITH DISCRIMINATION, HARASSMENT AND BULLYING IN THE WORKPLACE IS TO NIP IT IN THE BUD STRAIGHT AWAY.

If you feel someone is getting a rough ride then speak out.

It usually only takes one person to give voice to what others are probably thinking - the situation is getting out of control or that the 'joke' has gone too far, to put a stop to bullying.

Explain clearly that such behaviour is unwelcome, embarrassing and is interfering with work.

Hopefully the discrimination, harassment or bullying will stop, it may however continue when there is no-one around to witness it.

It is therefore very important that you, again as a fellow member or as an official, let the person on the receiving end know they have an ally.

As we have suggested in the previous section, advise the harassed person to keep a record of when, where and what took place and names of any potential witnesses.

This is vital if the complaint is to be pursued.

Let the person or people who are responsible for the offence know privately or publicly (whichever you judge to be the most effective) that you think that their behaviour is unacceptable and contrary to union rules.

If the discrimination, harassment or bullying continues, discuss with the person on the receiving end how they want to deal with it.

Their wishes must be paramount.

Make it clear they have your support and the support of the FBU.

For everyone's sake, both personally and professionally, unacceptable behaviour cannot be tolerated in the fire service and will not be tolerated in the FBU.

Reassure them that they do not have to put up with it and that they do not have to deal with it on their own.

THE FORMAL APPROACH

If an informal approach has not been effective and if the member who is suffering from discrimination, harassment or bullying consents, then the case should be pursued with management and union discipline.

You must involve your brigade and regional officials before you take any further steps. Where appropriate it may be useful to speak to a FAW official or an official of the NWC, B&EMM or the LGBT for support and advice.

Brigade, regional and sectional officials have access to the union's legal advisers who will provide specialist advice and if the member agrees, they will assist with a complaint to management and possibly an employment tribunal.

If you do not feel able to do this then speak to your executive council member or contact the national officer with responsibility for FAW matters at FBU head office.

As previously stated, you should advise the member to keep a note of the details of each incident of discrimination, bullying or harassment.

This is important as such behaviour often occurs when there are no witnesses or where colleagues close ranks.

Monitor any changes in the work patterns of the person being bullied or the attitude of the harasser, to try and avoid or minimise accusations of poor work performance or victimisation.

Again make sure that you methodically gather together:

- The facts
- The evidence

Make sure you get legal advice regarding any time-limits which may exist. In cases of sex discrimination or harassment our solicitors will, as far as is possible and if preferred by the complainant, provide the services of a solicitor of the same gender as the complainant.

SEXUAL HARASSMENT IN THE WORKPLACE

The impact of sexual harassment in the workplace can have a damaging effect on the recipient's mental and physical health, often resulting in poor performance and attendance at work. The cost to an organisation can also be considerable. It is therefore a major issue.

This union is committed to representing women, however, any member may experience sexual harassment. FBU officials and the fire service should encourage victims to refer the case to the police for investigation immediately. In all cases the wishes of the victim must remain paramount.

The executive council will educate and inform FBU representatives to ensure that they support and encourage victims to contact the police and report any form of sexual harassment in the workplace.

GUIDANCE FOR REGIONAL SECRETARIES

On receipt of an application for union representation from a member who is or believes they may be the subject of allegation/s of discrimination, bullying or harassment, the regional secretary shall;

1. Cause an investigation to be carried out as soon as reasonably practicable.
2. Within five working days appoint two officials of the union as investigators (investigators do not need to be regional officials).
3. Receive a written report from the investigators of their findings within 20 working days. The report will conclude with a recommendation as to whether representation should be granted, or not, based solely on the existence, or not, of an arguable defence to the allegation(s).

