

LOCAL TERMS & CONDITIONS OF SERVICE – PART 2

15.0 DIGNITY AT WORK

- 15.1** Everyone has a responsibility to ensure they do not behave in a way that could be offensive to others, or is in anyway unjust to others. We can all contribute by developing an awareness and sensitivity towards the issues and by ensuring that proper standards of conduct are maintained.
- 15.2** Harassment and bullying are difficult and distressing problems for those experiencing and witnessing them. Employees are often reluctant to complain as they may feel embarrassed, be afraid of not being taken seriously, fear victimisation or have feelings of guilt or self blame.
- 15.3** The Council has a procedure, which is designed to resolve complaints informally wherever possible. Where the nature of the complaint makes it impractical to deal with informally, or it has not been possible to resolve a complaint informally, the complainant can raise a complaint formally (See Part 3, Paragraph 15). The formal stages of the procedure are:
- ⇒ An investigation carried out by an investigation panel appointed by the Head of Service;
 - ⇒ Consideration of the report of the investigation panel by the Head of Service who will decide on what action to take. The Head of Service will be responsible for ensuring that the action to resolve the complaint is implemented;
 - ⇒ A right of the complainant to appeal a decision by the Head of Service to the Executive Director or nominated Director. The decision of the Executive Director or nominated Director will be final.
- 15.4** Timescales set out in this procedure will be followed. Where the handling of the case would be compromised by the need to comply with the timescales and in the event more time is needed the timescales may be extended, with the mutual agreement of the employee and manager.

LOCAL TERMS & CONDITIONS OF SERVICE – PART 3

15.0 DIGNITY AT WORK PROCEDURE

1 AIM

Everyone has a right to be treated with respect and dignity at work. The Council is committed to ensuring that dignity at work and mutual respect are enshrined in all its working practices and the ways in which its employees behave towards each other. The Dignity at Work Procedure reflects the principles embodied in the Council's Equalities and Diversity Policy and practice.

The Council is committed to meeting its statutory responsibilities to prevent discrimination and unfair treatment, by implementing all relevant legislation and ensuring that all steps have been taken to ensure that appropriate arrangements are made to meet relevant provisions. This procedure lays down the Council's procedure to prevent harassment, bullying and discriminatory treatment generally.

Specifically the procedures outlined below are identified to deal with complaints that relate to treatment or behaviour impacting on the dignity of individual or groups of employees which may arise from areas (identified below) which are covered by existing and forthcoming legislation:

Age

Disability

Ethnic/Racial origin

Religious belief

Sex/gender

Sexual orientation

The Council takes seriously its responsibilities to provide a safe and supportive working environment and will take all reasonable steps to prevent harassment and bullying in the work place. Employees are expected at all times to maintain dignified and considerate working relationships with colleagues. Allegations will be treated very seriously and could result in disciplinary action being taken.

Victimisation of an individual who makes a complaint or takes part in an investigation and malicious or vexatious complaints will be treated as a disciplinary matter.

2 SCOPE

This Procedure applies to all employees of the Council except for school-based teaching and non-teaching employees who are covered by separate arrangements.

If an employee is unsure whether her/his complaint is within the scope of this Procedure or another procedure such as grievance or whistle blowing, s/he should seek advice from a Human Resources Consultant.

This Procedure is separate to the Council's Disciplinary Procedure, which may be used if the results of an investigation establish a case for disciplinary action. Allegations that may constitute misconduct may be immediately referred for action under the Disciplinary Procedure.

The procedural framework is based on principles of best practice. The principles and guidelines should be followed when dealing with complaints.

3 TIMESCALES

Timescales set out in this Procedure will be followed. Where the handling of the case would be compromised by the need to comply with the timescales and in the event more time is needed, the timescales may be extended, with the mutual agreement of the employee and manager, by up to 20 calendar days. In this case the employee must be informed and given the reasons for the extension, together with details of any steps to be taken to resolve the complaint within this period.

Where a trade union representative or work colleague chosen by the employee to accompany him/her at any stage of this Procedure cannot attend on the date proposed, the employee can offer an alternative time and date so long as it is reasonable and falls before the end of the period of five working days beginning with the first working day after the day proposed by the employer.

All parties to the proceedings have an obligation to co-operate in ensuring that processes and timescales set out in this Procedure are followed.

For purposes of this procedure only, 'working days' in the context of timescales will be defined as Monday to Friday, irrespective of the working days of the employee concerned, but excluding public holidays.

