

Handling casework



A GUIDE FOR UCU REPS





Introduction

Union support to a member who is facing difficulty in the workplace is a key benefit of union membership, and UCU, like all other trade unions, relies heavily on the voluntary support and commitment of its many branch reps to deliver this key benefit.

However, this is not always an easy task. Not only has employment law become more complex and detailed over the years, but many other considerations now impact on this work, for example, data protection.

This guide has been produced to assist branch reps who are involved in representing members. It is not intended as a definitive guide on how to conduct casework. Instead, it offers a series of issues which the person conducting casework on behalf of individual members should take into account.

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The importance of confidentiality

Casework will almost always involve handling sensitive material and information – that is to say, material and information about a member who has a legitimate expectation that the information given is treated as strictly confidential.

With this in mind, it is important to take stock of the arrangements you make when undertaking casework. For example, where do you meet the member, where do you store their information and how? A good trade union facilities agreement should address many of these issues, such as a locked office space and use of the employer's network and email servers.

Example

It is well known that you are the UCU representative for a particular department. A member, X, approaches you for support and you arrange to meet X in the staffroom or a local coffee shop to discuss X's problem.

Meeting in a public space may compromise X's expectation of confidentiality as merely being seen with the union casework representative is likely to reveal to onlookers that X has a problem at work.

By discussing X's problem in a public space there is a risk that others may overhear what is being said.

Confidentiality and data protection

Almost all casework will involve handling and processing data of some description, whether paper or electronic documents such as emails. With this in mind, UCU recommends that your basic setup

Members have a legitimate expectation that the sensitive information they disclose is treated as strictly confidential.

should address how you keep information and data secure.

- 1 When not in use, paper documents should be kept in a locked cabinet/drawer at all times and the key held by authorised UCU reps only. Ideally, reps should have a secure place for their own casework which is not shared with other caseworkers, or anyone else.
- 2 If you keep paper files at home, they should also be locked away securely.
- 3 Electronic files and emails should be kept in a secure manner¹. If you use your employer's computer for holding electronic material this will pose special issues if the employer and/or its IT or other staff can gain remote access to the files on the hard drive, or you share your computer with others. However, some employers will not allow memory sticks to be inserted into computers. One option may be to use 'cloud' storage, eg Dropbox², Google Drive³ or similar. This also facilitates the sharing of files between the caseworker and member and avoids the need to email large attachments. However, if you use these services you must log in and log out every session to avoid unauthorised access to the files, and encrypt files which are stored there.
- 4 If you use a memory stick, it must be encrypted.

¹UCU takes responsibility for compliance with the Data Protection Act under its umbrella registration for all UCU officers and reps at the Information Commissioner's Office, so reps do not need to register individually.

²<https://www.dropbox.com/>

³<https://drive.google.com/>

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- 5 If you use a laptop, whether your own or your employer's, UCU recommends that the whole of the drive is encrypted, and certainly any files relating to UCU casework must be encrypted and kept separated from your employer's business files and folders.
- 6 Whatever you use, you should ensure that files relating to one member's case are not intermingled with another member's case (or your work files). Files should be strictly segregated and kept properly ordered.
- 7 If you use email to send and receive casework-related emails it may be appropriate to create and use a specific email account, rather than your work email account. Remember to check with the member which email address they would prefer you to use. It is usually best if you do not use their work email account.
- 8 When sending sensitive documents via email, it may be appropriate to send them using a secure method, such as an encrypted zip file. Using cloud storage applications does not obviate the need for additional security, such as encryption. We also recommend that you select the option to receive a 'delivered' and 'read' report.
- 9 If you access emails and documents on a smart phone/tablet, you must ensure the device is locked when not in use.
- 10 If you need to copy emails to others then you should consider whether you use the 'bcc' option which withholds the addressee's email address (particularly if the email address in question is a personal email address).



The first meeting

It's a good idea to have a short checklist of items you need to address with the member before you get started. Items on the checklist might include the following:

- 1 Contact information, such as phone numbers, email address, home address.
- 2 Do you need to consider making any reasonable adjustments for the member?
- 3 Check their UCU membership (and that they are paying the correct subscription).
- 4 Who else may information be shared with on the member's side, eg partner/spouse, and who else in UCU does the member agree may have information about their case, eg other members on the branch committee, or the union's regional office?
- 5 Record all relevant dates. There are time limits associated with employment legislation and often internal procedures too, so it's important to make a note of the dates on which events occurred (an up-to-date list of employment rights, qualifying periods and time limits is available via UCU's Support Centre, see below).
- 6 Explain your role, that is to say, what you will do and what you will not do. Agree what you expect from them in return (such as full disclosure of all relevant material, facts and documents).