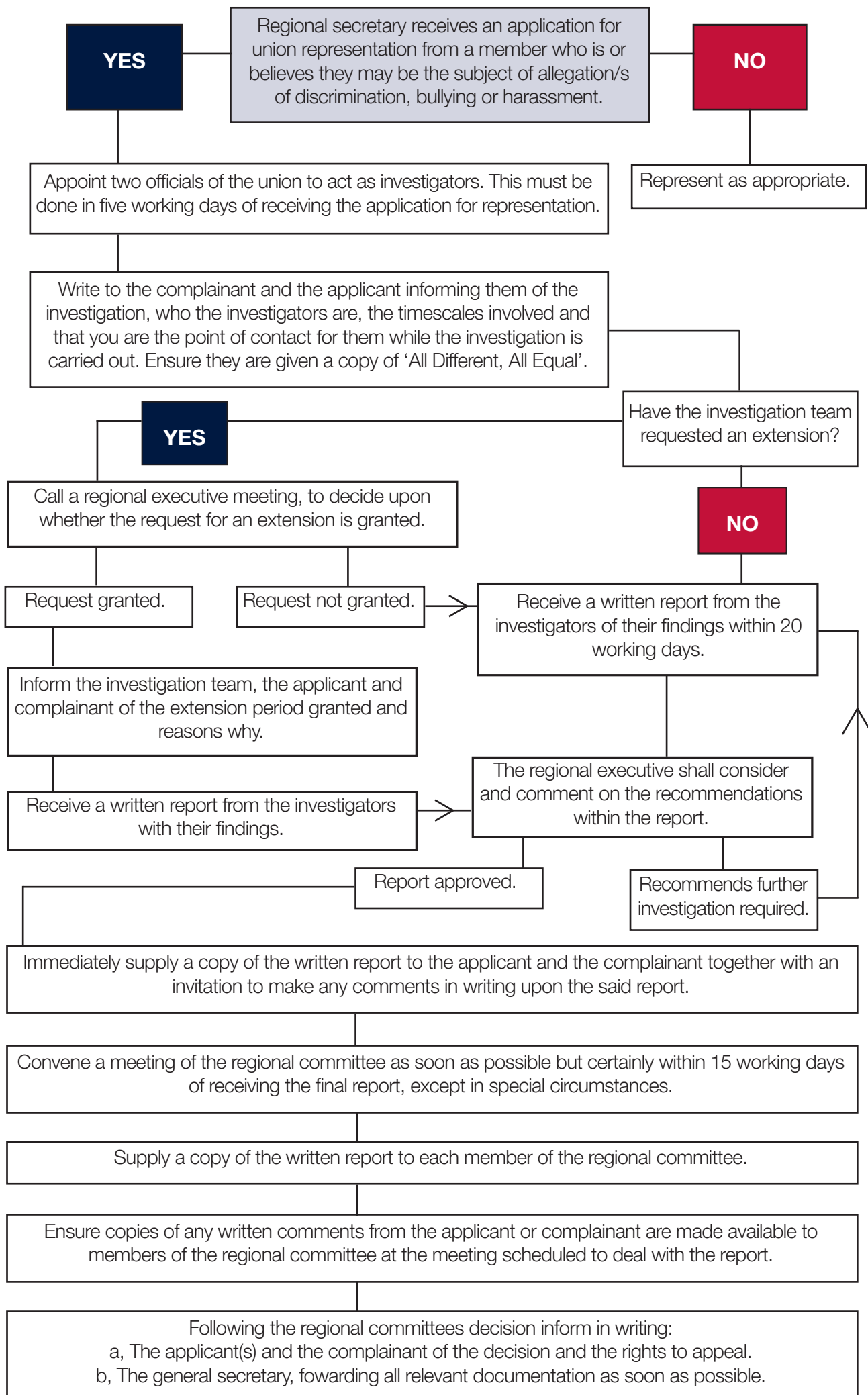
Note: An extension to this time limit may be granted only by the majority agreement of the regional executive, following application to the regional secretary with stated reason(s).

4. The regional executive should consider the investigators report and recommendation prior to the regional committee meeting. The regional executive should ensure the investigation has been carried out in the appropriate manner and make comment on the recommendation. The regional executive may request further investigation takes place if they deem it necessary.
5. Following consideration by the regional executive, the regional secretary will supply a copy of the written report to the applicant and the complainant, together with an invitation to make any comments in writing upon the said report. The invitation for comments will also make clear the date set for the regional committee meeting that shall hear the report. If either party make any written comments it shall be their duty to provide them to the regional secretary in good time prior to the regional committee meeting
6. Convene a meeting of the regional committee as soon as possible but certainly within 15 working days of receiving the final report except in special circumstances

7. Supply a copy of the written report to each member of the regional committee.
8. Ensure that copies of any written comments from the applicant or complainant are made available to members of the regional committee at the meeting scheduled to deal with the report.
9. Following the regional committee's decision, inform in writing:
 - a. The applicant(s) and the complainant of the decision and their right to appeal.
 - b. The general secretary, forwarding all relevant documentation as soon as possible.

Both parties, complainant and applicant, should be given the same documentation with the same rights to comment, prior to the regional committee meeting and the same documentation and rights to appeal against the decision reached by the regional committee. The regional secretary will normally be the official identified as the contact point for all members involved on both sides of a discrimination, harassment or bullying complaint/investigation.