4 RIGHT TO REPRESENTATION

Employees have the right to advice and guidance and to be accompanied and/or represented by a trade union representative or work colleague at any stage of the Procedure. Employees are encouraged to make use of the facility and to seek advice and guidance. However, it is the responsibility of the employee to ensure that his/her chosen representative is able to attend on the relevant date, and if this is not possible to select another representative (subject to the provisions of paragraph 3 above).

Employees and their representatives should be consulted on the timing of meetings/hearings to consider a complaint under this Procedure.

5 TRAINING

Managers who participate in any formal stage of this Procedure must have successfully completed the training course on the operation of this Procedure.

6 ROLE OF HUMAN RESOURCES CONSULTANTS

At all stages in this Procedure, in addition to those stages where there is a specific requirement, the Service Director, Human Resources or his/her representative may

be consulted for advice on issues of a procedural nature, employment law, etc., and to ensure that the outcomes are consistent.

7 DEFINITIONS AND EXAMPLES OF HARASSMENT AND BULLYING BEHAVIOUR,

Harassment is conduct, which is unwanted by the recipient, which infringes the dignity of an individual or group of individuals at work. Harassment may be repetitive or an isolated occurrence against one or more individuals. It can take a number of forms, e.g. from bullying, overt physical contact to subtler forms such as creating an unpleasant and intimidating environment at work.

Harassment can also have specific meaning under certain laws; for example if the harassment is related to sex, race, disability or sexual orientation it may be unlawful discrimination.

Examples of harassment and bullying behaviour include:

- Behaviour which an individual knows, or ought reasonably to know, would cause or be likely to cause offence, fear or anxiety to another;
- Threatening or coercive behaviour by actions or words, including humiliation and ridicule;
- Excessive, unnecessary supervision;
- Physical contact ranging from unacceptable touching to serious assault;
- Abusing one's position of authority to the detriment of another colleague;
- Offensive, suggestive jokes or language;
- Displaying pictures, graffiti, flags, or emblems which could reasonably be considered to be offensive;
- Isolation of an individual or group of individuals, non co-operation at work or exclusion from work-related activities;
- Victimization, where an individual is treated less favourably than another, for example because s/he has brought proceedings, given evidence or complained about the behaviour of someone who has been harassing or discriminating against them or others;
- Deliberate action outside work which adversely affects an individual's working life;
- Vandalism of an individual's property with the intention of causing fear or anxiety.
- The telling/tolerating of homophobic jokes;
- The insistence that one religion/belief is better than another;
- The insistence that an employee cannot take time off for a religious observation day, without actively considering how that may be accommodated without adversely affecting the service;
- Derisory/derogatory comments about an employee's age;

- Derisory/derogatory comments about an employee's sexual orientation.

Harassment and bullying by managers is particularly serious as it re-enforces a negative working environment and feelings of powerlessness. However proper management action, which is fair and equitable and designed to achieve the Council's standards of work, conduct and attendance does not constitute bullying. It is not legitimate to use this Procedure as a means of deflecting proper management action. Such behaviour will be treated very seriously and could result in disciplinary action.

8 PREVENTING HARASSMENT AND BULLYING AT WORK

i Everyone has a responsibility to ensure they do not behave in a way that could be offensive to others, or is in anyway unjust to others. We can all contribute by developing an awareness and sensitivity towards the issues and by ensuring that proper standards of conduct are maintained.

ii The Council will:

- ensure the health, safety and welfare of all its employees while they are at work;
- ensure all employees are aware of the Dignity at Work Procedure and the standards of behaviour expected in the workplace;
- monitor and regularly review the Procedure to ensure it reflects best practice and learning;
- provide guidance, support and training to enable managers to deal with incidents of harassment and bullying;
- ensure support and guidance is available to both complainant and the alleged harasser.

iii Managers will:

- ensure they are familiar with and understand the Procedure;
- set a good example by treating all their employees with dignity and respect;
- consistently reinforce appropriate standards of behaviour;
- take complaints seriously and not underestimate the effect on an individual's feelings;
- investigate and act on complaints brought to their attention quickly and impartially;
- investigate behaviour which they consider may constitute harassment or bullying and take appropriate action whether or not a complaint has been made;
- monitor a situation to ensure that any inappropriate behaviour stops.

iv Employees will:

- treat colleagues with respect and dignity;
- challenge harassment and bullying behaviour when it occurs. This may include dealing with the incident personally, providing support to colleagues or informing an appropriate manager;
- co-operate in giving evidence when harassment or bullying has occurred.

