

Mind Your Language –

is there a ticking time bomb in your workplace?

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Introduction

Many Baby Boomers and Generation X-ers growing up in the UK will remember *The Benny Hill Show*, *Mind Your Language*, *Love Thy Neighbour* and *Are you Being Served* – all big hits on prime time television in the 1970's. The crux of many of the jokes and banter on these shows were about women, old people, different sexual orientation and people from different countries and from different races. It is doubtful whether scripts for any of these shows would even be considered, let alone aired on TV today. What was considered comedy back then, would be shot down as being discriminatory by Ofcom and the viewers.

Legislation introduced over the past four decades has tried to pave the way for a more tolerant and politically correct society in the UK. The Sex Discrimination Act in 1975, the Race Relations Act in 1976, the Disability Act in 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003 and the Employment Equality (Age) Regulations 2006 legally protect people from discrimination in the workplace and in wider society and have been consolidated in the Equality Act 2010.

Yet in the age of political correctness, how much 'PC' behaviour is being reflected in the workplace? Is enough being done to monitor how we communicate with each other in the office? How many of us are aware that office banter or a joke we make could be regarded offensive, or even worse, unlawful? Could saying comments such as "*you look good for your age*" or "*you're looking good today*" find yourself in a legal dispute? How common is swearing in today's workplace and does where you work (geographically) make a difference?

The HR & Employment practice at Turbervilles Solicitors decided to investigate further by commissioning research in February 2016 (conducted by Atomik Research) amongst 1003 employees across the whole of the UK. It's 2016, but some of the results could shock you and make you think we are still living in the 1970's. It could even be a wake-up call to your own organisation

Section 1: Discrimination is still rife in the workplace

Four in ten employees (five in ten for those aged between 25-34) admitted they had heard discriminatory remarks at work (comments which could cause offence because of somebody's age; disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The most discriminatory remarks heard or made directly to an employee were about age, sex and sexual orientation, race and religion/belief. Verbatim remarks included: *"Women are only useful for wearing skirts"*, *An older co-worker being called a "dinosaur"*, *"I have heard colleagues calling Pakistanis workers "ragheads" and "Muslims are terrorists"*, *"Calling a black person a darkie"*, *"I hate all queers"* and *"One colleague was making fun of disabled person in a wheelchair because they couldn't get around the office."*

It's happening on a regular basis

Nearly half of all employees (46%) hear discriminatory remarks on a weekly basis and this rises to seven in ten employees (72%) on a monthly basis.

Remain in silence or brush it off?

Despite the fact that discrimination is still prevalent at work, nearly two thirds (62%) of employees do nothing about it or laugh it off. A mere 4% of employees raised the issue formally, whilst the remainder spoke to another colleague about it and raised the issue informally.

What policies?

Staff are still unaware whether their employer has a policy or guidelines on acceptable verbal and written communication within the workplace. A third of employees (33%) did not know what measures are in place and a further 28% replied that there are no policies in place at work.

The social media red flag

Of the four in ten employees who use social media at work, more than a quarter (27%) had received or heard discriminatory remarks (defined as above) via these communication channels.

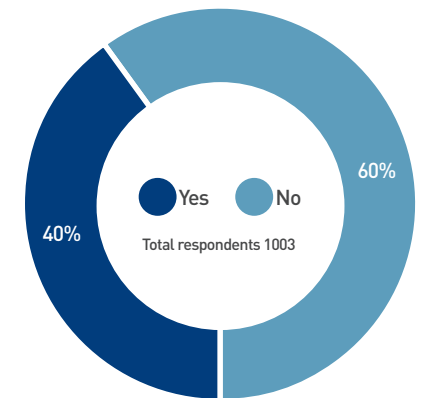
What can employers do to tackle these issues?