THE ROLE OF THE REGIONAL EXECUTIVE

- a) The regional executive may grant, by majority agreement, an extension to the 20 working day time limit for the provision of the investigation report. This shall only be considered following receipt of an application for an extension to the time limit which must state the reason/s.
- b) The regional executive should consider the investigators report and recommendation prior to the regional committee meeting. The regional executive should ensure the investigation has been carried out in the appropriate manner and make comment on the recommendation including requesting further investigation is carried out if deemed necessary.

The role of the regional committee

- a) Only members of the regional committee should attend the meeting called to decide on an application for representation under this policy.
- b) Any representative from the complainants or applicants branch should not be party to the discussions or decisions of the meeting.
- c) Every member of the regional committee should receive a copy of the investigators report.
- d) Every member of the regional committee should be supplied at the meeting with any written comments on the report submitted by either the complainant or the applicant. These shall be provided by the regional secretary.
- e) The regional committee shall consider the report, any additional comments submitted by the complainant or the applicant and the recommendation as to whether the investigators concluded that an arguable defence exists or not.
- f) The regional committee may:
 - i) Make such decisions as it considers appropriate in all the circumstances.
 - ii) Require the investigators to carry out such further investigations, as are considered necessary.

The applicant will be granted FBU representation if the regional committee is satisfied that the applicant has an arguable defence to the allegations made.

- g) The regional committee may reconsider any decision in light of any substantial and or compelling new evidence which may become apparent following the regional committee meeting.

APPEALS

- 1) From the date the regional committee decision is sent to the parties i.e. complainant and applicant, either have seven working days to forward an appeal in writing against that decision to the general secretary. Notice of appeal must be accompanied by full written reasons for the appeal. Upon receipt of an appeal against a regional committee decision the general secretary shall cause a meeting of the representation appeals committee to

be held to consider the appeal. The applicant shall continue to receive representation whilst awaiting the decision of the representation appeals committee.

- 2) Meetings of the representation appeals committee shall be convened within 10 working days of receipt of the appeal by the general secretary.
- 3) The committee shall not be required to hear the application again but must decide whether or not the regional committee could reasonably have reached its decision in the light of all the evidence put before it. The committee may consider any evidence which was not put before the regional committee and in that event can require the regional committee to re-convene to reconsider all new evidence, should it consider the new evidence could have materially affected the regional committee's decision. Alternatively the committee may make any decision it considers just, in the light of all the evidence.
- 4) If, upon the basis of all the evidence before it, the representation appeals committee considers that the regional committee should not have refused or granted representation, it may reverse or amend the decision as it considers appropriate, in its absolute discretion. The decision of the representation appeals committee will be final and shall be conveyed in writing to the parties. The general secretary, and the regional secretary will also receive a full written report from the representation appeals committee detailing reasons that the decision was reversed or amended, that they may share with their regional committee.

REQUEST FOR REPRESENTATION FROM OFFICIALS OF THE FBU

On receipt of a request for representation from an official, as defined in the rule book, who is or believes they may be the subject of allegation/s of discrimination, bullying or harassment, the regional secretary shall inform the executive council member within two working days. The executive council member shall act as the investigator with the assistance of a regional official. The executive council member shall inform the national officer who has been appointed to act as the secretary to the representation appeals committee. The national officer will then take the role of regional secretary and the representation appeals committee will take the role of the regional committee.

Appeals under this procedure will be made in writing to the general secretary and will be heard by the final appeals committee.

If a national secretary or national chair of any of the six national sectional committees, an executive council member, national officer, assistant general secretary, president or vice-president, request representation they should write to the general secretary who will appoint an investigator. The request will be heard by the representation appeals committee and any appeal will be heard by the final appeals committee. In the case of the general secretary requesting representation he/she should write to the president, who will appoint an investigator. The procedure will then be as that outlined for executive council members.

REPRESENTATION APPEALS COMMITTEE

This committee will be established by the executive council and comprise of a national officer (who will act as secretary), the vice-president as chair and four executive council members appointed as and when required. Executive council members representing the region or section of which an appellant is a member, will not act as members of the representation appeals committee.

Guidance notes for officials investigating claims of discrimination, harassment or bullying

When carrying out an investigation you must keep careful notes of everything that takes place so that you can produce a full report. You should ask the person who is alleging discrimination, harassment or bullying (who from now on we will call the complainant) to provide you with all details necessary to support their complaint. **INCLUDING** advising them to seek legal advice **BEFORE** providing you with any evidence.

