

EAST HERTS COUNCIL

LOCAL JOINT PANEL - 16 JANUARY 2006

REPORT BY SECRETARY OF THE EMPLOYER'S SIDE

7(A) HARASSMENT AND BULLYING AT WORK POLICY

WARD(S) AFFECTED:

'D' RECOMMENDATION - that (A) you note this report, and

(B) agree to receive a verbal up-date at the meeting.

1.0 Purpose/Summary of Report

1.1 This report gives an up-date on negotiations on a revised Harassment and Bullying at Work Policy.

2.0 Contribution to the Council's Corporate Objectives

2.1 Providing a mechanism for addressing the issue of harassment and bullying in the workplace is a key requirement of improving the health and sustainability of the organisation.

3.0 Background

3.1 Negotiations with UNISON on a revised Harassment and Bullying Policy have been ongoing for some time. There is agreement that our existing policy is inadequate, but at the time of writing this report, it has not been possible to reach agreement on a revised policy.

4.0 Report

4.1 HR have been working with UNISON on the development of a revised Harassment and Bullying at Work Policy.

4.2 Negotiations have been ongoing for some time and significant progress was made over the summer. Indeed, there was a point in September when the management side believed they had achieved

agreement. A copy of the policy at that stage of the negotiations is attached as Appendix 'A' (Pages 24 - 58)

4.3 It subsequently emerged however, that UNISON remained concerned about three points, which the Secretary to the Staff Side summarised in a letter of 19 September in the following terms:

1. Fast tracking a case so that it is “transferred to be dealt with under the Disciplinary Procedure and all further action under the Harassment and Bullying at Work Policy will cease.” (page 8 – para. 6.15, page 12 – para. 8.10 and page 15 – para 9.11)
2. Convening a meeting with the investigator “and both parties to the complaint, where the investigator will present their report and be open to questions by the parties to the complaint and the manager.” (page 15 – para 9.20)
3. The whole of the appeals process we believe needs revisiting but particularly paragraph 10.12 – page 19, the procedure for the Hearing.

4.4 There was at that time some discussion about a joint referral of the policy to the regional Joint Secretaries as a dispute requesting their assistance with conciliation. However, the management side felt that local negotiations were not yet exhausted and that there should be further attempts to reach agreement locally. There were harassment cases being dealt with under the existing policy at that time and management’s view was that lessons learnt from the experience of those cases could inform local negotiations and assist in reaching an agreed resolution.

4.5 The management side presented a discussion paper to UNISON in December with the hope that it would clarify some of the issues, promote freer discussion of the differences between the sides and identify avenues for negotiation that might offer some prospect of success. The Discussion Paper, which seeks to summarise the differences between the sides and proposes a way forward which addresses those differences, is attached as Appendix 'B' (Pages 59 - 60)

4.6 In the event, it was not enough time to discuss the matter at the scheduled Management/Trade Union meeting and it was not possible to arrange a meeting in advance of a scheduled meeting on 6 January, where UNISON’s Regional Women’s Officer would be present.

- 4.7 A verbal update on developments will be made at the Local Joint Panel meeting. If an agreed Harassment Procedure is available before the Local Joint Panel meeting it will be sent to you separately.
- 5.0 Consultation
- 5.1 Consultations with UNISON are continuing
- 6.0 Legal Implications
- 6.1 The full legal position around harassment and bullying at work is set out in Appendix 'A' (Pages 24 - 58) of the attached draft Harassment and Bullying at Work Policy.
- 6.2 A key area of disagreement with UNISON surrounds the application of the rules of natural justice within the policy.
- 7.0 Financial Implications
- 7.1 None
- 8.0 Human Resource Implications
- 8.1 This is a key HR policy.
- 9.0 Risk Management Implications
- 9.1 A sound Harassment and Bullying at Work Policy will contribute to minimising the risk of potentially expensive litigation.

Background Papers

None

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Harassment and Bullying at Work Policy

www.eastherts.gov.uk

PART 1: INTRODUCTION

1. BACKGROUND TO THE POLICY

- 1.1 Employees of East Herts Council have a right to be treated with dignity and respect and as an employer the East Herts Council has both a legal and moral duty to protect their employees against harassment and bullying. Any such behaviour will be dealt with under the Disciplinary Procedure as a disciplinary offence that could lead to dismissal.
- 1.2 Cases of harassment or bullying are rare within East Herts Council and, whilst wishing to ensure that any such occurrence will be treated with due gravity, it is not intended that having such a Harassment and Bullying at Work Policy should restrict personal expression within accepted norms, or stifle social interaction in the workplace.
- 1.3 Employees are asked to treat this issue seriously, to read this document carefully and consider whether their actions and behaviour are always appropriate in the workplace.
- 1.4 Harassment and bullying in the workplace can lead to illness for the employee being harassed, causing anxiety and tension, preventing an effective working environment. They can lead to stress at work or illness, increased absenteeism, resignation and denial of opportunities limiting future prospects. All employees should be given the opportunity to perform to their best abilities and therefore harassment or bullying at work will not be tolerated.
- 1.5 Throughout this policy the term harassment is taken to mean an all encompassing term, which includes harassment and bullying.

2. HARASSMENT

- 2.1 People may face harassment both in the workplace and outside because of some aspect about themselves such as their gender, race, skin colour, ethnic origin, disability, sexual orientation, religion or age. People who are particularly vulnerable are those with less influence within the organisation or in society as a whole.
- 2.2 Harassment (and bullying) may take place between two individuals or several people (e.g.. one person may harass a number of others or a group of people may harass one individual). Where the procedures refer to one perpetrator and one complainant, it should be interpreted to cover all other combinations.
- 2.3 Harassment can be defined as any action based on gender, race, skin colour, ethnic origin, disability, sexual orientation, religion or age, by a person (or group of people) that is unwanted and unreciprocated, is found objectionable and causes humiliation, offence and distress. In addition to deliberate harassment, someone's behaviour may unintentionally give offence to another. However, the law does not take into account the motive or intention of the harasser. The law takes into account only the impact the behaviour has on the recipient; ignorance of the law is no defence.

2.4 Harassment may be an isolated incident or a series of events and can include gestures, verbal (spoken or written) or physical acts or other conduct making the recipient feel uncomfortable or upset and/or humiliated.

2A What Is Racial Harassment?

2.5 Racial harassment covers race, colour, nationality or ethnic or national origins and can be seen as a deliberate or calculated act directed by members of one distinct racial group against those of a different racial group. Harassment in this context may be defined as any action by a person (or a group of people) that is unwanted, found objectionable, and causes humiliation, offence and distress. Harassment may be an isolated incident or a series of events.

2.6 The following examples identify some types of behaviour that could constitute Racial Harassment. The list is illustrative only, and should not be regarded as exhaustive:

- Physical: Physical threats or assault
- Verbal: Derogatory comments; racist “jokes”; persistent name-calling or abusive language
- Non-verbal: Wearing of offensive badges or insignia; offensive publications; racist posters or graffiti; insulting gestures or behaviour
- Intimidation: Deliberate exclusion of a person(s) from conversations or particular types of work; rejection or isolation of an employee by refusing to talk or work with them; unfair pressure regarding the speed and quality of work or unfair work allocations; unjustified supervision; the frequent invitation of comments on racial issues from a member of a minority racial group.

2.7 Similarly, harassment on religious grounds may arise in the form of verbal or other abuse in relation to the prayer, dress, dietary or other observances of the religion concerned.