- Make sure all your staff know that your organisation has a zero tolerance approach to acts of discrimination in the workplace.
- If you don't have an equal opportunities policy, anti-harassment policy and/ or a dignity at work policy in place make sure you put them into effect as soon as possible.
- Given the increasing number of staff using social media – make sure that your policies factor what is acceptable behaviour within all of these channels.
- Make sure **all your staff** understand all of the policies - what is considered acceptable behaviour and what is unacceptable and unlawful. Provide regular training for your staff about these policies.
- Make sure your organisation culture is one which encourages staff to come forward about a perceived discriminatory comment.
- Be clear to distinguish the difference between harmless banter and what could be deemed offensive and unlawful. Be sure to stress that jokes about ethnic minorities, women, different sexual orientation, individuals with disabilities, or older workers will not be tolerated in your organisation.
- Ensure staff of a different sex, race, sexual orientation or religion are not excluded and are integrated effectively in the workplace

Q1

Discriminatory remarks are comments which could cause offence because of somebody's age; disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation.

Have you heard such comments in your workplace?



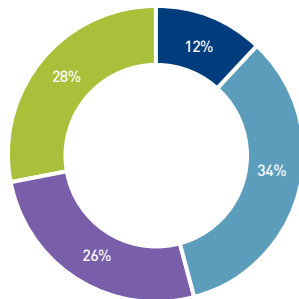
Q2 What was the discriminatory comment about?

Choice	Frequency	Percent
Age	160	40.10%
Sex	185	46.37%
Race	122	30.58%
Religion or belief	102	25.56%
Disability	55	13.78%
Sexual orientation	112	28.07%
Marriage or civil partnership	45	11.28%
Pregnancy and maternity	47	11.78%
Gender reassignment	29	7.27%
Other	27	6.77%

Total respondents = 399

Q3

How often have you heard the discriminatory comments (like the ones mentioned earlier) in your workplace?

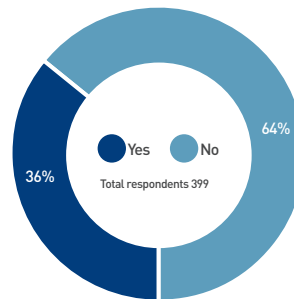


● Daily ● Weekly
● Monthly ● Yearly

Total respondents 399

Q4

Were the comments directed at you?



Total respondents 399

Q5

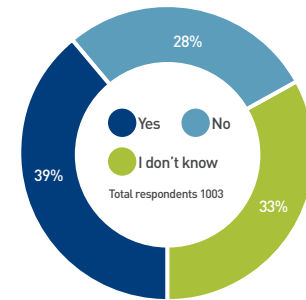
What action did you take in relation to the comments mentioned earlier?

Choice	Frequency	Percent
I did nothing	115	29%
I laughed it off	131	33%
I spoke to a colleague about it	90	23%
I raised it as an issue informally	47	12%
I raised it as an issue formally	16	4%

Total respondents = 399

Q6

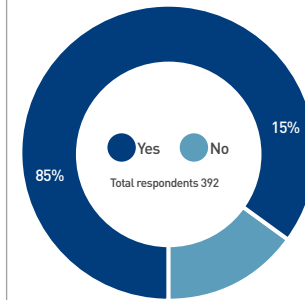
Does your employer have a policy or guidelines on what is acceptable verbal and written communication within the workplace /during office hours?



Total respondents 1003

Q7

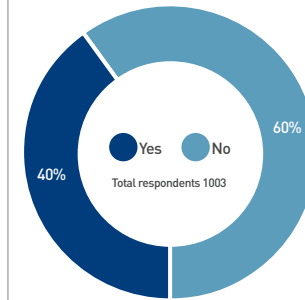
Have you read these guidelines/policy and understand what is unacceptable?



Total respondents 392

Q8

Do you use social media at work (such as Facebook, LinkedIn, Yammer, Twitter, Instagram, Pinterest)?

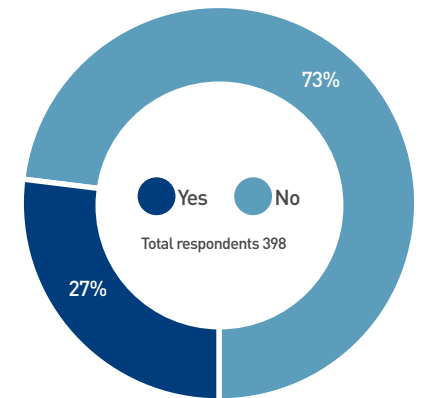


Total respondents 1003

Q9

Discriminatory remarks are comments which could cause offence because of somebody's age; disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation.

Have you experienced any discriminatory remarks on social media?