Establish the boundaries of your involvement – that you are the member's trade union representative, not their counsellor or legal adviser.

- 7 Establish the boundaries of your involvement – that you are their trade union representative, not their counsellor or legal adviser. If they want to involve others outside the union, agree with them how that will work in practice. You may also want to share your contact details but make it clear that you will not be responding in the evenings or at weekends unless agreed otherwise.
- 8 Discuss and agree how you will progress their case, for example, if you intend to write communications on their behalf to management, you would expect to prepare a draft for them to approve before it is sent.
- 9 Understand the issues and set realistic objectives and desired outcomes (see below).

The above is not an exhaustive list – you will need to tailor it to your specific circumstances.



Understanding the member's case

It's important to understand the issues facing the member. There's no 'correct' or 'best' way of achieving this. It will depend on the member's circumstances and the circumstances of the case. An issue involving a broken water fountain is quite different from a case of alleged harassment.

In almost all cases it is going to be advisable to meet the member. Conducting casework via email is not recommended. Allow a reasonable amount of time.

The key task at the first meeting is to understand the issue/s. In other words, what are the issues which the member wants to have resolved? Sometimes this will be straightforward, for example if the member is facing a disciplinary. But in other cases the issue should be reduced to a level of detail which enables an understanding of the essence of the dispute and provides a framework for resolution.

Example

Member complains that she is being harassed and bullied by her line manager, and has been over a number of years. Merely identifying the issue as one of bullying and harassment is not likely to be sufficient. Using open questions try to establish what she considers the causes of the treatment might be. Are they, for example, related to her gender? Or is it related to workload? Also, try to move away from the generality of the claim of bullying into the specific incidents. By doing this you address the essence of the claim (bullying) and the specifics (eg reducing workload).

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In general, at the first meeting it is best to either invite the member to bring a written narrative and supporting documents/emails for you to go through together, or, for you to take the member through the circumstances of the case while you make notes. If you do make notes, it is also recommended that you give them a copy and ask them to check that they are accurate.

When asking questions, use open questions, rather than closed ones. For example, ‘what happened next?, rather than ‘did X follow this up?’. Sometimes it is helpful to reflect back what you have been told to make sure you understand it, for example you might say ‘so, from what you’re telling me you are saying this ... is that correct?’

Getting the narrative in chronological order is very important, even if the member’s case involves what appear to be distinct issues. Separating facts from opinion and conjecture is also important – what matters first and foremost is what the member knows from direct experience. Their conclusions or assumptions may be informative but they may also be completely wrong!

You may need to approach other staff for help in the case, such as individuals who may be potential witnesses. If you think this is necessary, you will need to agree it with the member. If the member agrees, and you do approach other staff, you must be careful to maintain confidentiality by asking anyone you approach to keep the contact confidential.

It is quite likely that the first meeting will not give you the full story – there will be details or documents missing. But it will be helpful to

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set a timeframe within which the narrative is completed and agreed. This prevents the case from drifting and progress being delayed.

It is also important at the end of the process of establishing the member's case to discuss what you/the union can do, and what the member wants as an outcome. This should be realistic but also supportive.

Example

The member is facing a disciplinary. After discussing the case and getting the facts, it appears to you unlikely that the member will not be found to have committed gross misconduct. Clearly, it will not inspire confidence if you tell the member that they should consider resigning, but it may be appropriate to discuss whether the member would want you to raise with the employer leaving on agreed terms.

Sometimes you may consider, after hearing the case facts, that the member's expectations are unrealistic, or that the probabilities of a successful outcome are slim. But it will not encourage confidence in the union's support if you provide that view in a negative way.

Example

The member complains of race discrimination by other members of staff including managers. Advising the member that only three percent of race cases succeed in the employment tribunal may be true but likely to create a lack of confidence or even distrust. It would be better in such circumstances to explore fully the facts and issues to assist the member to gain another objective view, and discuss with them their options, eg the grievance procedure etc.

It is also important to discuss what you/the union can do. This should be realistic but also supportive.

You should also avoid venturing a personal viewpoint, eg if the member complains about X, don't say that you know X and think s/he is incapable of acting improperly.

In some cases, by the end of the first meeting you may need to consider escalating the member's case to a more experienced branch caseworker, and notifying the regional office – this would normally be appropriate in any case where dismissal is threatened or the complaint is one of discrimination.

By the end of the first meeting you should aim to:

- identify and agree the issues so that specific action points can be also agreed and taken forward by the union
- agree a narrative and supporting documents which contextualise the issues (or a timeframe for achieving this)
- identify any relevant procedures applicable, obtain and review them, checking for time limits etc
- consider any other relevant time limits – statutory ones for example – and you may want to check with your regional office if you're not confident that you can correctly assess any which apply
- agree the parameters of the union's involvement/support, ie what we can and can't do
- agree a timeframe for the action points
- set the overall aims and objectives.