2.8 Where there are few people from visible minority ethnic groups in the workplace, the harassment may be perceived as worse, because of the recipients feeling of isolation.

2.9 Some apparently trivial incidents, repeated over time, can create an unpleasant, intimidating or frightening atmosphere. Someone experiencing such incidents is often far more deeply affected by them than the perpetrator thinks. What is important is the perception and feelings of the recipient.

2B What is Sexual Harassment?

2.10 The European Commission defines sexual harassment as follows “Sexual Harassment: Where any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs with the purpose or effect of violating the dignity of the person, in particular when creating an intimidating,

hostile, degrading, humiliating or offensive environment". It is the creation of an offensive working environment where individuals feel uneasy because of their gender. Sexual harassment is direct, and personal, and causes humiliation, offence and distress to the recipient.

- 2.11 Sexual harassment is perpetrated by men against women and also by women against men. Sexual harassment also includes harassment of transsexuals.
- 2.12 Sexual harassment in the workplace can lead to illness for the employee being harassed, causing anxiety and tension; it may also prevent an effective working environment.
- 2.13 Perceptions of what constitutes sexual harassment may vary from person to person, and sometimes what is perceived as friendliness by one person may well be interpreted as unwelcome attention by another, but the following examples identify some types of unwelcome or unwanted behaviour of a sexual nature:
- Physical: Touching, patting, pinching or brushing against another employee's body, assault.
 - Verbal/Written: Sexual advances, demands for sexual favours, lewd comments, sexual innuendo or other suggestive comments, offensive e-mails, notes or messages, flirtation.
 - Non-verbal: The display of pornographic or sexually-suggestive pictures, objects or written materials, leering, whistling or making sexually-suggestive gestures.
 - Intimidation: Conduct that ridicules or offends or is physically abusive, based on the gender, dress or appearance.
 - Sexual Extortion: Suggestions that sexual favours may further someone's career, or that refusal may damage it.

This list is illustrative only, and should not be regarded as exhaustive:

2C Sexuality Harassment

- 2.14 Lesbian women and gay men are disproportionately at risk of such harassment, which can include written, verbal, physical assault, comments and "jokes" that imply lesbian or gay lifestyles are inferior and should not be talked about, exclusion from social groups, or denial of job opportunities or certain types of work. In this context harassment may take place between two individuals, or a group of people may harass one individual.

2D Disability Harassment

- 2.15 Harassment directed at employees with disabilities, specific health conditions or persistent ill-health may include offensive or patronising remarks, ridicule, exclusion from certain types of work, ignoring or

devaluing ability, physical assault, lack of job opportunities and excluding the employee from conversations or full participation at work.

2E Age Harassment

2.16 Unjustified assumptions made about a person's value and abilities because of their age are examples of age harassment. It also includes ageist jokes and comments, physical threats or abuse or stereotyping about commitment to the job leading to the denial of development opportunities. There is sometimes a belief that older employees have outdated ideas and are inflexible with regard to change. Younger people are sometimes treated as though their views are unimportant because it is thought they lack experience, maturity or commitment.

3. BULLYING

3A What is Bullying?

3.1 Bullying can be defined as offensive or vindictive or manipulative behaviour that humiliates and undermines individuals or groups of people. Bullying at work is not an isolated expression of anger, but regular and persistent intimidation by one or more persons against an individual, which undermines the confidence, self-esteem and integrity of the target. Bullying is often, but not exclusively, the misuse of position or power, the persistent exertion of pressure on subordinate staff by those in authority, to coerce by fear and persecution or to oppress them by force or threat. Bullying is a sustained form of psychological abuse but it can manifest itself as attacks on individuals that are sudden, irrational, unpredictable and unfair. However, occasionally the reverse happens and it could be carried out by a subordinate on a manager.

3.2 Occasionally, bullying may arise in a peer-group context, where an individual is targeted by colleagues.

3.3 Bullying must be distinguished from the right of, and obligation placed on managers, to exercise proper supervision of staff in the course of their duties. Whilst recognising individual personality traits and attributes of the staff they supervise, managers will exercise this supervision in a fair, constructive, consistent and reasonable manner which does not compromise the employee's dignity.

3.4 The East of England Regional councils define bullying as "Unreasonable, offensive, intimidating or insulting behaviour, which makes the recipient feel upset, threatened, humiliated or vulnerable, which undermines confidence and which may cause stress".

3B Examples of Bullying

3.5 The following list is not exhaustive but gives examples of the type of inappropriate behaviour which may be used:

- Repeatedly shouting at an individual
- Persistent and sometimes violent criticism
- Personal insults or name-calling

- Conduct which denigrates, ridicules, or humiliates an individual in front of their colleagues
- Picking on one person where there is a common problem
- Overruling, ignoring, or marginalising an individual
- Increasing responsibility whilst decreasing authority
- Removing responsibility and imposing menial tasks
- Withholding work related information
- The frequent setting of unrealistic deadlines
- Constantly undervaluing effort
- Constantly changing targets or work guidelines
- Consistently undermining an individual's professional ability until their confidence crumbles
- Blocking applications for leave, training or promotion
- Isolation at work, ignoring
- Non co-operation or communication
- Offensive language, gossip, spreading malicious rumours, slander, personal insults, name-calling
- Comments, looks, whispering

3C The effects of bullying behaviour

- 3.6 The effects of bullying can be significant and broad ranging, signs of which may be physical or psychological.
- 3.7 Physical: nausea, sweating/shaking, palpitations/trembling, panic attacks, sleeplessness, stomach/bowel problems, backache, headaches, skin complaints
- 3.8 Psychological: acute anxiety, loss of confidence, feeling isolated, loss of self-esteem and motivation, depression, tearfulness.
- 3.9 As with other forms of harassment, bullying is essentially experiential and depends upon how the person subjected to the inappropriate behaviour feels, rather than the intentions of the perpetrator.

4. HARASSMENT/BULLYING BY CONTRACTORS, AGENCY STAFF, SERVICE USERS OR OTHER GROUPS

- 4.1 Employees have a duty to report incidents of harassment by people who are not East Herts Council employees. This should be done by advising their line manager of what happened and by completing an Incident Report Form on the Intranet.
- 4.2 East Herts Council has a duty to provide a safe working environment for its employees and will take what action it can to protect employees from harassment or bullying by third parties. Management undertakes to investigate reported incidents and take appropriate action, which could include e.g. a formal letter from the East Herts Council's Solicitor setting out reasonable behaviour, loss of the contract, termination of agency agreement, withdrawal of service.

5. HARASSMENT/BULLYING BY ELECTED MEMBERS

- 5.1 Elected Members may justifiably comment constructively on officers' performance, where necessary, and this may be done in an appropriate manner by addressing the issue through line management, as in supervisory situations.
- 5.2 However, the definitions of harassment and bullying apply equally to the actions of Members towards officers, and, where employees feel they are subjected to harassment or bullying from Elected Members they should use this procedure to pursue the matter. If a formal complaint is made concerning the alleged behaviour of an elected member, it should be addressed to the Head of Paid Service who will decide how to address the matter seeking legal advice where appropriate.

