



East Herts Council

Bullying & Harassment Policy

Policy Statement

**Policy Statement No 17 (Issue No 2)
July 2012**

Contents

1.0	BACKGROUND.....	1
2.0	HARASSMENT & BULLYING – DEFINITIONS.....	2
3.0	HARASSMENT / BULLYING BY CONTRACTORS, AGENCY STAFF, SERVICE USERS OR OTHER GROUPS	3
4.0	HARASSMENT / BULLYING BY ELECTED MEMBERS.....	4
5.0	HARASSMENT / BULLYING BY EAST HERTS STAFF.....	4
6.0	INFORMAL ACTION.....	5
7.0	FORMAL ACTION	8
8.0	INVESTIGATION.....	9
9.0	VICTIMISATION.....	15
10.0	MONITORING FOLLOWING A FORMAL HARASSMENT/BULLYING COMPLAINT.....	15
11.0	MALICIOUS COMPLAINTS.....	8
12.0	CONFIDENTIALITY.....	16
13.0	MEDIATION & CONCILIATION.....	16
14.0	SUPPORT.....	17
15.0	APPEALS	9
16.0	REVIEW.....	10

1.0 **Background**

- 1.1 East Herts Council strives 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. As an employer East Herts Council has both a legal and moral duty to protect their employees against harassment and bullying.
- 1.2 All employees should be given the opportunity to perform to their best abilities and therefore harassment or bullying at work will not be tolerated. Any such behaviour will be dealt with under the Disciplinary Procedure as a disciplinary offence that could lead to dismissal.
- 1.3 The Council has a Dignity at Work statement championed by the Chief Executive and managers of the Council (see Appendix A).
- 1.4 Despite cases of harassment or bullying being rare at East Herts Council, any such occurrence will be treated with due gravity. 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.
- 1.5 Employees are asked to treat this issue seriously, to read the Dignity at Work statement and this policy carefully and consider whether their actions and behaviour are always appropriate in the workplace.
- 1.6 All managers at East Herts Council have a duty to create a working environment where harassment and bullying are not acceptable and to take action to address harassment and bullying if it arises.

- 1.7 Throughout this policy the term harassment is taken to mean an all encompassing term, which includes harassment and bullying.
- 1.8 Where the Procedure refers to one perpetrator and one complainant, it should be interpreted to cover all other combinations.
- 1.9 This Policy applies to all Council employees including Chief Officers and above.

2.0 Harassment & Bullying – Definitions

2.1 Harassment

- 2.1.1 The current definition of harassment as set out in the Equality Act 2010 is ‘unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating and intimidating, hostile, degrading, humiliating or offensive environment for that individual.’
- 2.1.2 The protected characteristics are; age, disability, gender reassignment, race, and sex. Whilst there is no specific harassment protection for pregnancy and maternity and religion and belief within the act direct discrimination protection prohibits treatment such as bullying and harassment which results in a person being treated less favourably.
- 2.1.3 The scope has been extended to include harassment based on association or perception and by a third party.
- 2.1.4 The essential characteristic of harassment is that the action(s) is unwanted by the recipient.
- 2.1.5 Forms of harassment include many kinds of unacceptable behaviour. For example:
- Uninvited, unreciprocated and unwelcome behaviour of a sexual nature, which is offensive to the person involved and causes that person to feel threatened, humiliated, or embarrassed.

- Action, behaviour, comment or physical contact which is found objectionable or which causes offence, including: offensive jokes, verbal abuse, language, graffiti or
- literature of a racist or sectarian nature, or offensive remarks about a person's skin colour, physical characteristics, age, sexual orientation, or any other personal characteristic.

2.2 Bullying

2.2.1 Bullying is not specifically defined in law, however ACAS gives the following definition:

'Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient'.

2.2.2 Bullying is often inextricably linked to the areas of harassment described above.

2.2.3 Examples of bullying include:

- Unjustified criticism of an individual's personal or professional performance,
- shouting at an individual, criticising an individual in front of others.
- Spreading malicious rumours or making malicious allegations
- Ignoring or excluding an individual from the team / group.
- Online bullying.