Total respondents 398

Section 2: Commenting on appearance – overstepping the line?

Managers beware! An innocent remark made to a younger, junior member of staff of the opposite sex about their appearance could potentially land you in hot water. Only a minority of employees (44%) believed it was acceptable language for a boss or someone in a more senior role to say “*you’re looking nice today.*”

A fifth of employees consider such a comment to be overfamiliar language or too flirtatious for the workplace. One in ten employees believe that under no circumstances should a boss or manager comment on the physical appearance of an employee, whilst a further quarter believe that such language could be seen as an advance, depending on how it is said.

If managers continued to make regular and what was perceived to be flirtatious remarks, more than a third (36%) would be prepared to take the matter further. Others would do nothing with more than a third (36%) not wanting to make a fuss or worried that this could put their job in jeopardy. Some employees (18%) felt that the best way forward is to laugh or humour their manager.

What can employers do to tackle these issues?

“ Training, training, training is key if we are to eliminate unacceptable and unlawful comments in the workplace. All staff (whether owners, directors, managers or otherwise) need to be aware of the line between acceptable and unacceptable comments. This needs to be championed by the business leaders and must be seen to be done. ”

Marc Jones

Partner and HR & Employment Law specialist

Q10 If a **boss or a senior manager** says ‘you are looking nice today’ to someone of the opposite sex, who is in a more junior role, do you think:

Choice	Frequency	Percent
This is overfamiliar language for the workplace	124	12.36%
This is acceptable language for the workplace	439	43.77%
The language is too flirtatious for the workplace	79	7.88%
Depending on how he or she says it, it could be seen as an advance	262	26.12%
Under no circumstances, should a boss or a senior manager comment on the physical appearance of an employee	99	9.87%

Total respondents = 1003

Q11 If a **colleague of the opposite sex** said ‘you are looking nice today’, do you think:

Choice	Frequency	Percent
This is overfamiliar language for the workplace	79	7.88%
This is acceptable language for the workplace	525	52.34%
The language is too flirtatious for the workplace	81	8.08%
Depending on how he or she says it, it could be seen as an advance	256	25.52%
Under no circumstances, should a colleague comment on the physical appearance of an employee	62	6.18%

Total respondents = 1003

Q12 What would you do if your boss made regular (and what you believed to be) flirtatious remarks to you?

Choice	Frequency	Percent
Say nothing/ignore it– it’s not worth making a fuss	229	22.83%
Say nothing – you don’t want your job to be in jeopardy	131	13.06%
Speak up and say how uncomfortable you felt	362	36.09%
Laugh /humour them – it’s the boss after all	184	18.34%
Encourage the flirtatious banter	45	4.49%
Other - specify	52	5.18%

Total respondents = 1003

Section 3: Swearing in the workplace – is it acceptable?

Workplaces today are undoubtedly more tolerant of swearing than they used to be, and in some environments, such as factories, construction sites this is far more common place.

Our research revealed that swearing takes place in 60% of organisations across the UK, although there is definitely a North/South divide when it comes to usage. In London swearing takes place in less than half of the companies (48%) whereas this figure rises to 70% in Yorkshire and Humberside and 72% within Scottish companies.

The majority (53%) believe that certain swear words are acceptable. Although the range of acceptable words ranged from 'bloody', 'shit' to the more offensive 'F' and 'C' words. Four in ten believe that swearing in the workplace is offensive.

Should employers allow swearing in the workplace?

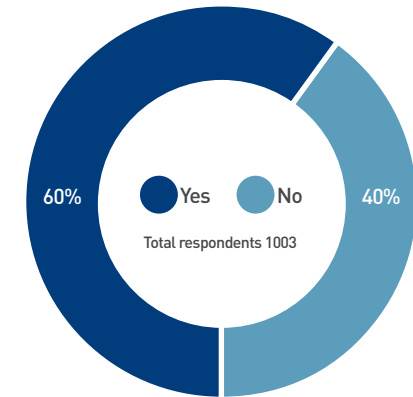
Employers need to consider whether the use of swearing is an accepted conduct of the workplace culture or whether the use of certain words could cause reputational or financial damage to the organisation or offense to an employee, customer or visitor.