6. COURSES OF ACTION

- 6.1 An employee who feels that they are being harassed or bullied has more than one course of action available to them.
- 6.2 Employees have a right to:
- Access to a Confidential Adviser
 - Discuss any problems with their line manager where appropriate
 - Access to confidential HR advice
 - Access to Union/other advisor
 - Access to an informal process to resolve issues
 - Make a formal complaint about harassment or bullying at work
 - Expect that every complaint will be fully investigated and dealt with appropriately.
- 6.3 East Herts Council is striving to provide a good working environment for all staff in its employment and, indeed, the people it serves. This includes ensuring that everyone is treated equally and with respect. Incidents of discrimination, bullying and/or harassment need to be brought to the attention of East Herts Council to ensure that unacceptable behaviour is eliminated, and that a good environment can be maintained for the benefit of everyone. If such incidents are not reported they cannot be dealt with, and the alleged perpetrator may continue to subject others to similar treatment.
- 6.4 Some people are unaware that their behaviour in some circumstances is harassing or bullying. If it is clearly pointed out to them that their behaviour is unacceptable, the problem can sometimes be resolved.
- 6.5 With this in mind, this policy includes informal as well as formal action to deal with complaints of harassment or bullying.
- 6.6 Formal cases are rare within East Herts Council, and it is hoped that the majority could be resolved satisfactorily at an informal and early stage.

6A Responsibilities of Employees

- 6.7 Each employee has a responsibility for his/her own behaviour.
- 6.8 Employees must ensure that their behaviour does not constitute harassment or bullying, and they should co-operate in complying with the procedure. In particular employees are expected to consider the impact of their behaviour on others.
- 6.9 The Council expects its managers to address instances of harassment or bullying as matters of priority. Employees who feel that they have been subjected to harassment or bullying are therefore urged to address the issue promptly and expeditiously, either by speaking to the alleged perpetrator, or to their line manager, or seeking the advice of a Confidential Adviser.
- 6.10 Employees should offer support to a known target of harassment or bullying and not support the behaviour directly or indirectly by ignoring it.
- 6.11 Employees have a responsibility to challenge harassment and bullying where they see it.
- 6.12 Employees have a responsibility to read and understand this policy.

6B Responsibilities of Managers

- 6.13 Managers have a responsibility to create a working environment where harassment and bullying are recognised by all employees as unacceptable behaviour. Managers are responsible for communicating this policy and procedure to all employees and new recruits.
- 6.14 All managers have additional responsibilities in this procedure. They have a responsibility to role model acceptable behaviour, are responsible for addressing workplace harassment or bullying and for taking appropriate decisions and actions as befits the nature of the situation. Managers have a responsibility to respond swiftly to information received or official complaints and work actively towards eliminating harassment and bullying behaviour.
- 6.15 Harassment and bullying are disciplinary offences and will be dealt with as such. If, at any time, during the application of this Policy, the responsible manager forms the view that there is a disciplinary case to answer the matter will be transferred to be dealt with under the Disciplinary Procedure and all further action under the Harassment and Bullying at Work Policy will cease. Managers will take due consideration of the wishes of the complainant, but the manager's decision will be final.
- 6.16 Managers should be sensitive to personal feelings and perceptions. Managers also have a role in ensuring that formal investigations are completed within the specified timescales and in strict confidence.

6C Responsibilities of Human Resources

- 6.17 Human Resources Staff are responsible for providing advice about the policy and signpost Managers and Staff to act in accordance with the policy.
- 6.18 They are also responsible to setting up the formal and informal investigation processes and any follow up actions that may be required.
- 6.19 All Confidential Advisers and Investigators and others involved in the process will be trained in to use the policy.
- 6.20 A further responsibility is to work with managers to ensure other staff in the relevant work area/s are supported through the process and at the conclusion of the case all staff in the work area are also supported.

6D Actively implementing the Policy

- 6.2 In order that this policy is actively implemented and is effective in eliminating harassment and bullying, the policy will be publicised widely, using such methods as staff briefings, the Staff Update magazine and the intranet. Training will be given to managers, to Confidential Advisers and Investigators. Briefings will be given to note-takers who will accompany and support Investigators.

PART 2: PROCEDURE FOR DEALING WITH COMPLAINTS OF HARASSMENT OR BULLYING AT WORK

7. GENERAL CONSIDERATIONS

7A Changes to the procedure

- 7.2 There may be occasions or circumstances arising where minor variations or amendments are required in the operation of this procedure to accommodate particular circumstances.
- 7.3 Where the Procedure refers to one perpetrator and one complainant, it should be interpreted to cover all other combinations.

7B Confidential Advisers

- 7.3 The Council will appoint and train a group of staff to provide confidential information, advice and support to staff who believe they are being harassed and/or bullied.
- 7.4 The role of Confidential Advisers and arrangements for their training are set out in Appendix 3.

7C Investigators

- 7.6 The Council will appoint and train a group of staff to investigate allegations of harassment and/or bullying under the formal part of this procedure.
- 7.7 The Council will also identify staff to act as note-takers in support of Investigators during their investigations and will ensure that they are briefed on their duties.
- 7.8 The role of Investigators and Arrangements for their training are set out in Appendix 3.

7D Record of Incidents

- 7.9 It is important that employees who feel that they are being harassed or bullied keep a diary and written record of all incidents of harassment/bullying. This should include dates, time, details of what happened and how you felt, and the names of witnesses, if any. A hard copy should be kept of any offensive e-mails or other communications. This is helpful to the investigators in looking into the complaint.

7E Malicious Complaints

- 7.10 Malicious complaints are exceptionally rare. However, if it is felt that this policy is being abused with a malicious complaint, this will be treated as a disciplinary offence and pursued via the disciplinary procedure.

7F Confidentiality

7.11 In order to protect all parties involved in any investigation and/or disciplinary process, it is essential that everyone concerned adheres strictly to the rules of total confidentiality; breaches of confidentiality will normally be treated as misconduct under the disciplinary procedure.

8. INFORMAL ACTION

8.1 All managers at East Herts. Council have a duty create a working environment where harassment and bullying are not acceptable and to take action to address harassment and bullying if it arises.

8.2 An employee who feels that they are the target of bullying or harassment or an employee who witnesses an instance of bullying or harassment, is urged to seek the advice of a confidential adviser and should always seek to resolve the matter on an informal basis before activating the formal procedure.

8.3 They may raise the matter informally with the alleged perpetrator, stating which aspect of their behaviour is offensive and unacceptable, the effect it is having on them, and making it clear that they want it to cease. This can be done either verbally or by means of a letter, a copy of which should be retained. The employee, or witness, may seek the support of a friend, colleague, trade union representative or HR to accompany them at this discussion.

8.4 The aim of this meeting, or action, is to ascertain whether the alleged harasser agrees that the behaviour occurred, irrespective of intention, and to obtain an agreement to cease the behaviour. The confidentiality of all parties must be maintained at all times.

8.5 If the employee, or witness, does not feel able to approach the alleged harasser directly, or the alleged harasser does not respond to their concerns, they should speak to their line manager. If it is the line manager who is accused of harassment, the employee should speak to the line manager's manager.

8.6 The line manager must take action to address the issue and will respond to the employee who has raised the complaint within 10 working days. (This time limit may be extended with the agreement of the complainant.)

