

APPENDIX 5

East Herts Council

Bullying & Harassment Policy

Policy Statement No 17 (Issue no 4)

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APPENDIX A: PATHWAY FOR DEALING WITH COMPLAINTS OF BULLYING AND HARASSMENT

1. INTRODUCTION

- 1.1 East Herts Council is committed to the elimination of discrimination on the grounds of sex, marital status, sexual orientation, race, colour, nationality, gender reassignment, creed or religious belief, ethnic or national origins, age and disability. It is the right of every member of staff to work without fear of harassment or victimisation. The council recognises the problems associated with bullying and harassment and is committed to providing an environment in which all individuals can operate effectively, confidently and competently.
- 1.2 We welcome the support of staff in seeking to eradicate harassment and bullying in the workplace, or outside work if it has a bearing on the working relationship.
- 1.3 Where unacceptable behaviour occurs within the scope of this policy, appropriate disciplinary action will be taken which may include dismissal. The council treats serious cases of harassment or bullying as gross misconduct.
- 1.4 This procedure does not form part of any individual employee's contract of employment with East Herts Council

2. PURPOSE AND SCOPE

- 2.1 The purpose of this policy & procedure is to provide a procedure under which staff who consider they are victims of harassment or bullying can seek action which is non-threatening to them and quickly ends the problem. It is intended to give confidence to those who might be afraid to seek a solution to the problem due to fear of reprisal or ridicule and to put into practical application the council's firm commitment to the elimination of harassment and bullying.
- 2.2 This policy is a specialised version of the council's Grievance Policy. Any formal actions to investigate an employee's complaint taken within the scope of this Procedure will count as grievances, grievance hearings and grievance decisions.

- 2.3 This procedure will not cover circumstances where an employee has been dismissed under the Councils Disciplinary Procedure, in which case the Disciplinary (Appeals) Procedure will apply.
- 2.4 This policy and procedure covers all full and part-time East Herts Council employees, including casual staff and agency staff.

3. HARASSMENT & BULLYING - DEFINITIONS and FORMS

3.1 Harassment

- 3.1.1 The current definition of harassment as set out in the Equality Act 2010 is 'unwanted conduct or sexual conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual and because of rejection or submission to the conduct the individual is treated less favourably than they would have been treated if they had not rejected or submitted to the conduct.
- 3.1.2 The protected characteristics are; age, disability, gender reassignment, race, religion, sex and sexual orientation.
- 3.1.3 In deciding whether conduct has the effect referred to in the definition the following must be taken into consideration:
- (a) the perception of the individual
 - (b) the circumstances of the case
 - (c) whether it is reasonable for the conduct to have that effect.
- 3.1.4 The scope has been extended to include harassment based on association or perception and by a third party.
- 3.1.5 The essential characteristic of harassment is that the action(s) is unwanted by the recipient.

3.2 Bullying

- 3.2.1 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'.

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

3.3 Forms of Harassment and Bullying

3.3.1 Harassment and bullying can range from extremes such as violence, to less obvious forms such as ignoring or excluding someone. Forms include:

- Inappropriate and unwelcome physical contact
- Abusive, aggressive, threatening or insulting words and behaviour.
- Derogatory remarks or offensive language.
- Insensitive jokes or pranks.
- Gossip or slander.
- Spreading malicious rumours or making malicious allegations.
- Displaying or circulating or distributing offensive writing or literature or pictures or computer imagery.
- Posters, graffiti, badges, or other symbolic displays of offensive material.
- Requests for sexual favours.
- Speculation or innuendo about a person's private life and sexual activities.
- Obscene gestures.
- Unwelcome or unauthorised use of mobile phones to take pictures or video films or record conversations without agreement.
- Pressure to participate in political/religious groups.
- Isolation or non-cooperation.
- Exclusion from conversations or work or social activities.
- Criticising individuals unreasonably in front of others.
- Constantly devaluing effort and/or achievement.
- Blaming individuals for mistakes that are not their fault.
- Setting employees up to fail, for instance by setting unreasonable deadlines, changing work objectives without consultation, or withholding information necessary for the individual to do their job.
- Substituting responsible tasks with menial or trivial ones without justifiable cause.

This list is not exhaustive, actions could be in person or online and the actions in question must be viewed in terms of the offence or distress they cause the individual and the degree to which the offence caused is apparent to a reasonable person.

- 3.3.2 A professional management conversation concerning performance or behaviour where legitimate and constructive criticism is made (or a reasonable request/instruction given) may be difficult for an employee to hear (and therefore unwanted) but does not constitute bullying behaviour providing such criticism or instruction is legitimate/reasonable.
- 3.3.3 Harassment and bullying can occur between any two parties, and may be directed by one or more individuals towards one or more individuals. A person may be harassed even if they were not the intended "target". They can be perpetrated by people at any level of the organisation against people at any other level - or at the same level - within the staffing structure.