I think it would take a brave employer to operate a zero tolerance policy on swearing in the workplace. The reason for this is swearing has generally become more acceptable on the whole. However, adopting a policy on certain swear words and the context in which those words are said may be a better step forward. A one-size fits all policy will be unlikely to work, especially when an organisation has say a factory and an office. Policies need to be pitched at the particular type of workforce.

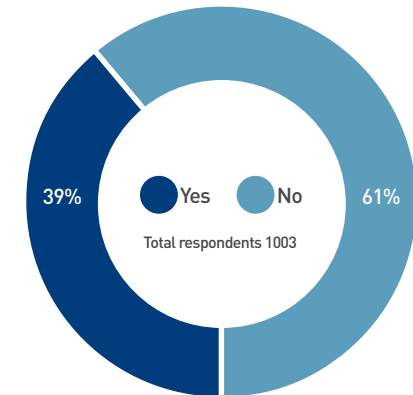
Marc Jones

Partner and HR & Employment Law specialist

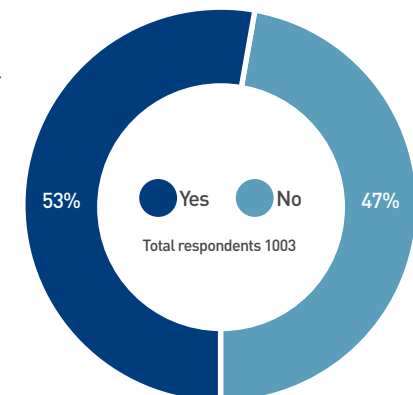
Q13 Does swearing take place in your workplace?



Q14 Do you find swearing in the workplace offensive?



Q15 Do you think there are any swear words which are acceptable?

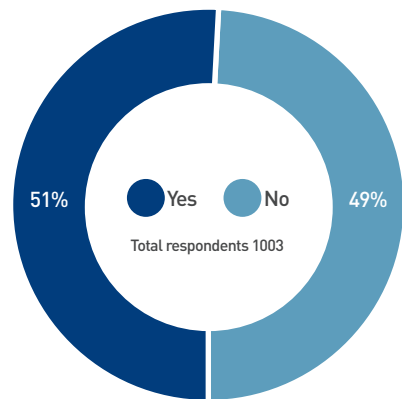


Section 4: Mind Another Language?

Many businesses in the UK now rely heavily on foreign workers. With an increasingly diverse workforce, we asked employees whether they felt it was acceptable for employers to **stop** individuals speaking another language within the workplace. The majority felt it was acceptable to prohibit speaking another language other than English in the workplace – many verbatim comments believing if “*they are working in England they should speak the language at work.*” Others felt that speaking another language would exclude others at work and some felt that they could be talking about them so would invoke suspicion.

Recent decisions on such matters appears to suggest that a general policy applying to all staff not to speak another language in the workplace (other than as part of a role) is lawfully permissible. However, problems occur where certain individuals or groups of individuals are subjected to such a policy and this is likely to be seen as discriminatory.

Q16 Do you think it is acceptable for employers to stop individuals speaking another language within workplace?

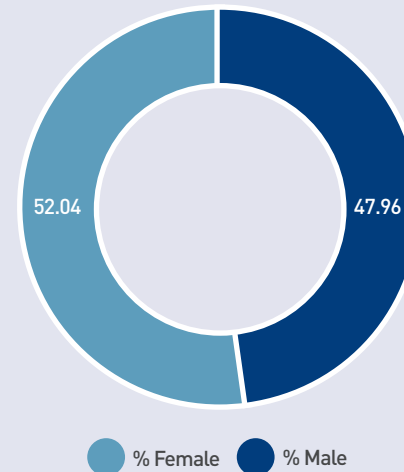


Key considerations for employers – can you make all your employees speak the same language?

