

Complaints and Whistleblowing

Basic guide to positive resolution of issues

Guide 52



BAJR Series
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1. Introduction:

This document represents a BAJR guide to work-related whistleblowing and complaints, created as a reaction to the accumulating number of individuals, who have sought the BAJR's advice and some recent multimedia discussions regarding the issue. Although most of you will hopefully never have to use this guide, there may well be times when you will need to complain about an action, event or issue that arises within your work environment. Most work-related concerns can be resolved without too much trouble or the need for further (legal) actions, to the mutual benefit of all involved parties. This guide looks briefly at how best to approach and deal with such issues, before they get too far— often beyond the control of the original parties involved. Remember also that in some cases, your perception of a situation may be incomplete, so before going in with all guns blazing, make sure you approach each issue in a staged and measured manner.

Needless to say, if you are a member of Chartered Institute of Archaeologists (CIfA) and/or a Union Member then things may be easier as you will have more support. However, regardless of your particular union or other membership, you should never be afraid of 'rocking the boat' (so to speak) or being 'blacklisted' when raising an issue, as there are employment laws and regulations aimed at protecting you. Indeed, if you do find yourself to be blacklisted or marginalised as a result of your complaint, then there are serious legal repercussions for the employer ([Employment Relations Act 1999 \(Blacklists\) Regulations 2010](#)), which can be employed to protect your rights as an employee.

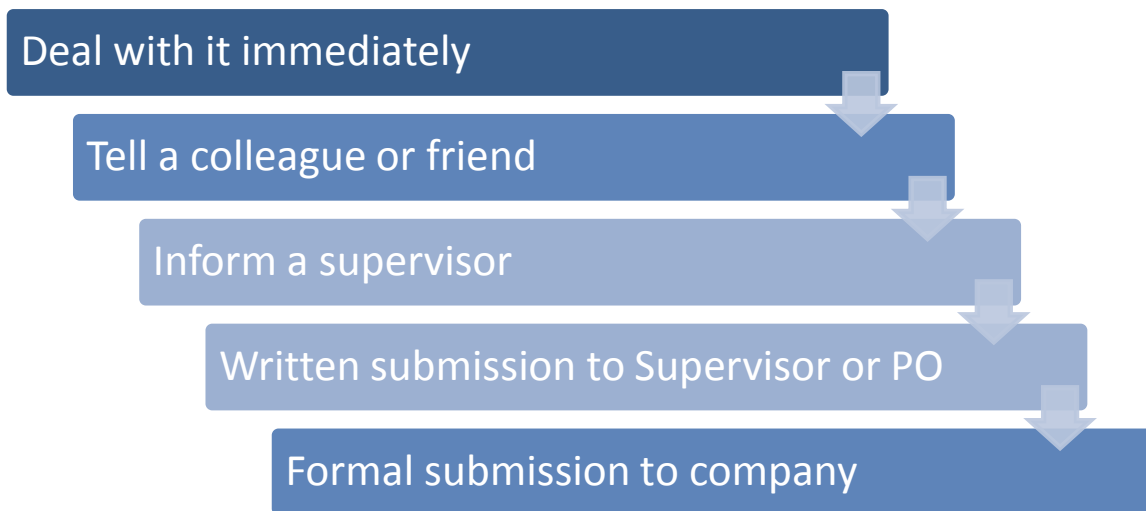
For example, the legal protection gives employee rights to complain about unfair dismissal, which, in the event of an employment tribunal, can lead to a compensation of up to £65,300— including an award for injury to feelings— with a minimum award under the regulations amounting to £5,000. Organisations should be wary of subscribing to or making use of blacklists because of the new powers that will soon be available to the Information Commissioner's Office (ICO) to levy large fines of up to £500,000. ICO can impose these fines in cases where company/ organisation is found to have deliberately flouted the [Data Protection Act](#) or where they had known of the potential risks and did not employ suitable mitigation measures to prevent serious damage or distress to the employee.