4. GENERAL PRINCIPLES

- 4.1 If a complaint is brought to the attention of management, it will be investigated promptly and appropriate action taken. All employees involved in an investigation are expected to respect the need for confidentiality.
- 4.2 Measures will be taken to ensure that employees are protected against victimisation for making or being involved in a complaint. Any action taken against an employee for complaining about harassment or bullying (except where the complaint is found to be false and malicious) will be investigated as a potential disciplinary offence.
- 4.3 Where an employee makes a formal complaint under Section 8 of this procedure, the employee should be kept informed in general terms (usually by the investigating manager) of any decisions or actions taken, and/or any proposed future action with an indication of timescales.
- 4.4 Any allegations/complaints found to be false and malicious may result in disciplinary action being taken against the complainant.

5. RESPONSIBILITIES UNDER THE POLICY

- 5.1 Every East Herts Council employee is responsible for their own conduct within the terms of this policy. The aim of the policy is to protect employees from harassment and bullying and to enable them, if necessary, to make a complaint or assist in an investigation without fear of reprisal. The responsibility for ensuring that this is achieved lies with the complainant themselves, the line manager and colleagues.

- 5.2 **The complainant:** We acknowledge that people who are harassed or bullied often feel vulnerable and isolated and believe it is best not to complain as their complaints will not be taken seriously. East Herts Council will treat all complaints very seriously and we would strongly encourage anyone in this situation to take active measures to stop the bullying or harassment by using the informal and/or formal procedures set out below.
- 5.3 **The manager:** All East Herts managers have a duty to establish and maintain a working environment free from harassment and bullying and to challenge incidents when they occur. Any manager who receives a complaint of harassment or bullying, or is witness to such behaviour, must investigate the complaint or incident and ensure that the problem is resolved as quickly as possible. They may be able to intervene informally (with the consent of the victim) to resolve the problem, or where this is likely to be inadequate or inappropriate they may need to take measures to invoke action - or support the victim in taking action - under the formal procedure set out in Section 8 below.
- 5.4 **Colleagues:** All employees must comply with this policy and take steps to ensure that bullying and harassment does not occur. This includes not colluding in or ignoring harassment or bullying behaviour directed at others, and challenging it (or drawing it to the attention of an appropriate manager) if you think it is taking place. Any employee who receives a complaint of harassment or bullying must respect the confidentiality of both the complainant and the alleged perpetrator, and should encourage the complainant to consider using the informal and/or formal procedures set out below.

6. MAKING A COMPLAINT

- 6.1 A member of staff who believes that s/he is being subject to harassment or bullying may, if they choose to, first use the informal procedures set out in Section 7 below. It is preferable for all concerned that complaints of harassment or bullying are dealt with informally wherever possible since the intention is to prevent the harassment or bullying. Informal action often enables quick, practical solutions while preserving confidentiality and minimising embarrassment for the victim.
- 6.2 However, where the complainant feels that the informal procedure is inappropriate or likely to prove ineffective, they may use the formal procedure described in Section 8 below.

- 6.3 Any employee being subjected to or witnessing any incident(s) of harassment or bullying should keep a written record including the date, time, nature of incident(s), any correspondence relating to the incident(s), names of those involved and the names of any witnesses.
- 6.4 The Council's confidential Employee Assistance Programme is available to employees who feel they need such counselling support [\(add link\)](#). Managers can refer employees if appropriate but it can also be accessed through self-referral and without approval from managers, Occupational Health or HR. The role of the counsellor is to provide support and assistance to the complainant during this stressful time. The role also extends to the alleged harasser, if requested. However, the same counsellor should not advise the alleged harasser. The counsellor has no role in formal investigations and neither are they a source of evidence in any proceedings, since all discussions between counsellor and employee are confidential.

7. INFORMAL PROCEDURE

- 7.1 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.
- 7.2 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 them 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 they should keep.
- 7.2 If the employee feels unable to do this, or has tried this and it has failed, they should approach any of the following for confidential advice/support and be encouraged to take appropriate steps:
- Line manager or another manager or a member of Human Resources
 - A EHC colleague
 - Trade Union representative

The colleague or TU rep or Manager or HR Officer may accompany the employee to any discussion with the alleged perpetrator and facilitate a discussion to resolve matters.

7.3 HR should also be contacted (if they have not been by the complainant) to provide advice and support over the informal stage to ensure matters are treated consistently and support is provided to both parties.

8. FORMAL PROCEDURE

8.1 A formal complaint can be made using East Herts Council formal Grievance Procedure. The employee should also copy their written grievance to the Head of Human Resources or in their absence the Human Resources Officer.

8.2 The formal procedure will apply where:

- Where the complainant feels that the informal stage is inappropriate or likely to prove ineffective.
- The informal procedure has proved ineffective and the complainant wishes to make a formal complaint.
- The nature of the allegation is serious enough to warrant formal action from the outset.
- An allegation has been made by a "third party", who witnessed an incident.
- It becomes apparent during an informal stage to the manager supporting this stage that the matters are serious enough to warrant formal action.

8.3 An appropriate manager will be appointed by HR to investigate the complaint promptly and adequately, they will be supported by a HR Officer. Human Resources may appoint a note-taker in addition to a HR Officer to support the investigator. In certain cases East Herts Council may appoint an independent and/or expert investigator from outside of the organisation.