3.0 Harassment / bullying by contractors, agency staff, service users or other groups

3.1 The Council has a responsibility under equality legislation to protect our staff from harassment by third parties (stakeholders and other external contacts). The Council will

take all reasonable actions to ensure people are aware of the Dignity at Work statement, and take action in response to incidents of unacceptable behaviour towards employees. Management undertakes to investigate reported incidents and take appropriate action.

- 3.2 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 and returning it to the Health & Safety Officer. HR will also be informed of the incident to ensure any support the employee needs is provided.

4.0 Harassment / Bullying by elected members

- 4.1 Any dealing between Members and Officers should be conducted with mutual trust, respect and courtesy. Further guidance is available in the Council's Constitution and the Member/Officer Relations Protocol.
- 4.2 If an employee wishes to raise concerns about a member's behaviour towards them they should raise the complaint with the Head of Legal and Democratic Services or the Council's Monitoring Officer (Director of Neighbourhood Services) in accordance with the Constitution.

5.0 Harassment / bullying by East Herts staff

- 5.1 Employees that feel they are being harassed or bullied have a right to:
- Discuss any problems with their line manager where appropriate
 - Access to confidential HR advice in relation to support and the process
 - Contact PPC (the Council's Employee Assistance Programme) for confidential advice and support

- 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.

5.2 Employees that are being harassed or bullied should keep a diary and written record of all incidents. This should include dates, time, details of what happened and how the person 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.

6.0 **Informal action**

6.1 Informal and formal cases of harassment and bullying are rare within East Herts Council, and it is hoped that if a case exists that it can be resolved satisfactorily at an early stage.

6.2 Employees that feel they are a target of bullying or harassment or an employee who witnesses an instance of bullying or harassment, is urged to seek advice as stated in 5.1 and try to resolve the matter on an informal basis before activating the formal procedure. They should contact HR in the first instance to discuss the incident and how they may wish to proceed.

6.3 Some people are unaware that their behaviour in some circumstances could be viewed as harassing or bullying. If it is clearly pointed out to them that their behaviour is unacceptable, the problem can sometimes be resolved.

- 6.4 Employees that feel comfortable doing so should raise the matter informally with the alleged perpetrator, stating which aspect of their behaviour is offensive and unacceptable, the effect it is having on you and making it clear that it should cease. This can be done either verbally or by means of a written communication, a copy of which you should keep. You may seek the support of a colleague, trade union representative or HR to accompany you at this discussion.
- 6.5 Employees should find a quiet place to discuss the issue confidentially and without interruption. 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.
- 6.6 Employees that do not feel able to approach the alleged harasser directly, or the alleged harasser does not respond to their concerns, should speak to their line manager. If it is the line manager who is accused of harassment, you should speak to their manager.
- 6.7 The line manager must take action to investigate as set out in 6.8 and respond to you within 10 working days (This time limit may be extended with your agreement).
- 6.8 The line manager will investigate 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

- 6.9 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.
- 6.10 It should also be noted that disciplinary action and sanction may be taken against perpetrators of harassment and bullying. Disciplinary action may be taken only after a formal investigation has been conducted. Please see the disciplinary procedure for further information.
- 6.11 A record of the complaint must be recorded on the Confidential Monitoring form (see Appendix B). The line manager should record the informal action taken and return a copy to HR for monitoring purposes.

7.0 Formal action

- 7.1 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.
- 7.2 Throughout the formal part of this procedure, both parties have the right to be represented or accompanied by a Trade Union representative, or work colleague.
- 7.3 Employees who wish to raise a complaint under the formal procedure must complete the Confidential Monitoring Form (see Appendix B). This should be handed to your line manager and a copy sent to Human Resources. If the allegation is against your line manager the form can be handed to your Head of Service or Director (if the Head of Service is your line manager). In cases where a Director is the alleged perpetrator, the appropriate Executive Director should be notified.
- 7.4 The Confidential Monitoring Form will include the following:
- Details of the alleged harassment or bullying, including as much specific information as possible.
 - The name(s) of the alleged perpetrator(s)
 - What form of resolution you are seeking.
- 7.5 In cases where the employee has attempted to resolve the matter informally with their manager, Head of Service or Director, or has good reason to believe their concerns have not been taken seriously, they should send the completed Confidential Monitoring form to Human Resources. HR will ensure that the investigator’s terms of reference include assessing the suitability of the manager, Head of Service or Director to have any further involvement in the case. Alternatively, the Investigator may develop their own concerns about the suitability of the manager, Head of Service or Director to deal with the matter. In either circumstance the