8.7 The line manager will investigate the complaint and if they feel that there is substance to the complaint take action to address it, which may include:

- Talking to the alleged perpetrator about the issues
- Discussing behaviour and requirements in a team meeting (without breaching confidentiality)
- Coaching interviews with the alleged perpetrator to inform them of the effect of their behaviour and setting out expectations for the future. It may be appropriate to set targets with appropriate mechanisms to monitor progress and identify training needs.
- Skills training
- Interpersonal skills training (communication skills, assertiveness)

- Mediation
- Conciliation
- Arbitration
- Mentoring for the complainant or the alleged perpetrator

- 8.8 The parties should attempt to resolve their issues within one month. Where problems are long-standing and mediation is in progress, the issues may take longer to resolve. It is important that the parties feel that progress towards resolution is positive. However, where the parties have not been able to resolve their issues within two months, any of the parties can refer the matter to the formal procedure.
- 8.9 It should also be noted that disciplinary action and sanction may be taken against perpetrators of harassment and bullying. Disciplinary action (verbal warning, written warning, final written warning or dismissal) may be taken only after a formal investigation has been conducted. Please see the disciplinary procedure for further information.
- 8.10 If the line manager considers that there is a prima facie case for disciplinary action against the alleged harasser they will refer the matter to be dealt with under the Disciplinary Procedure and all further action under the Harassment and Bullying at Work Policy will cease.
- 8.11 A record of the complaint and informal action taken should be made on the Confidential Monitoring Form attached, by the complainant or the confidential adviser and returned to HR by the manager for monitoring purposes.

8A Mediation and Conciliation

- 8.12 Mediation refers to neutral and objective facilitation by a third party to help the parties communicate with each other and come to an agreement. Conciliation refers to the process once a decision has been made, whether formally or informally, to facilitate the restoration of positive working relationships.
- 8.13 Any of the parties have the right to request the assistance of a mediator to assist in the resolution of issues arising from bullying and harassment.
- 8.14 Both parties must agree to mediation. If any of the parties does not agree to mediation, mediation cannot be used to resolve the issues.
- 8.15 Human Resources will ensure that mediators used are trained to deal with the issues between the parties.
- 8.16 If the parties are able to resolve the matter through mediation, no further action will be taken.
- 8.17 Conciliation may be appropriate to help restore working relationships where they have become strained as a result of attempts to resolve the issues.

8.18 The Mediator/Conciliator will provide the parties with a written statement outlining the issues addresses and agreed action to be taken by the parties to resolve the issue.

8.19 The parties are advised to keep their own notes of the actions taken following the mediation.

8B Support

8.20 East Herts Council recognises that an employee who has been the target of harassment or bullying may require counselling to enable her/him to deal with what has happened to them. Equally, employees accused of harassment or bullying may also require someone to talk to in confidence, or counselling to assist in coping with being accused. Individuals should ask Human Resources who will refer them to an appropriate outside counselling.

8.21 Support Services may include:

- listening by confidential advisors, who may be consulted by an employee at any stage;
- counselling via external agency by independent, trained counsellors.

8.22 If external counselling is necessary Human Resources will make the necessary arrangements. Any counselling provided will be strictly confidential between the counsellor and employee; no details or records will be disclosed without the express written permission of the employee. In the event that an employee pursues counselling support independently of East Herts Council service, paid time off work will be facilitated, where possible, to ensure the employee can attend counselling appointments.

9. FORMAL ACTION

9.1 The formal procedure will apply where:

- The informal procedure has proved ineffective and the complainant wishes to make a formal complaint.
- The parties have not been able to resolve their issues under the informal part of this procedure within two months
- An allegation has been made by a "third party", who witnessed an incident
- The nature of the allegation is serious enough to warrant formal action from the outset.

9.2 There may be situations where an employee prefers to raise an allegation of harassment or bullying under the formal part of this policy without first using the informal procedure. In such circumstances the employee will be required to seek the advice of a Confidential Adviser (if they have not already done so) before the matter proceeds any further. Also, the appropriate manager will consult with Human Resources and an Investigator nominated by Human Resources to consider the circumstances of the case and whether it is appropriate to refer the matter to be dealt with under the informal part of the procedure in the first instance.

- 9.3 Throughout the formal part of this procedure, both parties have the right to be represented or accompanied by a Union representative, friend or colleague. An employee may have reasonable time in the workplace to prepare their case.
- 9.4 An employee who believes that he or she has been the subject of harassment or bullying should formally report the alleged act(s), in writing, to their line manager, or, if the line manager is the alleged perpetrator, their Head of Service or Director; or, in cases where a Director is the alleged perpetrator, the appropriate Executive Director.
- 9.5 The written notification invoking formal action will include the following:
- Details of the alleged harassment, including as much specific information as possible.
 - The name(s) of the alleged perpetrator(s)
 - What form of resolution they are seeking.
- 9.6 Whichever manager receives the formal complaint, they will notify Human Resources immediately.
- If the matter has not previously been raised under the informal part of the policy, Human Resources will consult the manager and an Investigator about whether it would be appropriate to refer the matter to be dealt with informally in the first instance. No decision to refer a case back to the informal part of the procedure will be taken without first seeking the advice of the Regional Employers' Association. The Investigator consulted at this stage of the procedure will have no further involvement in the case.
 - If the matter is to be progressed under the formal part of the policy, Human Resources will immediately appoint an Investigator. The investigator will consider the complaint and decide how much information will be passed to the alleged harasser, consistent with protecting the complainant from personal detriment whilst providing the alleged harasser with sufficient information to begin preparing their response to the complaint. The investigator may add to the information given to the alleged harasser after they have spoken to the complainant.
 - The alleged harasser will then be informed that a complaint has been made about them, told who has been appointed to investigate the matter and given details of the allegation as determined above. They will also be advised of the procedure to be followed and of their right to be accompanied throughout the process. They will be asked if they wish to nominate witnesses. They will not be told the names of any witnesses nominated by the complainant at this stage.
- 9.7 Human Resources will appoint a note-taker to support the investigator. The investigator and note-taker will be from outside the department where the complainant and alleged perpetrator regularly work. Consideration will be given to the nature of the case and it may be appropriate for a case to be investigated by someone of the same sex, race or ethnicity etc. as the complainant.

- 9.8 In exceptional circumstances, it may be more appropriate for an external investigation team to be commissioned. This would normally be for the following reasons:
- If the allegations are against an Elected Member or member of Directors Board
 - If the nature of the case is potentially a criminal act of harassment;
 - If at any stage of a case the matter becomes larger or more complex than foreseen;
 - In the case of internal resource shortages.
- 9.9 An investigation is conducted in order to:
- Establish the truth of the situation,
 - Uncover evidence and determine whether there is a case to answer.
 - Determine whether there is a prima facie case for disciplinary action.
 - Explore the acceptability and practicality of options for resolving the complaint, including an assessment of the commitment of the parties to achieving a practical resolution to the complaint.
- 9.10 Strict confidentiality must be maintained by, and for, everyone involved in the investigation and all parties will be treated with respect and fairness at all times. The investigation process to be followed is attached at appendix two.
- 9.11 If at any stage of the investigation the investigator forms the view that there is a prima facie case for disciplinary action they will advise the responsible manager, who, if they agree with the investigator's assessment, will immediately transfer the matter to be dealt with under the Disciplinary Procedure. All further action under the Harassment and Bullying at Work Policy will cease. The subsequent disciplinary investigation will be based on the harassment/bullying investigation and will be led by the responsible manager, accompanied and supported by the Investigator.
- 9.12 Whilst every effort will be made to allow both parties to continue at work, it may be necessary to review working arrangements so that the complainant and the alleged harasser are separated. Whether the complainant, the alleged harasser, or both parties are moved to an alternative work location will be decided by the appropriate line manager, taking into account the needs of the service. This decision will in no way be influenced by any perceptions of the validity of the case or the culpability of the alleged harasser.
- 9.13 In exceptional circumstances consideration may be given to granting either or both parties extended leave or, depending on the circumstances of the case, suspending the alleged perpetrator in accordance with the provisions of the Disciplinary Procedure, while the case is in progress. Such circumstances may include:
- Cases where the allegations are so serious that gross misconduct is indicated.
 - There are concerns that one or both of the parties may tamper with evidence.
 - There are concerns that one or both of the parties may seek to bring improper influence upon potential witnesses.