9 ABOUT THE PROCEDURE

i Introduction

Harassment and bullying are difficult and distressing problems for those experiencing and witnessing them. Employees are often reluctant to complain as they may feel embarrassed, be afraid of not being taken seriously, fear victimisation or have feelings of guilt or self-blame

This Procedure has been designed to resolve complaints informally wherever possible, to nurture and promote good working relations. All parties need to maintain on-going relationships, even after there has been a dispute between them. Formal resolution is more likely to result in feelings of resentment by one or other of the parties or occasionally both parties, which can be difficult to resolve.

This of course does not prevent a complaint being made under the formal stage where serious incidents of harassment and bullying have occurred.

ii Group Complaints

Where more than one employee has lodged the same complaint a Human Resources Consultant will discuss with the group how they wish to present the information. In many cases it will be appropriate for the group to nominate one or more individuals to represent the group. It will not be normal practice to interview all claimants unless it is established that a failure to interview all parties would prejudice a fair and balanced investigation.

Individuals within the group have the right to pursue their complaint whether or not other members of the group withdraw at any particular stage of this Procedure

iii Counter-Claims

If a counter-claim is submitted by the alleged harasser either under this Procedure or the Grievance Procedure they will be they will be dealt with together.

iv Confidentiality

All complaints under this Procedure will be taken seriously. At all stages of the Procedure the need to maintain confidentiality will be observed as far as possible. It may not, however, be possible to guarantee confidentiality in all cases, e.g. disclosure of criminal activities or information that will put the health and safety of employees and/or the public at risk.

However, the Council will do its best to protect the complainant's identity when s/he raises a concern and does not want her/his name to be disclosed. A statement by the complainant, attendance at a disciplinary hearing, interview by the Police etc. may be requested as part of the investigation of or action on the complaint.

At all stages of the Procedure the need to maintain confidentiality will be observed. Circulation of information will be that which is necessary to ensure a fair investigation and hearing. Unnecessary disclosure of confidential information at any stage may lead to disciplinary action.

v Employee Support

Employees are encouraged to seek advice and support even if they are unsure the incident constitutes harassment or bullying or whether they wish to pursue the complaint. The Council recognises that an employee who has a grievance may wish to speak to someone they have confidence in, or someone of the same sex or ethnic background, or someone they have something in common with before deciding on a course of action. Talking about a situation will help to clarify matters, and allow the options to be explored.

Employees may wish to consult their trade union representative or work colleague, or get in touch with a Diversity Contact who can talk through issues but cannot attend formal meetings, or Focus (an employee help-line) who can be contacted on 0800 834587. Employees should be encouraged to use these services.

vi Police Involvement

Where the allegations involve actions, which may be considered to be a criminal offence, the Council may contact the Police.

10 INFORMAL STEPS

All attempts should be made to resolve the issue informally unless the complaint is of a serious nature and needs to be dealt with directly under the formal stage of the Procedure e.g. physical harassment, threats or victimisation.

i Records

Managers must make and retain a written record of all formal and informal discussions and action taken at each stage of the Procedure. The written records should be retained on the employee's personal file and the employee should be given a personal copy.

ii Detail of Events

If an employee believes s/he is being harassed or bullied it is important that notes are kept of the incidents to enable the employee to take action to stop the unwanted behaviour. Detailed notes should include:

- when and where the incident occurred;

- the name of alleged harasser;
- what actually happened;
- how the employee felt at the time;
- the name(s) of any witnesses;
- action taken and response from alleged harasser;
- any correspondence relating to the incident(s) and subsequent complaint(s).

iii Action Employees Can Take

- a) Speak to the alleged harasser and ask them to stop their offending behaviour. A personal approach may have a better chance of producing the desired outcome. If an employee is unable to speak to the alleged harasser direct they could consider writing to them.
- b) Speak to their manager (or with a more senior manager if their manager is the person they believe is behaving inappropriately).
- c) Speak directly to the manager of the alleged harasser if the employee reports to a different manager or ask their manager to speak to the manager of the alleged harasser.
- d) Request that the complaint be handled formally because of:
 - failure to stop the unwanted behaviour informally or,
 - the seriousness of the inappropriate behaviour the employee does not believe it can be resolved informally.
- e) Keep the situation under review, continue to record any future incidents and seek further advice if necessary. It is important to remember that failure to act may result in the situation remaining unresolved or escalating further. In the majority of cases action taken at an early stage will remedy a situation.

iv Responding to an Informal Complaint

If the employee decides to speak to their manager about the complaint, or the harasser's manager, either manager should:

- see the alleged harasser(s) and explain the complaint without making accusations;
- ask the alleged harasser(s) if they are aware of the impact of the alleged complaint and give them the opportunity to respond to the allegation;
- specify what the required standards of behaviour are;
- monitor and review the situation which will include meetings to ensure that the situation has been resolved;
- call a meeting of both parties to attempt to resolve the situation;
- in exceptional circumstances offer a short period of leave without loss of pay.