Head of Service, with advice from Human Resources, will determine whether there is substance to the concerns and, if appropriate, will appoint an alternative manager to deal with the matter. In cases concerning a Head of Service the Director will make this decision with advice from the Head of Human Resources. Should the case involve a Director the Chief Executive will make the decision with advice from the Head of Human Resources

- 7.6 The manager on receipt of the Confidential Monitoring form should notify Human Resources immediately. If the matter has not previously been raised under the informal part of the policy. Human Resources will discuss with the employee and line manager whether it would be more appropriate to try and resolve the matter informally first. The decision to move to formal action under the policy will be in accordance with the reasons set out under 7.1.
- 7.7 Human Resources will appoint an Investigator once it has been decided the formal process should be invoked. 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.
- 7.8 Human Resources may 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.
- 7.9 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 a Chief Officer;
 - 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.

8.0 Investigation

8.1 Principles

8.1.1 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.

8.1.2 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.

8.1.3 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. In such circumstances, the presumption will be that the complainant should not be moved from their normal work location. However, the line manager will also need to consider any impact on services and will consult with both parties on the options available. Whether the complainant, the alleged harasser, or both parties are moved to an alternative work location will be decided by the line manager, taking all of the circumstances into account. This decision will in no way be influenced by any perceptions of the validity of the case or the culpability of the alleged harasser.

8.1.4 In exceptional circumstances consideration may be given to granting either or both parties extended leave. Or depending on the circumstances of the case, and where the disciplinary procedure has had to be invoked, suspending the alleged perpetrator in accordance with the provisions of that 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.
- Where there are concerns that the complainant is finding the situation too stressful or difficult, paid time off from work should be considered for the duration or remainder of the investigation.

8.1.5 Investigative interviews will be conducted promptly, and investigations should normally be completed within 28 days of the receipt of the Confidential Monitoring form. 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.

8.2 Investigation preparation

8.2.1 Terms of reference specific to the case should be drawn up and agreed with the Head of HR. If, during the course of the investigation, the Investigator forms the view that the terms of reference need to be changed they must agree the revised terms of reference with the Head of HR.

8.2.3 The meaning of confidential needs to be defined in the context of the investigation within the terms of reference and communicated to all those involved in the investigation.

8.2.4 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.

8.2.5 The Investigator will write to the complainant and alleged perpetrator notifying them that they have been appointed and explaining the process, terms of reference and need for confidentiality. They will also be advised their right to be

accompanied throughout the process and asked if they wish to nominate any witnesses. Counselling for both parties will be offered at this stage and can be taken up at any point during the investigation.

8.2.6 The alleged perpetrator will also be given details of the allegation as determined above. They will not be told the names of any witnesses nominated by the complainant at this stage. They will also be informed of implications of any acts that may be construed as victimisation.

8.3 Investigation interviews

8.3.1 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.

8.3.2 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.

8.3.3 Interviews to be conducted in a neutral/comfortable environment, with trade union reps/colleagues present for support/representation as requested.

8.3.4 Interviews should commence with a clear introduction of the purpose of the investigation and the terms of reference. It should also be explained that minutes will be taken but that these will not be verbatim.

8.3.5 After the interview the minutes will be sent to the interviewee. They will be asked to sign, confirming them as a fair and true record of the interview. If relevant, this statement may form part of the Management Case presented at a subsequent disciplinary hearing. If the interviewee disagrees with the minutes they may propose amendments. The minutes will either be amended accordingly or the proposed amendments will be placed on file.

8.3.6 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.

8.4 Written Statements & Evidence

- 8.4.1 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.
- 8.4.2 Relevant documentary evidence, policies and procedures, internal documentation, training records, to be gathered and collated and perused by the investigator.

8.5 Investigation Outcome

- 8.5.1 The investigator will consider options on any action to rebuild effective working relationships and form a view on the commitment of both parties to resolving the complaint.
- 8.5.2 The investigator will produce a written report detailing the investigation, complaint, defence and evidence. The report must be confined to the agreed terms of reference. This will be made available to both parties (without supporting documentation e.g. witness statements etc).
- 8.5.3 The report should 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.
- 8.5.4 The investigator may submit an additional report to management on issues outside the agreed terms of reference and/or not directly relating to the substance of the complaint, which may include recommendations on management action to reduce the possibility of similar complaints in the future.
- 8.5.5 The Investigator will advise the line manager that the investigation has been concluded and request a meeting.