2. Basic Concepts

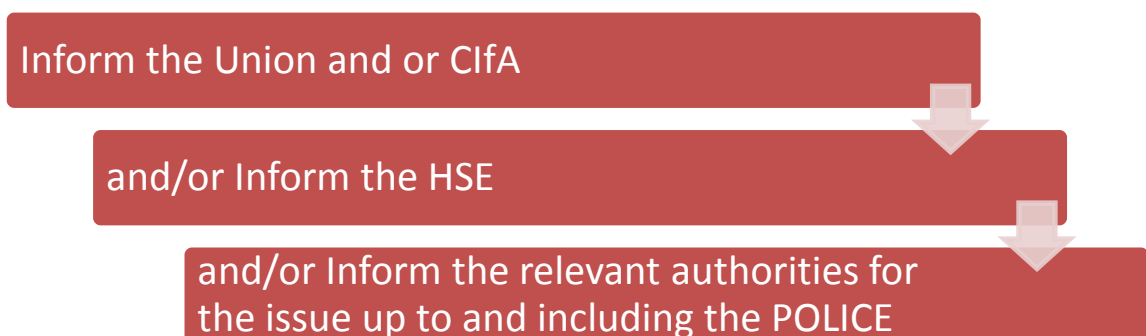
This section considers general procedures and basic concepts regarding multitude of complaints– including the best way to gather evidence; and whom to approach with the specific complain.

Before anything else, the company/organisation you are working for **should** have policies in place for raising issues or for dealing with legitimate grievances.

Consider this ascending escalation model:



If your complaint is not resolved accordingly you can move to the next more serious level.



Remember: It is always best to **write down details of the event** that led to any of the above steps, as this will help in case you need to provide evidence at a later stage.

Basic details should include: Date/Time of the incident; Place of the incident; Nature of the issue; Who was involved/was present; Any other relevant details.

If the issue took place over several days or weeks, **keep a diary**, where you may **build up a pattern**. **Remember** you should include details of what you did to mitigate against the situation.

3. Commonly encountered issues

The following section reviews commonly reported problems/grievances; general procedures and relevant published material regarding dealing with these.

The most frequent complaints involve:

- Bullying/Sexual Harassment
- Health and Safety Breaches
- Lack of Facilities
- No (or inadequate) PPE is offered
- Alterations in salary/working conditions
- **Doing more than your job description** (This can include acting above your capabilities, working hours or perhaps driving for the company with no additional pay or insurance)

3.1. Bullying/Sexual Harassment

Read the [BAJR Guide 44](#) on this issue. All the details are there, and it provides an initial point of reference to signpost services and create procedures to prevent cases of sexual harassment, sexual assault and rape, as well as bullying and discrimination.

Document Who, Where, What and When. If you can't stop the observed/encountered bullying or similar negative behaviour immediately (then and there) or voice your concern about 'low-level' harassment, (i.e. can't you take a joke style) then **documenting** everything represents the next best thing.

When deciding what is 'sexual harassment' or 'bullying' it's important to remember that it is the effect of the behaviour on the recipient that counts –and not how it appears to another person.

If it continues, **keep a diary** and **report your concern** to your line manager (perhaps a supervisor or site manager). The company should have a policy on all forms of harassment – ensure you have read it and followed the procedures.

If you are still having issues after talking to your manager, or if the bullying is at the level of management, then talk it through with your **Union representative**, the **Citizens Advice Bureau** or **CifA**.

Make sure others are aware of the issue, and speak out if you see it!

3.2. Health and Safety

This requires immediate action and **reporting to the supervisor** or line manager; if it is something simple, like a trip hazard, or spill, deal with it, and then report it.

If you see something in a workplace that you think is breaking health and safety law and is likely to cause serious harm, you can report it to the **Health & Safety Executive (HSE)**.

Remember: It may be possible to correct some health and safety problems without contacting HSE, so start by speaking to:

- The site safety officer (Principle Contractor) and/or your supervisor
- Your employer
- Your union representative

And take a note of what you said, when and to whom.

If nothing changes and **as a last resort** –go to the HSE website and fill in the concerns form:

tinyurl.com/yavdlggc

or phone them on **0300 003 1647** (Monday to Friday from 8.30am to 5pm; Wednesdays 10am to 5pm).

3.3. Lack of Facilities

The main contractor OR your Employer must provide the **right workplace facilities** for everyone in your workplace, including people with disabilities. However, this doesn't have to be complicated.