The manager may take advice from a Diversity Contacts or Human Resources Consultant who may be involved in seeking a resolution.

Under the informal steps a complaint will be handled within **5** working days.

Managers should keep a record of action taken to resolve the complaint.

If the complainant speaks directly to the alleged harasser's manager, that manager should consider informing the complainant's manager or more senior manager.

In the event the situation is not resolved the manager may suggest mediation with a neutral third party. It may take more than one meeting to agree a mediation settlement. Failure to reach agreement may result in moving to the formal stage.

11 FORMAL ACTION

i Where the nature of the complaint makes it impractical to deal with informally, or it has not been possible to resolve a complaint informally, the complainant can raise a complaint formally. A formal complaint must be registered in writing using the appropriate complaints form (see below) as soon as reasonably practicable and, in any event, no later than one month after the act complained of occurred. This may be the latest incident if there have been a number of related incidents over a longer period.

ii Completing a Complaints Form

A complaints form, which can be obtained from the Council's intranet, Human Resources, or a trade union officer, must be completed. The complainant may seek assistance to complete the form from a Human Resources Consultant or from any of the people referred to in Employee Support (see paragraph 9 v above).

As much information as possible should be given including:

- the names and service area(s) of complainant and alleged harasser;
- the nature of complaint;
- details of all incidents in chronological order, with dates and times if possible;
- the names of any witnesses;
- the effect on the complainant;
- any other documentary evidence;
- details of any informal action;
- monitoring information (the complainant's ethnic origin, gender, age and any disability).

The complaint should be given to the employees' manager, or to the managers' manager if the employee's complaint is against her/his manager. The date the relevant manager receives the completed complaints form will be deemed to be the date the formal procedure commences. The employee should retain a copy of the completed form.

Where the alleged harasser's manager is not the manager of the employee who has lodged the complaint, this manager will be informed of the complaint within two working days from receipt of the complaint.

iii Investigating the Complaint

The Head of Service will convene an investigation panel consisting of not less than two members. The composition of the panel should reflect the race, gender, disability or other status of both parties as far possible. Panel members will be at middle and senior management levels within the organisation and will be completely impartial, i.e. will not have been previously involved in the case. In some circumstances it may be advisable to have panel members from outside the service area. The Investigating Panel will be advised by a Human Resources Consultant.

The Investigating Panel has a responsibility to protect the rights of both parties involved and ensure that both are entitled to a full and fair opportunity to submit their version of events.

The investigation will be completed within **15** working days of the complaint being received.

iv Arranging the Investigation

A Human Resources Consultant will write to both the complainant and the alleged harasser setting out :

- the complaint;
- details of the investigators;
- the requirement to attend an interview;
- the right to be accompanied by a trade union representative or work colleague.

Appropriate arrangements will be made to meet any special needs.

The Head of Service will consider the nature of the complaint and any action required during the investigation to relieve the stress and pressure on one or both parties, to prevent the risk of incidents and to prevent victimisation.

Such action may include:

- a) a temporary transfer of one of the parties whilst ensuring that any transfer does not result in a breach of the employee's contract of employment;
- b) requiring either or both parties not to attend work during the period of the investigation, i.e. granting leave without loss of pay.

v Conducting the Investigation

The investigation will focus on establishing the facts of the alleged offending behaviour and its effect on the complainant. It will consist of:

- interviewing the complainant;
- interviewing the alleged harasser;
- interviewing witnesses;

- considering written statements and supporting documentation;
- any other reasonable action required to determine the facts.

vi Investigation Report

When the investigation has been completed the Panel will come to a decision whether the complaint is upheld or not upheld. Where the evidence is not conclusive the decision will be based on the balance of probabilities, taking corroborating evidence into consideration. The Panel will write a report detailing the investigation and analysis, conclusions and recommendations on the complaint.

The report will be sent to the Head of Service who will decide on what action to take. The Head of Service will be responsible for ensuring that the action to resolve the complaint is implemented.