8.5.6 The line manager will meet with the investigator and a representative from HR to consider the investigator's report. A disclosure of evidence gathered will be made at this meeting. Unless there are exceptional circumstances a decision will be taken on the appropriate action, which will be either:

- There is a case to answer and disciplinary action is appropriate invoking the Disciplinary Policy, or
- It is likely that there is some substance to the complaint and the matter should be resolved through informal means, or
- There is no case to answer.

8.5.7 Both parties to the complaint will be advised of the manager's decision in writing and given a copy of the investigator's report (without supporting documentation e.g. witness statements etc), no later than 3 working days after the meeting.

8.5.8 If the manager decides there is a disciplinary case to answer, prompt action will be taken to stop the harassment or bullying immediately and prevent its recurrence. The matter will then be dealt with under the Council's Disciplinary Policy.

8.5.9 The line manager will present the case at any disciplinary hearing in accordance with the Council's Disciplinary Policy, using the investigator's report as their primary evidence. The supporting documentation (e.g. witness statements etc) from the original investigation will be used to support the case. The Investigator will normally be called as a witness at the Disciplinary Hearing. The Hearing Officer must be impartial and as far as possible have had no previous role in the investigation.

8.5.10 The complainant will be advised of the outcome of the disciplinary hearing and will be advised that the information is being given in the strictest confidence. Failure to keep the matter confidential will result in disciplinary action being taken against the complainant.

8.5.11 If the manager decides that there is some substance to the complaint, but that the issue is not serious enough to warrant

disciplinary action, the manager 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.

8.5.12 The action plan will be initiated as soon as possible and, in any event within 10 working days of the meeting.

8.5.13 If the manager decides that there is no case to answer they will also form a view on whether the allegation was malicious. In any event the manager 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.

9.0 Victimisation

9.1 Intimidation and/or victimisation of employees who have filed a complaint or been party to an investigation are 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 i.e. something is more likely to be true than not true.

10.0 Monitoring following a formal Harassment/Bullying Complaint

10.1 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 on a regularly basis.

11.0 Malicious Complaints

11.1 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 Policy.

12.0 Confidentiality

12.1 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 Policy.

13.0 Mediation and Conciliation

13.1 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.

13.2 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.

13.3 Both parties must agree to mediation. If any of the parties does not agree to mediation, mediation cannot be used to resolve the issues.

- 13.4 Human Resources will ensure that mediators used are trained to deal with the issues between the parties.
- 13.5 If the parties are able to resolve the matter through mediation, no further action will be taken.
- 13.6 Conciliation may be appropriate to help restore working relationships where they have become strained as a result of attempts to resolve the issues.
- 13.7 The Mediator/Conciliator will provide the parties with a written statement outlining the issues to be addressed and agreed action to be taken by the parties to resolve the issue.
- 13.8 The parties are advised to keep their own notes of the actions taken following the mediation.

14.0 Support

- 14.1 The Council recognises that an employee who has been the target or has been accused of harassment or bullying may require counselling to enable her/him to deal with what has happened to them/assist in coping with being accused.
- 14.2 PPC, the Council's confidential Employee Assistance Programme is available to employees who feel they need such counselling support. Managers can refer employees if appropriate but it can also be accessed through self referral and without approval from managers, Occupational Health or HR.
- 14.3 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 the Council's service, paid time off work will be facilitated, where possible, to ensure the employee can attend counselling appointments.

15.0 Appeals

- 15.1 If the manager decides that there is a disciplinary case to answer neither party will have a right of appeal against this

decision. There is a separate right of appeal regarding a sanction against an employee following a disciplinary hearing. Please see Appeals Policy for further details.

15.2 If the manager decides that it is likely that there is some substance to the complaint and the matter should be resolved through informal means or finds that there is no case to answer, the complainant may appeal against the decision. Please see Appeals Policy for further details.

16.0 **Review**

16.1 This procedure will be reviewed every 2 years, or sooner if there are any changes in legislation or best practice require amendments to be made.

DRAFT