



MANAGERS' GUIDANCE HARASSMENT & BULLYING PROCEDURE

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Links and Dependencies

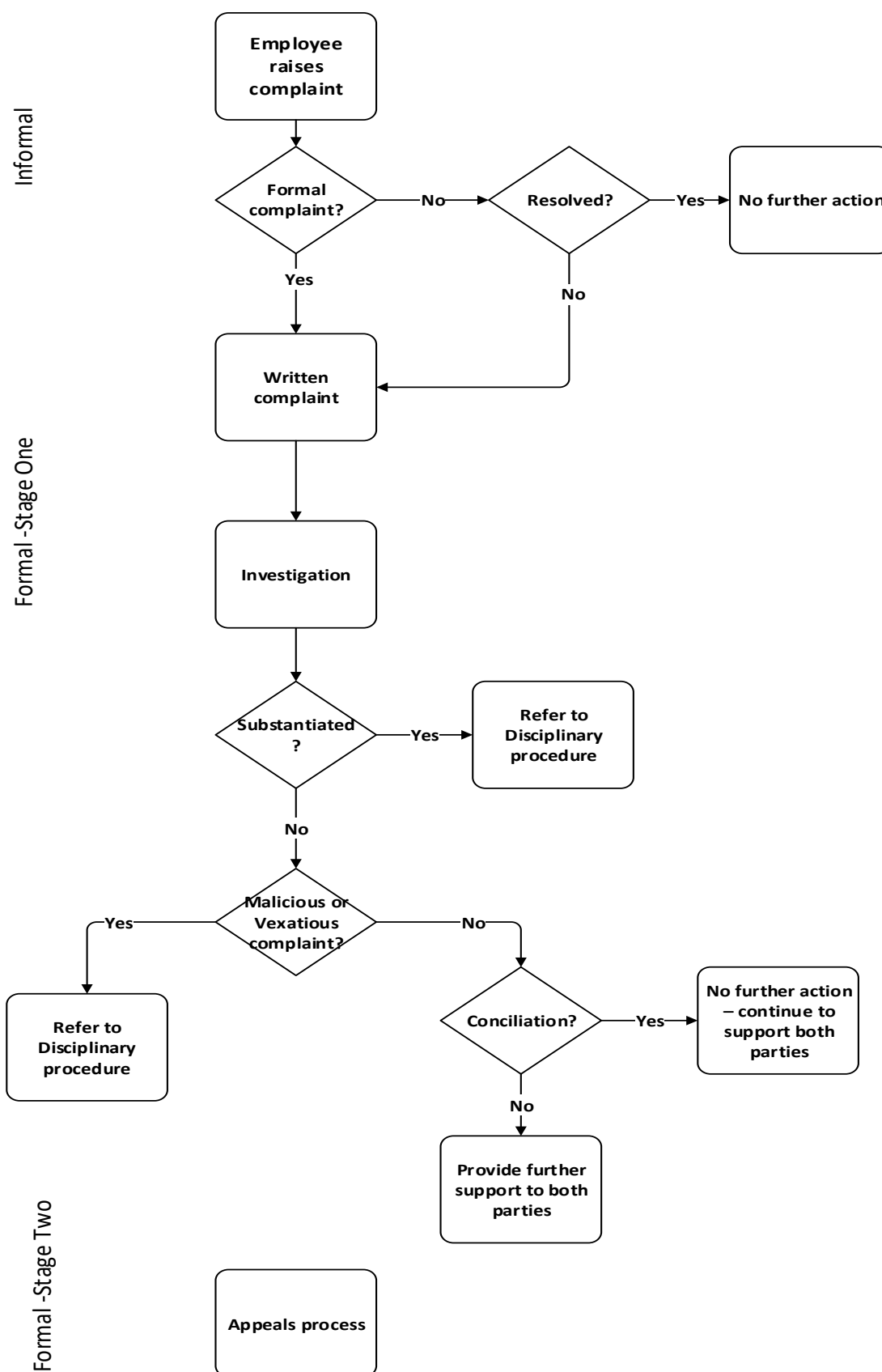
- Equality Act 2010
- Protection from Harassment Act 1997
- Disciplinary Procedure
- Grievance Procedure
- Acceptable Use of Social Media Policy - 2013

Derbyshire County Council Guidance on the Harassment & Bullying Procedure

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Process for Dealing With Complaints of Harassment



1. Introduction

Derbyshire County Council supports the right of every employee to be treated fairly and with dignity and respect. It is committed to ensuring that all staff treat others appropriately and to promoting an environment that ensures employees are not subjected to harassment, bullying, discrimination or victimisation. All employees are responsible for maintaining and promoting such an environment.

The Council is committed to the wellbeing of its workforce and to enabling individuals to recognise their full potential at work. This includes treating everyone as we would expect to be treated, being sensitive in our relationships with others, and providing leadership in a positive, non-dominant style.

Workplace harassment and bullying has a detrimental effect on individuals, on operational efficiency and will not be tolerated. An environment free of harassment and bullying can:

- Improve morale and employee relations.
- Improve performance and productivity.
- Reduce absence levels and staff turnover rates.
- Establish a reputation as a good employer and prevent legal claims.