The complainant and alleged harasser will be informed in writing of the Head of Service decision within **5** working days after the submission of the report.

vii Outcomes

If a complaint or counter-complaint is upheld the Head of Service may decide to:

- refer the case to the Disciplinary Procedure dependent on the seriousness of the complaint;
- make arrangements for training or counselling (with, where appropriate, paid time-off);
- make arrangements for mediation;
- take other appropriate remedial measures.

Where a decision is taken to refer the case to the Disciplinary Procedure, one member of the Investigating Panel will be responsible for presenting the management case to a disciplinary panel. The report of the Investigating Panel will be used as evidence. The complainant will not normally be asked to go through the investigation again. If the person against whom allegations have been made remains in employment then he/she may be relocated to a different work area. The complainant may be relocated in exceptional circumstances.

If a complaint is not upheld the Head of Service will consider:

- Letting both parties continue working together but offer support to build working relations;
- Offering mediation subject to both parties' agreement;
- Discussing with the employees concerned whether there is an opportunity to offer other work.

viii Right of Appeal

The complainant will be entitled to appeal a decision by the Head of Service to the Executive Director or nominated Director. Appeals will be allowed if the complaint is not upheld and the complainant believes that the decision is not justified.

An appeal by a complainant must be lodged in writing to Executive Director within **5** working days of receipt of the written decision at the formal stage. The grounds for the appeal must be clearly set out.

The Executive Director or nominated Director will convene a meeting to consider the appeal within **10** working days of receipt of written notification of the appeal. A Human Resources Consultant will attend the meeting to advise the Hearing Manager. The Head of Service will also attend the meeting to present the case in response to the appeal.

The purpose of this meeting will be to consider the reasons why the employee is dissatisfied with the outcome, not to re-hear the entire case.

A model procedure for the conduct of the appeal is set out in the Appendix. However, the Executive Director or nominated Director will have discretion to agree with the parties the conduct of the meeting, provided that in all cases the complainant is provided the opportunity to present his/her case to the panel, together with any supporting information as may be reasonable and relevant.

A decision will be given and confirmed in writing within **5** working days of the meeting. The decision of the Executive Director or nominated Director will be final.

ix Right to Make Representation - Harasser

Where a complaint is upheld against an alleged harasser, that employee will be entitled to make representations to the Executive Director or nominated Director before any steps or measures (for example, training or counselling) are taken in respect of the employee. The exception to this right is where the outcome of the complaint is a decision to take action against the employee under the Council's Disciplinary Procedure.

12 MONITORING AND REVIEW

The Council will monitor performance under this Procedure against the relevant performance indicators.

This Procedure will be reviewed on a regular basis and changes and improvements made where necessary. The employees and recognised trade unions will be consulted on any proposed changes, in accordance with the relevant provisions of Part 1 of the Council's Local Agreement on Terms and Conditions of Employment.

PROCEDURE AT APPEAL HEARINGS

Conduct of the Meeting

Procedure

- The Hearing Manager will introduce those present and outline the procedure to be followed at the meeting.

Employee Complaint

- The employee or his/her representative may present an elaboration of the written submission and may call upon other persons as witnesses.
- The Head of Service (the “presenting manager”) may question the employee (or his/her representative) and any witnesses that the employee (or his/her representative) has called.

Presenting Manager’s Response

- The presenting manager may elaborate on his/her written submission and may call any witnesses.
- The employee or his/her representative may question the presenting manager and any witnesses s/he has called.

Hearing Manager

- The Hearing Manager (and any adviser) may ask questions or seek clarification at any time during the proceedings.
- The hearing manager may:
 - Stop and/or redirect any participant if at any time s/he believes that witnesses testimony or evidence being produced is irrelevant to the matter under consideration;
 - Call for any additional information/ evidence to be provided, and/or witnesses to attend if deemed necessary to establish the facts;
 - Adjourn the meeting where appropriate. The parties will be given reasonable notice of the date of the reconvened meeting.

Closing Statement

- The presenting manager, followed by the employee or the employee’s representative may make final statements in summary to the Hearing Manager without including any new material.

Decision

- The Hearing Manager will consider the case in private and may recall the employee and their representative and the presenting manager to clarify points on evidence already given. If recall is necessary both parties will return.

- The Hearing Manager will give her/his decision personally if practical to do so. In any case the decision and reasons for the decision will be confirmed in writing, within **5** working days of conclusion of the hearing, to the employee, his/her representative and the relevant Executive Director.