If they are legally represented then you must make your enquiries through their solicitor.

You should ask them to provide written comments on any evidence and a copy should be given to the person against whom the complaint has been made (who from now on we will call the applicant).

These must be attached to your report.

The investigator(s) should:

1. Start the investigation **AS SOON AS POSSIBLE**. Remember that a written report with the findings should be supplied to the regional secretary within 20 working days of being appointed to carry out the investigation. If you require further time to carry out the investigation you must make an application to the regional secretary stating the reasons for the extension.

You should also keep in mind that time limits may arise or may have already arisen with regards to procedures external to the FBU i.e. employment tribunals, grievance/ disciplinary procedures etc.

2. Carry out the investigation with the sole objective of locating an arguable defence.
3. Contact the complainant or the complainant's solicitor at the earliest opportunity and seek details of the allegations from or approved by the complainant.

You may want to ask the complainant further questions via their solicitor.

The complainant might want to answer further questions through their solicitor or meet you in person. Make sure you write down any further questions and answers, which result from any meetings held with the complainant and give a copy of these written records to the complainant or complainant's solicitor for them to approve the contents. Make sure you retain any correspondence received from their solicitor.

When this has been agreed between the complainant and/or their solicitor you should then send this with any statement from the complainant to the person against whom the complaint has been made (the applicant).

4. Ask the complainant or their solicitor if there are any witnesses who should be approached. If there are, then you should approach them for statements. This should be done swiftly and you should see each witness individually.
5. Witnesses should be given a verbal outline of the complainant's allegations and then be invited to comment on them. You should write down a detailed account of the meeting date, time, questions and answers etc., and ask them to approve the contents.

6. When you have carried out steps 1 – 5 you should meet the applicant and ask him/her to comment on what is said about him/her. Write down their response and give him/her a copy and ask him/her to approve the contents. The applicant may wish to make a written statement in support of their application and to name any witnesses to support their case. You should contact any witnesses as soon as possible and meet with them individually.
7. All the witnesses which the applicant names, should be given a verbal outline of what the allegations are and be asked for their comments. Again – as in point 5 you must make a written record of the meeting with the witnesses. Date the record, which should detail questions and answers and ask them to approve the contents.
8. When you have been through all the steps listed above you must then prepare a written report. If it is necessary for clarification or further information you may wish to meet with any of the parties concerned more than once. If so you should always record the meetings in writing and ask them to approve the contents.
9. The written report should set out:

WHO – has been interviewed?

WHEN – they were interviewed,

WHAT – they said – referring to all the documents attached to your report.

Your report should cover any matters which you, as the investigator, feel are relevant.

The report must contain the investigator's conclusion as to whether or not an arguable defence has been located.

The investigator must date and deliver the report to the regional secretary **AS SOON AS POSSIBLE** but certainly within 20 working days of being appointed to carry out the investigation, unless an extension has been granted. The report must be signed by the investigator/s and make a clear recommendation.