- 9.14 The investigator will interview and take statements from the complainant and the person against whom the complaint has been made. Any witnesses will also be interviewed.
- 9.15 It may be necessary to interview an individual more than once, in order to ensure that a complete understanding of the circumstances has been achieved. The questions asked during these interviews should be designed to ascertain all relevant facts, and should be consistent and fair to all parties.
- 9.16 After interviewing each individual the Investigating team will draw up a statement, which the individual concerned will be asked to sign as a fair and true record for the interview. If relevant, this statement may form part of the Management Case presented at a subsequent disciplinary hearing.
- 9.17 In addition to formal questions, as part of the investigation it may be appropriate to ask an individual to complete a written statement in his/her own words presenting the situation from their perspective.
- 9.18 Investigative interviews will be conducted promptly, and investigations should normally be completed within 28 days of the receipt of the formal complaint. If this is not possible, the reason should be recorded and both parties informed, in order to be transparent about the process. Formal records should be kept at all stages of the proceedings by the investigators.
- 9.19 After the investigation has been completed the Investigator will submit a formal report of the findings and recommendations to the appropriate Manager. The report will include:
- The Investigator's assessment of whether the alleged harassment took place, referring to evidence to support their findings
 - Identify options for resolving the complaint, including an assessment of their practicality and acceptability to both parties.
 - Express an opinion on whether there is a case for disciplinary action.
- 9.20 The Manager will convene a meeting with the Investigator and both parties to the complaint, where the Investigator will present their report and be open to questions by the parties to the complaint and the Manager. Both parties to the complaint may be accompanied at this meeting. Human Resources will attend the meeting to advise the Manager. If the complainant and alleged harasser have different Manager, both will attend. In such circumstances the alleged perpetrator's manager will lead.
- N.B. If either of the parties to the complaint expresses concerns about attending the panel meeting in the presence of the other party, or in more general terms, the Head of HR will advise on options to facilitate their attendance or to allow them to be represented at the meeting in their absence.**
- 9.21 The Manager will consider the investigator's report, any comments made by both parties to the case and advice from the HR Department and decide whether:
- The complaint is upheld and constitutes a breach of the Council's disciplinary rules, or

- Whilst there is some substance to the complaint, the issue is not serious enough to warrant disciplinary action, or
 - The complaint is not upheld.
- 9.22 Both parties to the complaint will be advised of the decision verbally at the meeting if possible and in writing, no later than three working days after the meeting.
- 9.23 If the investigation reveals that the complaint is upheld, prompt action will be taken to stop the harassment or bullying immediately and prevent its recurrence. The alleged harasser's Manager will present the case at any disciplinary hearing in accordance with East Herts Disciplinary Procedure, using the investigator's report as their primary evidence. They may, if they judge it necessary, conduct their own investigations to supplement the investigator's report. The Investigator will normally be called as a witness at the Disciplinary Hearing. A Head of Service or Director will hear the disciplinary case and act as the Presiding Officer. The Presiding Officer must be impartial and as far as possible have had no previous role in the investigation.
- 9.24 If it is found that there is some substance to the complaint, but that the issue is not serious enough to warrant disciplinary action, the Head(s) of Service will decide on an appropriate course of action designed to:
- Remind the harasser of the standards of behaviour and conduct required by East Herts. Council and advise them on how they should behave in the future to avoid further complaints.
 - Rebuild the working relationship between both parties to the complaint.
- 9.25 The action plan will be initiated as soon as possible and, in any event within ten working days of the meeting.
- 9.26 If the complaint is not upheld the Head(s) of Service will decide whether the allegation was malicious. In any event the Head(s) of Service will take action to ensure that both parties resume normal working and facilitate rebuilding the working relationship, which may include mediation or personal development training. All parties will be expected to co-operate with this process.

9A Victimisation

- 9.28 Intimidation and/or victimisation of employees who have filed a complaint or been party to an investigation is itself regarded as a disciplinary offence and management will take necessary action to prevent this and protect staff. In the absence of corroborative evidence, conclusions may be drawn on the balance of probability e.g. what probably happened as opposed to being certain it happened.

9B Monitoring following a formal Harassment/Bullying Complaint

- 9.29 The line manager of the complainant will monitor the working situation to ensure that no victimisation or recurrence takes place. The Line Manager will be expected to report back to Human Resources on the situation.

10. APPEALS

- 10.1 If the manager decides that the complaint is upheld and should proceed to a disciplinary hearing, neither party will have a right of appeal.
- 10.2 If the manager decides that there is some substance to the complain, but that the issue is not serious enough to warrant disciplinary action, or finds that the complain is not upheld, either party (or both) may appeal against the decision.
- 10.3 An appeal must be based on at least one of the following reasons:
- A reasonable person could not have reached the decision on the basis of the evidence submitted.
 - The investigation was inadequate.
 - The course of action decided upon was not appropriate in all the circumstances.
 - Significant new evidence has become available, and that evidence could not have been available at the time the Investigator conducted their investigation nor at the meeting convened by the Head(s) of Service to consider the investigator's report.
- 10.4 The employee or her/his representative must register her/his intention to appeal in writing to the Head of Human Resources within 5 working days of receiving the letter confirming the Head(s) of Service's decision.
- 10.5 Within a further 10 working days, the employee or her/his representative must submit a written statement to the Head of Human Resources substantiating the grounds of the appeal and stating what alternative resolution they are seeking. Failure to do so will result in the appeal being dismissed.
- 10.6 The Appeal will be heard by the Director within whose Directorate the complainant works.
- 10.7 The Appeal hearing will not be a complete rehearing of all of the evidence, but will focus solely on the grounds of the appeal.
- 10.8 The Appeal Hearing will be attended by both parties to the complaint, the manager(s) that considered the complaint and a Human Resources Officer. In most cases the Investigator will also attend. The Director's decision on who should attend will be final.
- 10.9 The Director must give at least 15 working days' written notice of the Appeal Hearing.
- 10.10 The appellant must submit any additional papers at least 10 working days before the Appeal Hearing. In exceptional circumstances, and only if the appeal is based on new evidence, it may be appropriate to call witnesses at the Appeal Hearing. Any witnesses that the appellant wishes to call must be notified to the Director, in writing, at least 10 working days before the Appeal Hearing.

10.11 Copies of all the papers to be considered at the Appeal will be given to everyone attending the Appeal Hearing at least 5 working days before the Appeal Hearing.

10.12 The Appeal Hearing will proceed as follows:

- The Director will invite the appellant, or their representative, to state the grounds of their appeal and what form of resolution they are seeking.
- If witnesses are to be called, they will be questioned by the appellant, of their representative, and cross-questioned by the other party to the complaint, or their representative, the Head(s) of Service, the investigator and the Director.
- Witnesses will leave after they have given their evidence.
- The other party to the complaint, the Head(s) of Service, the investigator and the Director may then ask questions of the appellant and/or their representative.
- The other party to the complaint, the Head(s) of Service and the investigator will then be given the opportunity to make a statement responding to the appellant's case and to call witnesses. Each may be questioned by the other people attending the Appeal Hearing.
- The Head(s) of Service, the investigator, the other party to the complaint, or their representative and the appellant, or their representative, will each be given the opportunity to make a short statement summarising their position.
- All the parties will then leave the room whilst the Director reaches their decision.
- If possible, all the parties will then be recalled to be told the Director's decision, which will be confirmed in writing within 5 working days. Alternatively, if the Director is not able to reach a decision immediately, the parties will be advised of the decision in writing within 5 working days.