Basic workplace facilities are outlined below:

- toilets and hand basins, with soap and towels or a hand-dryer;
- drinking water;
- a place to store clothing (and somewhere to change if special clothing is worn for work);
- a safe clean place to rest and eat meals

The key legislation specifies that Principal Contractors must provide suitable toilets, washing facilities with hot and cold running water and suitable, sheltered rest facilities for **all workers** engaged on their sites. Often, this may include the phrase "*where reasonable*". For example, if you are on a one-day watching brief in town, near shops, a café and toilets, then do not expect a full suite of portaloos, cabins and the like. **HOWEVER**, if you are on a site where you are told to pee behind a tree/bush; forced to sit in your car as only means of getting warm; or if there is a group of you, who are expected to all cram into the transit van to eat your lunch, and write site records on your lap in the front seat, then **speak up**, as this is a **legal requirement!**

What to do: Note the incident, date, time, number of people involved etc. and ask the management for appropriate facilities. If this is not satisfactorily dealt with, then **contact the HSE** at:

tinyurl.com/yavdlggc

or phone them on **0300 003 1647** (Monday to Friday from 8.30am to 5pm; **Wednesdays** 10am to 5pm).

3.4. Provision of inadequate or no PPE

As with facilities, the provision of 'adequate' PPE is a legal requirement for employees, who may be otherwise exposed to an unnecessary risk to their health or safety while at work, except where such risk has been adequately controlled by other means, which are equally or more effective. The standard PPE you should be normally provided with includes Hi-Viz waistcoat, a pair of gloves, a hard hat and a pair of workboots; however, you should always go by the **Risk Assessment Document** written SPECIFICALLY for the site you are on. Risk Assessment Document **MUST** be accessible to read and updated in case site conditions change during the course of the project. So, the requirement for cold weather gear and rain wear may turn to eye/dust protection and sun shading. **Remember** that PPE does not belong to you, but to the company.

What to do: Note the issue, date, time etc. and ask the management for appropriate PPE. If this is not satisfactorily dealt with, then **contact the HSE** at:

tinyurl.com/yavdlggc

or phone them on **0300 003 1647** (Monday to Friday from 8.30am to 5pm; **Wednesdays** 10am to 5pm).

3.5. Alterations in salary/employment conditions

An employer can offer whatever salary and employment conditions they want and are not legally bound by any advertised salary range or terms. However, once you have agreed to the terms by signing the **contract of employment**, this becomes legally binding.

A **contract of employment** is an agreement between you and your employer that outlines the rights and duties of both sides. Employees are **legally entitled** to a Written Statement of the main terms and conditions of employment within **two calendar months** of starting work. This should include details of things like pay, holidays and working hours and the main duties you will be expected to carry out.

If you **don't have a written contract**, you and your employer may have entered into an **initial agreement** verbally, after having discussed the main terms at the interview or when you accepted the job. Verbal agreement is also binding but **remember** that it is difficult to

argue your case, in event of any changes to verbal agreement, without written evidence.

If you begin a job without seeing or signing the contract or are entering into an initial verbal agreement and find that you have been offered less or indeed a different position (such as a trainee post) then you should initially **discuss this with the HR department**.

At this point, until you agree to accepting a variance to conditions, you are entitled to the rate and post duties that you applied for (*You can see why having a written rather than verbal contract is important*).

Remember: Neither **you** or **your employer** can change your employment contract without the other's agreement. However, **a collective agreement** (for example a union-negotiated pay deal) can make a change to employment contracts even if you are not a member of that trade union.

What to do: Start with the HR department (copy in your line manager) and if this is not satisfactory, then contact your Union representative and/or the Citizens Advice Bureau (CAB) – who can advise further. Again, keep careful note of emails and any verbal discussions regarding your employment – it is easier to spend a few minutes doing this, than wishing you had.

3.6. Doing more than your job description

In the same vein as above, this issue relates directly to your **Contract of Employment** and terms of employment specified in it. You may be asked to do things not agreed to in your contract, such as acting above your capabilities, change to working hours or perhaps undertaking activities beyond those specified in the contract– for example driving for the company. While this is not illegal per se, if you are forced to this or threatened with repercussions in case you refuse, then you have a case to take your employer to the **Employment Tribunal**.

Remember that before you start accusing your employers for placing unreasonable demands on you, **think** about whether what was asked of you was beyond any acceptable requests. **Check your contract** to see what is expected of you, and be prepared to **negotiate** if asked to do more than originally agreed or if you **feel uncomfortable** in carrying out work or activities above your grade (e.g. *You may find yourself being in charge of a small team, or asked to write up a site, while still paid as a site archaeologist/assistant*) You may be employed as a trainee, but then asked to carry out a watching brief by yourself, or receive no training regarding any duties.

What to do: As above, start with the HR department (copy in your line manager) and if this is not satisfactory, then contact your Union representative and/or the CifA or the Citizens Advice Bureau (CAB) – who can advise further. Again, keep careful note of emails and any verbal discussions regarding your employment.