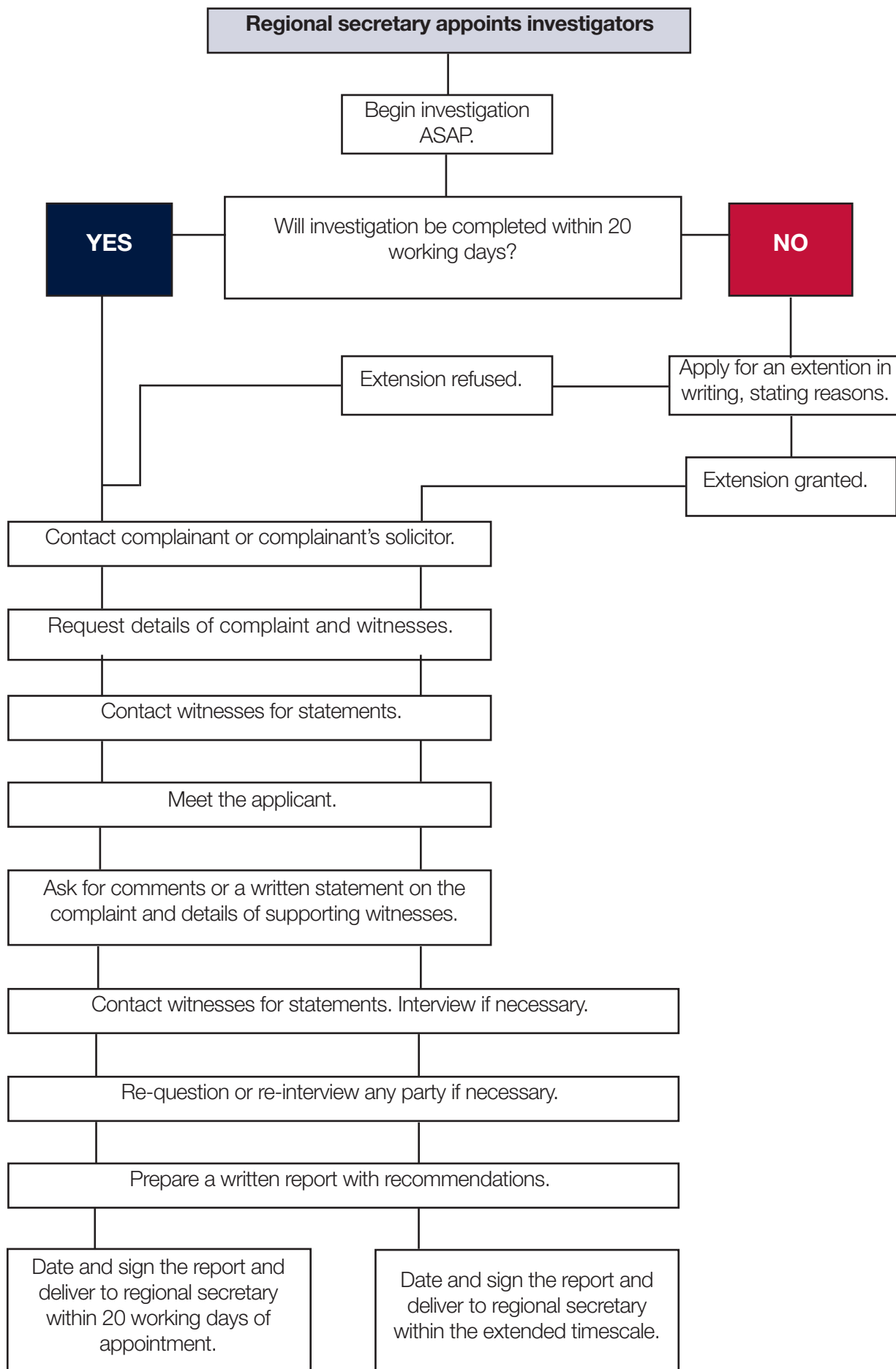
IF REPRESENTATION IS GRANTED THE FBU RESERVES THE RIGHT TO WITHDRAW THIS IF THE ACCUSED SUBSEQUENTLY ADMITS GUILT OR IF EVIDENCE OF GUILT COMES TO LIGHT.

Points to consider when conducting investigations

- What is important is that the investigations are thorough, the procedure is fair and that the decision is taken objectively on the basis of the available evidence.
- The executive council recommends that if applicants for representation are obstructive to any investigation, then the regional committee must place considerable weight on this when considering the granting of representation.
- The executive council recommends that when dealt with, copies of the papers relating to representation matters be sent for information and collation to head office.
- The executive council recommends that, with the agreement of the complainant(s), in cases where representation is withheld then consideration should be given to implementing the disciplinary procedure under rule to ascertain whether the rules and/or policies of the union have been breached.

- The executive council position, regarding scope of the regional committee decision on the granting of representation, is that it applies to all members of the union without exception.
- **Note.** After any request for representation has been concluded, a representation request can be re-heard should any substantial and/or compelling new evidence come to light. This applies at any stage of the process i.e. even after the appeal stage. Both the complainant and the applicant can invoke this process by writing to the regional secretary.





ARGUABLE DEFENCE

In deliberating upon their decision a regional committee must confine themselves to determining whether or not such a defence exists.

In consultation with our solicitors, it is possible to offer the following guidance in this matter:

It is for the investigators, having completed their enquiries to include in the report of the investigation, their conclusions as to whether or not there appears to be an arguable defence.

DETERMINING AN ARGUABLE DEFENCE

When determining the presence or not of an arguable defence, investigators initially and regional committees subsequently must give due weight to the cogency, consistency and eligibility of all the available testimonial and documentary evidence.

When balancing the weight of available evidence, the following should be considered:

1. A bare denial (i.e. a denial without evidence in support) does not constitute an arguable defence in the face of substantial evidence to the contrary.
2. A plea of ‘mitigating circumstances’ to excuse a confirmed act of discrimination, harassment or bullying may not by itself constitute an arguable defence. However, neither should it completely disbar the applicant from representation where the weight of that mitigation is significant.
3. Spurious and yet hypothetically possible speculation on theoretical scenarios do not constitute an arguable defence which requires a realistic consideration of the available evidence.