N.B. The Appeal Hearing Procedure may be amended to accommodate any special features of the appeal, particularly the grounds of the appeal and the issues to be considered. The Head of HR will advise on any such amendments. Furthermore, if either of the parties to the complaint expresses concerns about attending the Appeal Hearing in the presence of the other party, or in more general terms, the Head of HR will advise on options to facilitate their attendance or to allow them to be represented at the meeting in their absence.

10.13 Any further right of appeal will be as provided for in the Council's Grievance Procedure, as amended from time to time.

Part 3: The Forms

1. Completion of Forms

- 1.1 Use of the attached form aids monitoring and are essential to ensure that Human Resources is aware of the situations as they happen.
- 1.2 Always keep a copy for yourself of any form filled in.

2. Formal Action By an Employee

- 2.1 Upon lodging the formal complaint, complete Form A and hand this to the manager concerned or Human Resources

3. Report of Incident of Harassment

- 3.1 An employee who believes they are the subject of harassment in the course of their work by a person or persons **not** employed by East Herts Council should complete an Incident Reporting form (found on the Intranet) and send a copy to their line manager and the Health and Safety Officer in Human Resources.

**CONFIDENTIAL MONITORING
OF
HARASSMENT/BULLYING ISSUE INFORMALLY DEALT WITH**

NOTE: The details on this page are strictly confidential and will only be used for overall monitoring purposes; details will not be divulged during any proceedings, and individuals will not be identified. Completion of this form allows the East Herts Council to monitor the effectiveness of the informal process and to assess if any particular group is subject to harassment or bullying. Monitoring of these statistics will help us to be more effective in targeting awareness of the policy and so prevention of harassment and bullying.

NB – If you are a manager or confidential advisor return this under a compliment slip with your name on.

Details of the person informally raising the issue

Division/Service Area: Section:

Complainant's grade:

Type of job

Sex: Male/Female Disabled: Yes/No Age

Working relationship with alleged harasser:.....
(e.g., the harasser is my colleague/line manager/supervisor/subordinate)

The nature of the alleged behaviour you are complaining about

Please tick which one of the following seems to apply:

- | | | | | | |
|-----------|--------------------------|----------|--------------------------|------------|--------------------------|
| Sexual | <input type="checkbox"/> | Racial | <input type="checkbox"/> | Disability | <input type="checkbox"/> |
| Sexuality | <input type="checkbox"/> | Religion | <input type="checkbox"/> | Age | <input type="checkbox"/> |
| Bullying | <input type="checkbox"/> | Other | <input type="checkbox"/> | | |

If Other please specify:

Please provide details of the incidents you have found unwelcome

Details about the alleged harasser(s)

Division/Service Area: Section:

Harasser's Job/role:

Sex: Male/Female Disabled: Yes/No Age (approximately)

Was the harassment dealt with: **informally** by you?

informally by management?

This form should be completed when an issue is raised. The Manager forwards it to the HR Department for monitoring purposes.

In cases that have been dealt with **informally**, the complainant should forward the completed form directly to the HR Department.

CONFIDENTIAL FORMAL COMPLAINT REPORT

HARASSMENT/BULLYING

This form should be completed when a formal complaint is made or by a Manager raising formal action without a complainant.

Name of person making complaint:

Workplace.....

Telephone contact number.....

Name(s) of alleged harasser(s):

.....

Date or period of incident(s):

Place(s):

Please give an outline of what took place (continue on a separate sheet if necessary)

Form B Continued

Names of anyone else who witnessed the behaviour complained of:

Have you discussed this matter with a confidential advisor (or equivalent)? Yes/No

Please state how you would like the issue resolved:

I have been informed about the East Herts Council's Harassment and Bullying at Work Policy and Procedure.

Signed:Date:

Signature of person receiving the complaint

Please ensure a copy of this form is sent promptly to the HR Department. The receipt of the form in the HR Department will initiate the formal procedure.

INCIDENT REPORT FORM

This form should be completed by employees who believe they have experienced harassment or bullying in the course of their work by people who are **not** employees of East Herts Council.

(e.g., by service users, contractors, agency staff, other groups of people)

Name of person making complaint:

Workplace:

Telephone:

Division/Service Area: Job.....

Name of the alleged harasser:

Name of the organisation for whom they work (if any):

Date of the incident(s):

Place(s):

Please give an outline of what took place (continue on a separate sheet if necessary)

Form C Continued

Nature of the Harassment:
Please tick which one of the following seems to apply:

- | | | | | | |
|-----------|--------------------------|----------|--------------------------|------------|--------------------------|
| Sexual | <input type="checkbox"/> | Racial | <input type="checkbox"/> | Age | <input type="checkbox"/> |
| Sexuality | <input type="checkbox"/> | Religion | <input type="checkbox"/> | Disability | <input type="checkbox"/> |
| Bullying | <input type="checkbox"/> | | | | |

Other (Please specify).....

Signed:Date:

Signature of person receiving the complaint:

Harassment and Bullying in the Workplace: The Legal Position

Discrimination, Victimisation and Dismissal

As an employer, East Herts Council has a Duty of Care towards its employees. Failure to deal with allegations of harassment and bullying at work may expose the Council to a range of costly legal consequences. Harassment and bullying at work may lead to discrimination claims. In addition harassment and bullying may lead to criminal claims for assault or civil claims for negligence and or breach of contract, for example, claims of constructive dismissal. Harassment and bullying within the workplace may also result in health and safety claims for failure to provide a safe and healthy workplace.

Employees should be aware, that whilst the East Herts Council may be pursued through legal action, individual employees could also be pursued and named in legal proceedings.

In considering the implications of harassment and bullying within the workplace, the following terms can provide a practical guide to managers and employees:

Direct discrimination

This occurs when one person is treated less favourably than others in the same circumstances on the grounds of race, sex or disability. For example, the refusal to recruit someone who has the required skills because they belong to a particular gender.

Indirect Discrimination

This consists of applying a condition or requirement of employment which, whether intended or not, adversely affects, or favours, one particular group more than another, and which cannot be (strictly) justified in terms of the requirements for performing the job. For example, an unnecessary physical requirement might discriminate against women or people with a disability.

Victimisation

This occurs when an employee is treated differently because he or she has previously complained of discrimination, or they have given evidence on behalf of another employee in a discrimination case. For example, an employer sacks an employee because he or she complained of racial discrimination.

Constructive dismissal

Failure to respond to and deal with alleged harassment or bullying or permitting such behaviour may be held to have breached the contractual terms relating to mutual trust and confidence. Failure to treat harassment and bullying or a complaint alleging harassment and bullying seriously may be a fundamental breach of contract even if there is no discrimination. This breach may result in an employee's resignation and a claim of constructive dismissal through the Employment Tribunal.

Health and Safety at Work Act 1974

If an employer fails to respond to complaints about harassment or bullying and the complainant's health and ability to work effectively suffers, a claim could be made under the Health and Safety at Work Act on the grounds of failure to provide a safe and healthy workplace.

The Sex Discrimination Act 1975

The Sex Discrimination Act makes it unlawful to discriminate directly or indirectly, on the grounds of sex or marital status against women, men or married persons in areas including employment. Although the Act contains no specific reference to sexual harassment, the Code of Practice which is admissible in the Employment Tribunals does.