8.4 The complainant may request extra support from management during the time that any complaint is being investigated, which may include a request to work separately from the alleged perpetrator. In considering such requests management will conduct a risk and reasonableness assessment before deciding on action designed to protect the employee from the risk of further harassment without unnecessary disruption to services.

8.5 Depending on the nature and severity of the allegations, the employee who is accused of harassment or bullying may be suspended on full pay whilst the circumstances of a serious complaint are being investigated, in accordance with the procedures for suspension set out in the council's Disciplinary Procedure.

- 8.6 Investigation will be conducted with the aim of establishing the facts of the case. Where the complainant or any witness is interviewed as part of the investigation they will have the option of being accompanied by a trade union representative or a work colleague of their choice. The alleged perpetrator will have the same option.
- 8.7 A formal grievance hearing with the complainant within the terms of the Councils Grievance Procedure (see Stage 6 of the Grievance Procedure) shall form part of the investigatory process.
- 8.8 All efforts should be made to conclude the investigation within 28 days of the formal complaint being received. If this time limit is exceeded, the complainant should be advised of this and informed of a likely date when the investigation will end.
- 8.8 The investigator will prepare a report of the investigation. The investigator will conclude on the balance of probabilities whether the complaint should be upheld and referred to a disciplinary hearing or for the perpetrator to be issued with an informal warning where there is only some substance or the misconduct only warrants an informal warning, or they may determine there is no case to answer.

Where the matter is referred to a Disciplinary hearing, any disciplinary action will be conducted in accordance with the council's disciplinary policy, with the additional specific provisions:

- The complainant as well as the employee accused of harassment or bullying will have the right to be accompanied at the hearing by a trade union representative or a work colleague.
 - The severity of the disciplinary penalty imposed upon an employee found guilty of harassment will be consistent with those detailed in the disciplinary procedure (e.g. serious acts of harassment or bullying will normally result in summary dismissal). Where a lesser penalty is considered appropriate this may be coupled with action to ensure that the victim is able to continue working without embarrassment or anxiety. This may include the transfer of the harasser to a different work area or department on a temporary or permanent basis, or the amendment of working practices to minimise contact between the two employees
- 8.9 The employee against whom disciplinary action has been taken may appeal against the penalty in accordance with the council's Disciplinary (Appeals) Procedure.

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

- 9.1 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 in response to incidents of unacceptable behaviour towards employees. Management undertakes to investigate reported incidents and take appropriate action.
- 9.2 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
- 9.3 In such circumstances, the employee may in the first instance choose to follow the informal procedure set out in Section 7 above.
- 9.4 However, where the complainant feels that the informal procedure is inappropriate or likely to prove ineffective they should make a formal complaint in writing to their line manager.
- 9.5 Upon receiving a formal complaint the line manager must inform his/her senior manager of the complaint, and investigate the complaint promptly and adequately. While the complaint is being investigated the line manager should instigate all reasonable measures (with the authority of the senior manager if necessary) to protect the employee from the risk of further harassment.
- 9.6 If after the investigation the immediate line manager (and their line manager if relevant) are satisfied that harassment has occurred, it will be the responsibility of the senior manager to instigate appropriate action - within the council's legal and constitutional powers and operational/financial capacities - to prevent the perpetrator from further harassing the complainant or any other member of staff. In some cases a warning to the perpetrator may be adjudged sufficient in the first instance, coupled with other practical action designed to protect the complainant from exposure to further acts of harassment. However, for serious cases, or where an initial warning has proved ineffective, such action may ultimately include:

- Denying further access to EHC by the visitor or agent of a contractor or consultant, or termination of the contract for services.

9.7 Whatever the initial or ultimate course of action decided upon in relation to the perpetrator, the line manager and the senior manager must, from the point of becoming aware of the harassment, take reasonable and appropriate action to prevent or minimise the potential for the complainant to be subjected to further acts of harassment.

10. HARASSMENT/BULLYING BY ELECTED MEMBERS

10.1 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.

10.2 If an employee wishes to raise concerns about a member's behaviour towards them they should raise the complaint with the Monitoring Officer in accordance with the Constitution. This procedure will not apply in those circumstances and the matter will be managed by the Monitoring Officer (Head of Legal and Democratic Services).

10.3 Details of how to make such a complaint to the Monitoring Officer can be found here:

<https://www.eastherts.gov.uk/councillors-committees/complaints-about-councillors>

11. APPEALS TO STAGE 2 GRIEVANCES FROM THIS PROCEDURE

11.1 If the investigator 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 Disciplinary Policy for further details.

11.2 If the manager decides that it is likely that there is some substance to the complaint/grievance but that the matter should be resolved through informal means this will uphold the complaint and neither party will have a right to appeal against the decision.

11.3 If the manager decides that there is no case to answer, the complainant may appeal against the decision. Please see Grievance Policy for further details.

12. REVIEW

12.1 This procedure will be reviewed if there are any changes in legislation or best practice requiring amendments to be made.

Pathway for Dealing with Complaints of Bullying and Harassment