In coming to a decision, investigators and regional committees must weigh up the cogency, consistency and reliability of the evidence in support of the allegations against the cogency, consistency and reliability of the evidence in defence of the applicant. This balance will determine the presence, or not, of an arguable defence.

Evidence must not include hearsay, but may include eye witnesses, witnesses present in the immediate aftermath of any incident and any non-witness evidence such as documents, property, photographs, recordings etc.

LOCATE AN ARGUABLE DEFENCE

With regard to the complainant’s evidence, there should be a thorough investigation although we accept that in many cases, the complainant may be advised to provide no more than the information already detailed in any grievance lodged, employment tribunal application or other similar document.

Having completed the investigation it is for the investigators initially and the regional committee subsequently, to consider the weight, cogency and consistency of all available evidence and then decide whether the applicant has an arguable defence.

Undoubtedly, at one extreme, there will be cases in which a bare denial with no supporting evidence in the face of overwhelming evidence to the contrary will not amount to an arguable defence.

As lawyers always say, “each case will turn on its own facts”. It would not be appropriate to place a gloss on the words arguable defence or suggest the informal approach.

It may be that management has still a vicarious liability and so a formal complaint may be possible.

Regional committees and investigators should concern themselves solely with the substance of this definition.

An arguable defence is as it is defined here. Any attempt to redefine it will only cloud rather than clarify any investigation.

A series of acts which in themselves appear to be acceptable as one-offs may be so offensive when taken as a whole that an arguable defence cannot be said to exist.

A single act can also be so offensive that an arguable defence cannot be said to exist.

The applicant ought to know that an act (single or as part of a campaign) amounts to bullying/harassment if a reasonable person who had the same information would think that it amounted to bullying/harassment.

As the intent of the applicant (to follow a course of action which they know or should know will cause offence) increases so the ability to locate an arguable defence decreases.

The intent of the applicant has no bearing on the effect of the act(s) on the target. The greater this effect (emotionally, physically etc.) the more incumbent it becomes on the applicant to modify his/her behaviour. Likelihood of locating an arguable defence decreases as known/perceived effect increases.

1. REPRESENTATION BY THE FBU ON OTHER MATTERS

It is possible that a member(s) who has been refused representation on a harassment matter may have totally unrelated matters ongoing with which they are receiving assistance from the FBU. These will not be affected by the decision on representation in the case dealt with under this policy.

2. COUNTER-COMPLAINTS

The FBU notes the potential complexity and amount of work that counter-complaints may generate, however the union has no option but to conduct each complaint as per the procedures outlined in this document. It is recognised that regional secretaries may have to co-opt the assistance of officials from other regions or national sections.

3. INVOLVEMENT OF NON FBU MEMBERS

If the complaint is against someone from outside of the union this procedure will not be applicable and assistance should be given to the complainant. If however an allegation is made regarding an FBU member by someone outside of the union this policy will apply.

4. NON CO-OPERATION OF COMPLAINANT

In the event that a complainant is obstructive to the FBU investigation by not submitting a statement to the FBU investigation team or not partaking in an interview to enable the investigation team to ascertain the facts, then representation will automatically be afforded to the applicant.

5. THIRD PARTY COMPLAINT

The FBU believe that the wishes of the victim must remain paramount. If possible every effort and support should be offered in order to secure the willingness of the recipient to be involved with the complaint, this of course may not always be possible. Initially cases should be dealt with, where possible, informally and if at that stage, despite the wishes of the third party complainant the recipient wishes no further action (e.g. in the case of a gay member who may fear 'outing at work'), then the regional secretary may decide no action under rule will occur. It should be emphasised that in such circumstances, it is difficult to completely safeguard confidentiality and the wishes of a recipient, but the FBU believe it is the right decision.

6. MULTIPLE ALLEGATIONS

In the event that multiple allegations of discrimination, harassment and/or bullying are brought under discipline or an employment tribunal (ET) case, the investigation team must carry out their investigation methodically. Upon an arguable defence not being located for any of the allegations, the investigation will cease and the recommendation to the regional committee shall be that representation is withdrawn from that member. In the event that multiple allegations are made under separate discipline or ET cases, then each case must be taken separately in terms of the investigation and the affording or not of representation to that member.





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