4. Serious Complaints and Whistleblowing

Whistleblowing is the highest level of complaint, and must/should concern a serious wrongdoing you are disclosing in the public interest. In simple terms, this means the concern/problem must affect others– e.g. the general public.

As a whistle-blower, you are **protected by law** and any confidentiality clause or ‘gagging clause’ in a contract is not valid.

You are protected by law if you report any of the following issues:

- a criminal offence, such as fraud
- people’s health and/or safety are in serious danger and the issue is being ignored
- there is risk or actual damage to the environment
- you have witnessed a miscarriage of justice
- the company is breaking the law, e.g. no insurance, falsifying records, hiding a contamination spill etc.
- you believe someone is covering up grave misconduct

What to do: Get independent advice if you’re not sure where to start from Citizens Advice Bureau (CAB), a Union representative or a lawyer.

5. Social Media – Taking care in how you voice issues

There is **a lot of confusion** over what is acceptable behaviour regarding the use of social media, such as Twitter, Instagram or Facebook.

Some employees believe they should be able to say what they wish, especially if these comments are made outside of work. They do not realise the **implications** of making derogatory remarks about organisations, people they work with or even their employer.

Some companies are especially worried about the **use of images of a site** you are working on **or artefacts** you may have found on social media. The company should normally have a policy in place, regarding this issue; if this is not the case or clear, then **use common sense**. This is an extremely **grey area** within the copyright law, but generally even if the camera or phone belongs to you and you take a photo of a site during worktime, it probably belongs to your employer.

Remember, that social media is probably not the best place to **air grievances**, even if you think it is a closed group of friends you are talking to. Employees and employers should also be aware that **online behaviour could break defamation, data protection or privacy laws**. For instance, if an employee posted damaging or libellous comments about a company or its products; or if an employer divulged protected personal data, such as giving away details of salary or disciplinary records then there would be **serious legal implications**.

Be aware, that **this is not whistleblowing, it is damaging** to any case you may have.

6. Summary of the rules for making complaints

- Once an incident arises, begin to record events.
- Stick to the facts. Don't make allegations or accusations you cannot prove
- Keep copies and paper trails – this is why you should try to keep all written, rather than verbal, correspondence.
- Keep your letter of complaint to the point. You need to give enough detail for your employer to be able to investigate your complaint properly. Going off on a tangent can be confusing and won't help your case.
- Never use abusive or offensive language. You are unlikely to achieve your aim if you anger the person reading your complaint.
- Explain simply and succinctly how you felt about the behaviour or what prompted the complaint but do not use emotive language.

- Make sure you supply your name, address and contact number.
- Your employer's name and address.
- Make sure the letter is addressed to the right person.
- Your employer's grievance procedure should point out the person to send the letter or email to. If not, send it to your line manager. If the complaint is about your line manager, send it to their manager. If your employer has an HR department, it may be a good idea to send them a copy of your letter.
- Clearly set out the key facts of your complaint. Say what happened and try to include the following details:
 - The date and time of incidents
 - Where they took place
 - The names of the people involved
 - The names of any witnesses
 - A short precis of the incident

- Have you escalated your complaint appropriately? It may be the case, that a few words at the right moment in time would have sorted the issue (this does not mean you do not take note of the event, as it may be the start of a longer-term problem).
- Have you misunderstood the situation? Sometimes, it can be simply the case that you were not aware of all the details.
- Have you followed the company grievance and complaint procedure?

7. Further reading

Dealing with Grievances at Work (CAB)

<https://www.citizensadvice.org.uk/work/problems-at-work/dealing-with-grievances-at-work/>

Pay and work rights helpline and complaints

<https://www.gov.uk/pay-and-work-rights>

Disputes and problems at work (ACAS)

<http://www.acas.org.uk/index.aspx?articleid=1364>

Reporting a workplace health and safety problem

<http://www.hse.gov.uk/contact/concerns.htm>

Harassment at work (CAB)

<https://www.citizensadvice.org.uk/work/discrimination-at-work/what-are-the-different-types-of-discrimination/harassment-at-work/>

Sexual harassment (ACAS)

<http://www.acas.org.uk/index.aspx?articleid=6078>

Professional conduct and complaints procedures (Chartered Institute for Archaeologists)

<https://www.archaeologists.net/regulation/complaints>

The Diggers' Forum – a Special Interest Group of the Chartered Institute for Archaeologists representing all archaeologists working out on site at whatever grade. DF are willing to represent you if an anonymous complaint is to be made.

<https://www.archaeologists.net/groups/diggers>