General points

- 1 Try to avoid being, or appearing to be, judgmental about either the member or the issue which they brought to you.
- 2 It is always appropriate to treat as a complaint of discrimination one which the member describes as such. Don't be tempted to categorise the case as something else because you personally don't consider that the complaint of discrimination could be made out.
- 3 Avoid offering views or advice on the member's health or well-being. For example, even though a member may appear to show the symptoms of stress, it would inappropriate to offer views on the member's state of mind or health. However, if the member themselves states they are feeling unwell, it would be appropriate to encourage them to seek the advice and support of a medical professional. Support services for staff in further and higher education (including one-to-one counselling) are available through the charity Education Support Partnership:
www.educationsupportpartnership.co.uk/ Further guidance on representing members with a mental health impairment is on our website <https://www.ucu.org.uk/article/1940/Equality-advice-and-guidance#Disability>
- 4 Being a representative often means advising the member of choices. You are not there to ensure the member makes the 'right' decision, or indeed any decision. You are there to assist

Being a rep often means advising the member of choices and letting them follow their own path.

them but in the end the member is responsible for their own actions, or inactions.

- 5 Always maintain a paper trail of your actions and advice. If you give any advice orally, follow it up with an email or written note.
- 6 Be conscious of, and avoid, conflicting interests. If a member seeks help about another member, or another non-union employee, reflect on whether you, or UCU, may have any conflicting interests. If you think you may have, it will usually require you, or UCU, to step aside from advising the member.
- 7 If you are asked by management to have an ‘off the record’ or ‘without prejudice’ conversation, make sure that you tell the member beforehand and obtain their agreement. Also, make it clear to the manager that anything they say will be reported back to the member.
- 8 As the casework progresses it is usually worthwhile checking back against what was agreed at the first meeting. Have you covered all the issues and have any new ones been raised?
- 9 When offering technical advice, eg what the law is on a particular point – take your time and look it up, or contact the regional office for guidance. Don’t be tempted to offer the advice based on a hazy recollection.

Establishing informal arrangements within a branch which allows casework reps to share and discuss issues is likely to be helpful.

- 10 Your employer will usually keep a set of internal policies and procedures and it is worth finding out where these are kept and familiarising yourself with the contents. It is also worth exploring the possibility of resolving a case informally before invoking these local procedures or seeking legal remedy.
- 11 Finally, every caseworker is likely to face a case where their own experience or knowledge is pushed to the limit – establishing informal arrangements within a branch which allows casework reps to share and discuss problems and issues is likely to be helpful. Remember this should always be on a confidential basis unless the assisted member agrees to their information being shared in this way.



The conclusion of the case

Every piece of casework has to come to an end. It is in everyone's interests that both the adviser and the advised agree when that end is reached.

It could be when the case reaches a natural end, eg at the conclusion of a disciplinary matter, or at a point when all the steps that could reasonably be taken have been, and the union considers it can do no more – even if the member has not achieved the outcome they had hoped for.

As in all cases members are not obliged to accept the union's advice and, by the same token, the union is not obliged to support members who reject considered advice.

You need to feel confident that UCU has supported and advised the member appropriately. You will have made any reasonable adjustments to support the member, but many aspects of the case will be following the usual process for handling casework.

At the conclusion, if you have any original documents belonging to the member return them, and obtain a receipt if necessary. If you have created any documents/emails it is advisable to retain these for a reasonable period of time.

What is 'reasonable' will depend on the circumstances, but up to six years may be reasonable in a substantial case. It is perfectly acceptable to archive paper documents electronically, ie scanning to PDF, and then destroying the paper copies.

At the conclusion, if you have any original documents belonging to the member return them, and obtain a receipt if necessary.

Data should not be held for longer than is necessary, and so at the end of the designated archive period you should have a system which reminds you to securely delete the case file.

Paper documents should be shredded and electronic files should be securely deleted. If you are not sure what this involves seek guidance from your IT support team.



Useful links and further support

The sites listed below offer a good source of employment law and related information:

UCU Support Centre

<https://ucu.custhelp.com/>

Thompsons Solicitors

www.thompsons.law.co.uk

Slater & Gordon Lawyers

www.slatergordon.co.uk

Government Services Information

www.gov.uk/browse/working

ACAS

<http://www.acas.org.uk>

Further support

Your UCU regional office can provide further support and advice on handling casework and representing members. For contact details see: www.ucu.org.uk/yourcontacts

We recommend that UCU reps conducting casework receive appropriate training. You can access our full range of courses at:

www.ucu.org.uk/training