Harassment related to a person's gender or sexuality, which undermines equality in the workplace is contrary to the European Commission's Code of Practice on the protection of the dignity of women and men at work, and the principle of equal treatment for men and women, laid down in EC law, and given effect in UK law in the Sex Discrimination Act 1995.

The Race Relations Act 1976

The Race Relations Act 1976 makes it unlawful to discriminate directly or indirectly on the grounds of colour, nationality (including citizenship), ethnic origin or national origin in a range of areas including employment. Although the Act contains no specific reference to racial harassment, the Code of Practice which is admissible in Tribunal does.

Racial Harassment

Harassment related to a person's race is unlawful under the Race Relations Act 1976 and people who harass others may also be liable to prosecution under the Criminal Justice and Public Order Act 1994; Racial harassment in the workplace creates a hostile working environment; it undermines equality at work and can lead to illness for the employee being harassed.

The Race Relations Act 1976 as amended

The Race Relations Act was amended in 2000 to ensure that all public authorities are able to fully address institutional racism as identified by the Stephen Lawrence Inquiry Report. The amended Race Relations Act established an enforceable General Duty to eliminate racial discrimination, promote equality and good relations between different racial groups.

The General Duty is supported by specific duties which are designed to help public authorities meet the General Duty. Specific duties include the publication of the Race Equality Scheme which is a strategy and action plan outlining how a public authority will meet its duties under the Act and monitoring and annually reporting grievances, for example racial harassment and bullying by ethnic origin.

The Disability Discrimination Act 1995

The Disability Discrimination Act 1995 makes it unlawful to discriminate on the grounds of disability in a range of areas including employment. Although the Act

contains no specific reference to disability related harassment, the Code of Practice which is admissible in the Employment Tribunals does.

In accordance with the Disability Discrimination Act 1995 it is unlawful for an employer to discriminate against a disabled person (as defined), and employers must ensure that procedures are in place to protect disabled employees from harassment.

The Human Rights Act 1998

The Human Rights Act 1998 came into force on 2 October 2000 and is one of the most significant pieces of constitutional legislation enacted in the United Kingdom. The Act allows people to claim their rights under the European Convention on Human Rights (ECHR), in UK courts and tribunals instead of going to the European Court in Strasbourg. The Act requires all public authorities in the UK to act compatibly with the Convention rights, Article 14 of the Act prohibits discrimination.

Sex Discrimination (Gender Reassignment) Regulations 1999

The Sex Discrimination (Gender Reassignment) Regulations 1999 came into force in May 1999 and extended the Sex Discrimination Act 1975 to protect individuals from direct discrimination on the grounds of gender reassignment in employment and vocational training.

Criminal Justice and Public Order Act 1994

Section 154 of the Criminal Justice and Public Order Act 1994 established a new offence of causing "intentional harassment, alarm or distress". Any 'intentional' harassment in the workplace may now be a criminal offence.

Protection From Harassment Act 1997

The Protection From Harassment Act 1997 contains provisions designed specifically to deal with 'stalkers'. Under this act it is a criminal offence to pursue a course of conduct that amounts to harassment and where the harasser knows, or ought to know, that it amounts to harassment of another.

Article 13 of the Treaty of Amsterdam

Article 13 of the Treaty of Amsterdam, where a comprehensive set of anti-discrimination measures and a minimum standard of legal protection against discrimination will apply across the European Union from 2003. Article 13, provides the European Union with a legal basis to take action to combat discrimination on grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Employment Equality (Sexual Orientation) Regulations 2003 and Employment Equality (Religion or Belief) Regulations 2003 – both have four elements

1. Direct Discrimination – which means
Treating people less favourably than others on grounds of sexual orientation or religion or belief;
2. Indirect Discrimination – which means

Applying a provision, criterion or practice which disadvantages people of a particular sexual orientation or religion or belief and which is not justified as a proportionate means of achieving a legitimate aim;

3. Harassment – which means

Unwanted conduct that violates people's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment

Conduct shall be regarded as having that effect only if, having regard to all the circumstances, including in particular the perception of the recipient, it should reasonably be considered as having that effect.

4. Victimisation – which means

Treating people less favourably because of something they have done under or in connection with the Regulations, e.g. made a formal complaint of discrimination or given evidence in a tribunal case.

East Herts Councils Vicarious Liability

Under the Sex Discrimination Act 1975, the Race Relations Act 1976 as amended and the Disability Discrimination Act 1995 the East Herts Council can be held liable for discriminatory acts committed by its employees during the course of employment with or without the East Herts Council's knowledge or approval. This is known as 'vicarious liability' and the onus rests with the East Herts Council to establish that it took all reasonable steps to prevent the act(s) occurring or re-occurring.

Investigation Process

1. Complaint /issue of concern received.
2. Investigation team (Investigator and note taker) appointed and terms of reference specific to the case drawn up and Investigator decides what information should be immediately released to the alleged perpetrator.
3. Alleged perpetrator notified, and informed of implications of any acts that may be construed as victimisation.
4. The meaning of confidential needs to be defined in the context of the investigation within the terms of reference.
5. Investigation team writes to complainant and person complained of notifying they have been appointed and explaining the process, and their terms of reference.
6. Counselling for complainant/alleged harasser/witnesses is offered and commences (and continues throughout the process and shortly beyond).
7. Investigation team proceeds to interview and investigate
8. Interviews should be conducted in a **confidential** context. The precise meaning of "confidential" should be explained at the beginning of each interview and be consistent.
9. Interviews to be conducted in a neutral/comfortable environment, with trade union reps/colleagues present for support/representation as requested.
10. Interviews should commence with a clear introduction of the purpose of the investigation and terms of reference explained.
11. During interviews notes should be taken (but not tape recorded), which are to be typed up, and sent to the interviewee for confirmation as an accurate reflection of the interview, to be amended, signed and returned. Notes will rarely be a verbatim record of every word said during the interview, and this should be explained clearly to each interviewee.
12. Ideally the complainant is first to be interviewed. Following this interview the incident(s) will be summarised in writing in the investigators words, and given to the alleged harasser. **(No letter of complaint, statement or diary of events prepared by the complainant should be given to the person complained of.)**
13. Relevant documentary evidence, policies and procedures, internal documentation, training records, to be gathered and collated and perused by the investigator.

14. The investigator will consider options on action rebuild effective working relationships and form a view on the commitment of both parties to resolving the complaint.
15. Investigator produces a written report detailing the investigation, complaint, defence and evidence. This will be made available to both parties. Investigator concludes on the balance of probability and produces a written report addressing the complaint.
16. The investigator may submit an additional report to management on issues not directly relating to the substance of the complaint, but which may include recommendations on management action to reduce the possibility of similar complaints in the future.

Pro-forma for Investigation Report

Investigation reports are normally confidential documents, and should therefore be numbered copies, and securely bound to dissuade copies being made easily. The numbered copies should be listed and it be recorded to whom the copy is given.

Any investigation report should include the following headings/chapters.

1. Terms of Reference – which should be agreed with the Head of HR.
2. Identification of the investigating officers and position in the organisation/experience/training in dealing with these issues
3. Methodology – the approach taken to gather evidence/perceptions. Whether this was through interviews/statements, assessment of organisational paperwork. Ideally should state how many people were seen in the course of the investigation, but should not name the individuals seen. The meaning of 'confidential' in the context of the investigation should be explained.
4. Background to the complaint – explanation of what department, structure, nature of the complaint.
5. Findings – what evidence the investigation team found.
6. Conclusions – on the balance of probability – what the investigators believe has happened, if anything.
7. Recommendations – for individuals, departments and corporate. (ideally on separate pages within the report, so they can be separated and shown only to relevant people.
8. Any relevant appendices

Confidential Advisers and Investigators

Confidential Advisers provide confidential advice and support to staff who believe they are being harassed and/or bullied.