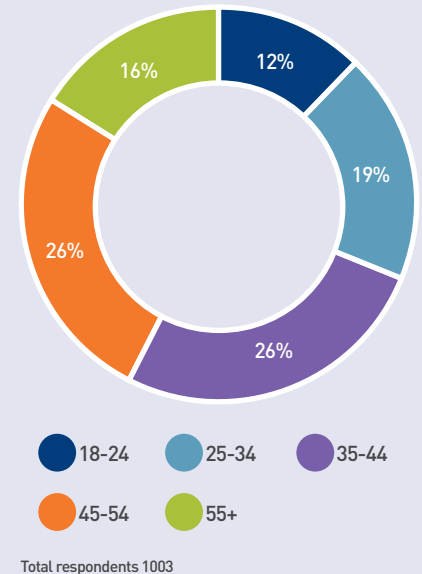
- Compliance with discrimination legislation in the workplace is crucial, compensation recoverable in the employment tribunal for a breach of the Equality Act 2010 is uncapped.
- Will you as the employer be able to show there are legitimate business reasons to speak common language, for example it could minimise “misunderstandings”, whether legal, financial or in relation to health and safety.
- On the flip side, if English speaking employees do not understand what their colleagues are saying in a different language, they may feel excluded and may suspect that their colleagues are talking about them. Employers will need to be mindful of the risk of bullying and harassment within the workplace.
- Make sure you have all the relevant policies and appropriate training and support structures in place to manage such situations.

Appendix 1 Workers Survey

Q17 What is your gender?



Q18 What is your age group?



Q19 In what region do you live?



Region	Frequency	Percent
East Midlands	77	7.68%
East/East Anglia	62	6.18%
London	200	19.94%
North East	47	4.69%
North West	96	9.57%
Northern Ireland	19	1.89%
Scotland	75	7.48%
South East	146	14.56%
South West	79	7.88%
Wales	38	3.79%
West Midlands	81	8.08%
Yorkshire and the Humber	75	7.48%
Rest of UK	8	0.80%

Total respondents = 1003

Q20 Which of these best describes the activities of the organisation you work for?

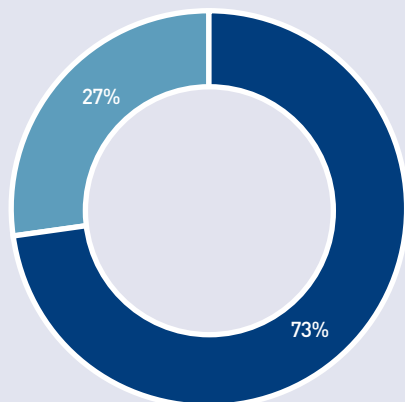
Choice	Frequency	Percent
Agriculture, Forestry and Fishing	8	0.80%
Mining and Quarrying	10	1.00%
Manufacturing	107	10.67%
Electricity, Gas, Steam and Air Conditioning supply	15	1.50%
Water Supply; Sewerage, Waste Management and Remediation activities	7	0.70%
Construction	60	5.98%
Wholesale and Retail Trade; Repair of motor vehicles and motorcycles	68	6.78%
Transportation and Storage	55	5.48%
Accommodation and Food Service Activities	29	2.89%
Information and Communication	75	7.48%
Financial and Insurance activities	56	5.58%
Real Estate activities	18	1.79%
Professional, Scientific and Technical activities	72	7.18%
Administrative and Support Service activities	76	7.58%
Public administration and Defence; Compulsory Social Security	48	4.79%
Education	96	9.57%
Human Health and Social Work activities	95	9.47%
Arts, Entertainment and Recreation	32	3.19%
Other science activities	5	0.50%
Activities of households as employers; undifferentiated goods and services-producing activities of households for own use	13	1.30%
Activities of Extraterritorial organisations and bodies	5	0.50%
Don't know	53	5.28%

Total respondents = 1003

Q21 Are you?

- In full time employment
- In part time employment

Total respondents 1003



Marc Jones
Partner and HR & Employment Law specialist

Marc joined Turbervilles* as an HR and employment law partner in June 2004 having qualified as a barrister before transferring to become a solicitor in 1998.

He has specialised in all areas of employment law and human resources since 1994, with particular emphasis on executive terminations, anti-competition and litigation.

Marc acts for multinationals, small to medium enterprises, public sector bodies, charities and individuals. This has included both employment and commercial related disputes in the employment tribunal, county court and High Court. He has acted as solicitor/advocate in employment tribunals, the Employment Appeal Tribunal and the Court of Appeal.

* Turbervilles and IBB Solicitors merged on 01 January 2018 the merged firm is known as IBB Solicitors.

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