Investigators investigate allegations of harassment and/or bullying under the formal part of this procedure.

To ensure that confidential advice and the investigation of complaints takes place consistently across the organisation, a number of people will be selected and trained as Confidential Advisers and Investigators.

The skills required of a Confidential Adviser are as follows:

- Someone well trusted and respected in the organisation
- Someone who is easy to talk to and actively listens
- Someone who is able to keep confidentiality and is known for this ability
- Someone who is objective and empathetic
- Someone who understands and knows the organisation well
- Someone who is accessible and approachable
- Someone who is sensitive to cultural, gender and minority group needs
- Someone who is assertive and able to challenge discrimination
- Someone who has the ability to recognise and manage stress in themselves and others

The skills required of an Investigator are as follows:

- Able to recognise what harassment and bullying is and what it is not
- Knowledgeable about the legal aspects of harassment and the conflicting rights and responsibilities of all those involved
- Experienced in handling general employee complaints and grievances
- Familiar with the organisations structure, policies, practices and management procedures
- Outside the involved parties immediate chain of command - ideally in a non-operational or service role
- Credible to employees. The designated individuals should have a corporate reputation for independence, honesty, professionalism, sensitivity and directness
- A trained facilitator, or someone who others find it easy to confide in
- A neutral party, who is neither a friend or a colleague of either party
- Able to recognise when their involvement might lead to issues of neutrality, impartiality and objectivity
- Trained and experienced in dealing with the emotional aspects of an investigation.

The Confidential Adviser role is to provide:

- Information in context.
- Support within the guidelines

- Advice and information on options
- Guidance on the process and procedure.
- A facility for people who believe they are being harassed and/or bullied or an alleged perpetrator of such behaviour to talk to an independent and impartial person who can act as a “sounding board”.

The Investigator role is:

- To interview and use questioning and active listening skills to obtain information from all parties involved in a complaint.
- To consider the information obtained objectively and to reach a conclusion about the complaint
- To write a report showing evidence gathered and including any information on contributory factors
- Explore the acceptability and practicality of options for resolving the complaint, including forming a view about the commitment of the parties to achieving a practical resolution of the complaint
- To explain conclusions reached
- To make recommendations for resolution of the complaint (which may include recommendations on pursuing disciplinary action)

To ensure a sufficient pool of resources to provide confidential advice and investigative skills at least one Confidential Adviser and one Investigator will be trained from each Directorate. Directors will be asked to nominate suitable candidates who fulfil the skills criteria above. UNISON will also be asked for nominations and self-nominations will be sought from staff who are interested in carrying out either role. The Head of HR will select from the nominations received who will be trained. The training will include an assessment of participants’ suitability to act as Confidential Advisers and Investigators and only those assessed as suitable will become recognised Confidential Advisers or Investigators.

The list of trained Confidential Advisers and Investigators will be held and maintained by Human Resources. The names and contact details of Confidential Advisers will be publicised to staff throughout the Council.

Harassment Policy Discussion Paper

1. The differences between us, as set out in Jane's letter of 19th September are:
 - i. Fast-tracking a case so that it is "transferred to be dealt with under the Disciplinary Procedure and all further action under the Harassment and Bullying at Work Policy will cease."
 - ii. Convening a meeting with the investigator "and both parties to the complaint, where the investigator will present their report and be open to questions by the parties to the complaint and the manager."
 - iii. The whole appeals process, particularly the procedure for the hearing.
2. As we understand it, UNISON's concerns regarding an adversarial "hearing" involving both the complainant and the alleged harasser focus on a potentially vulnerable member of staff, who may have been suffering harassment over a period of time being placed in a situation where they have to face their harasser and be directly challenged by them.
3. Management's concerns arise because the formal stage of the Harassment Policy potentially entails a finding that the accused person has harassed the complainant; that finding would be recorded and is a potential detriment the accused. Management feel that if someone is facing a detriment they are entitled to natural justice:
 - i. The right to know the charge.
 - ii. The right to know the evidence on which the charge is based.
 - iii. The right to submit a defence.
4. Under the Harassment Policy as it is currently drafted, the investigator's report makes a recommendation that either:
 - i. The complaint is upheld and constitutes a breach of the Council's disciplinary rules, or
 - ii. Whilst there is some substance to the complaint, the issue is not serious enough to warrant disciplinary action, or
 - iii. The complaint is not upheld.

The investigator does not have the authority to institute disciplinary action, nor to present the case at a disciplinary hearing. Also, the investigator's report does not present all of the evidence: identifying witnesses, including witness statements, etc., so we have to introduce a formal process to assess the investigator's recommendations, even if the case is going to be dealt with through informal action. The formal process of assessing the investigator's recommendations results in a formal finding that is recorded on the personal file and could be referred to in job references, etc. It is this aspect of the process that has led to management expressing concerns about natural justice.

5. In the normal course of events, if a manager becomes aware of a problem, they investigate and either conclude that there isn't a problem, or that they need to devote additional resources to address the problem through informal means, or there is a clear breach of the disciplinary rules and the matter goes to a disciplinary

hearing. There would only be a record on the employee's personal file if the disciplinary action succeeded.

6. An alternative approach could resolve the problem. If the investigator's report was confidential to the manager and was similar to a report on a disciplinary investigation, the manager would be placed in the position of taking a management decision on what action was appropriate in the case. Furthermore, the manager would have the evidence on which they could confidently base such a decision. The manager may, or may not need to interview witnesses and/or one or both of the parties to the complaint before finalising their decision, but in doing so they would essentially be collecting information in order to take a management decision. Copies of the investigator's report released to the parties to the complaint would need to be edited to protect confidentiality and would only be released once the manager had decided on the appropriate action. Any right of appeal under this scenario would be against the manager's decision on what action was appropriate, rather than seeking to prove or disprove that harassment took place.
7. Managers would have three possible decisions open to them:
 - i. Harassment is likely to have taken place and disciplinary action is appropriate.

There would be no right of appeal against such a decision. Managers have the right to institute disciplinary action if they feel that the evidence is sufficient and it is not normal for employees to be able to appeal against such decisions – they have the right to defend themselves at the disciplinary hearing.
 - ii. It is likely that there is some substance to the complaint and the matter should be resolved through informal means.

In this event, there is not a formal finding that harassment has occurred, rather, the manager is identifying a potential problem and is devoting additional management resources to address it. This is part of normal day-to-day management and it is difficult to see why the alleged harasser should have any right of appeal.

The complainant would have a right of appeal. But note, the focus of the appeal would be that the manager's decision was inappropriate in the light of the evidence. It would not be seeking a decision that harassment had occurred and would not involve a face-to-face confrontation with the alleged harasser.
 - iii. No case to answer.

Again, the complainant would have a right of appeal against the manager's decision.
8. Whilst this paper has focused particularly on the second point of disagreement between us, it does have implications for the other points:
 - i. If the Investigator's investigation and report takes on more of the characteristics of a disciplinary investigation there will be no need for a fast-track mechanism.
 - ii. The fact that only the complainant will have a right of appeal, and that the appeal will be against the manager's decision will have significant implications for the appeal procedure, which we feel should make it easier to reach agreement.