2. What is Harassment and Bullying?

If an employee makes a complaint about something that has happened to them that is unwelcome, unwarranted and causes a detrimental effect, and they feel they have been bullied and/or harassed, then this will be investigated to see if it meets the following definitions:

Harassment: Is unwanted 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 - Equality Act 2010. Harassment tends to be focused on a particular characteristic, it may be a single incident or a series of incidents, and it is linked to anti-discrimination law. An individual may complain about offensive behaviour even if it is not directed at them.

Discrimination: Is treating someone less favourably or making a decision based on a relevant protected characteristic. These are:

- Age
- Disability
- Gender reassignment

- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Bullying: Is often described as “offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient”. ACAS

It is not necessarily linked to any particular characteristic and tends to be an on-going series of incidents, aimed at one or more individual.

The terms bullying and harassment are often used interchangeably and involve similar behaviour. Key to whether bullying or harassment has occurred is that the behaviour is unwanted.

For practical examples of behaviour which may be considered to constitute either harassment or bullying, see Appendix 1.

3. Addressing Harassment & Bullying

3.1 Preventing Harassment & Bullying

As a manager, you have a responsibility to promote and support a culture where inappropriate behaviour is not tolerated and where people feel able to be themselves at work. You can prevent bullying and harassment, by demonstrating positive behaviour yourself, and ensuring employees understand such behaviour is unacceptable. Some examples of expected behaviours which you should aim to promote are:

- Treat colleagues fairly, courteously and respectfully.
- Value your employees for their diversity and the different qualities and contributions they can make.
- Be aware of how your behaviour impacts on others.
- Ensure staff feel able to challenge inappropriate behaviour and alert others where necessary.
- Ensure staff cooperate with investigations following complaints.

You can further encourage such a culture by demonstrating appropriate behaviour yourself:

- Lead by example by following high standards in your own behaviour.
- Manage staff fairly, effectively and consistently.

- Provide advice and guidance to staff on the harassment & bullying procedure.
- Ensure individuals are able to complain without fear of repercussions.
- Investigate any complaints promptly and fairly and wherever possible with due regard for confidentiality.
- Be aware of behaviour which may cause offence and challenge it where necessary – raising issues early will prevent habits forming.
- Intervene quickly if office dialogue starts to become unacceptable.
- Remind employees of expected standards if necessary, and have examples of what they have done that is unacceptable.
- Ensure there is a supportive working environment.

Harassment and bullying can be difficult to recognise and not apparent to others. This can be because it is done subtly, or employees think it is part of the “culture”, or individuals may be too frightened to report an incident. Therefore it is important that you are aware of possible indications of harassment and bullying and take action at an early stage. Causes for concern could be:

- An increase in absenteeism – longer periods or more frequent (either on an individual or organisational basis).
- High staff turnover in a particular area.
- Employees suffering from stress symptoms.
- Unexplained changes in behaviour or performance.

3.2 Handling Cases of Harassment & Bullying Informally

An informal resolution to incidents of harassment and bullying is often more satisfactory to both parties. It can minimise damage to working relationships, and allow these to be repaired, and so should be encouraged wherever possible. If you become aware of an issue or feel someone’s behaviour could be construed as ‘inappropriate’, early intervention can prevent things escalating into a complaint.

This approach allows employees to retain control of the process and therefore the outcome. Sometimes, alerting the implicated person to the issue may enable a solution to be reached, if they are unaware that their behaviour is causing offence. Often the complainant is seeking an apology and an assurance that the inappropriate behaviour will cease. If an employee raises an issue with you, try to discuss it with them informally before it is taken further. Actions they can consider include:

- Direct approach (Personal). If they feel able, the complainant can raise the problem personally with the other party, making it clear that their

behaviour is unwelcome and ask for it to stop. Try to encourage this approach in the first instance.

- Direct approach (Supported by manager). This is suitable if the complainant feels unable to meet with the other party alone, but able to take this approach if you, as their manager, were to facilitate the meeting, either in terms of moral support or mediation.
- Indirect approach (by manager). Sometimes, you may need to intervene on the complainant's behalf if they feel unable to approach the other party directly. For example:- If you judge that the issue can be resolved quickly and effectively by holding a discussion with the other party - it may be they are unaware of the effect of their behaviour and will accept positive suggestions. In some cases you are in the best place to make such a judgement.

If it is established in the conversation that there has been a problem, then you should discuss:

- That the behaviour must stop.
- The impact their behaviour has on the complainant and colleagues.
- That their behaviour is contrary to the harassment & bullying procedure.
- The potential consequences of continuing with this behaviour.
- That the discussion is confidential.
- That the situation will be monitored.

3.3 Handling Complaints of Bullying & Harassment Formally

A formal investigation is generally reserved for cases of a serious nature, or those cases that cannot be resolved through following an informal approach. Commonly this is where:

- A problem reoccurs having already been dealt with via the informal process.
- The incident is of such a serious nature that the informal route is inappropriate, for example, physical assault.
- The complainant considers that their complaint has not been dealt with satisfactorily via the informal route.
- The complainant opts to make a formal complaint in the first instance.

3.4 Carrying Out an Investigation

- Hold meetings in a timely manner, as a swift conclusion is desirable.
- Prepare your questions in advance.
- Meet separately with the complainant and the person being complained about, reminding both that they may be accompanied, by a colleague or trade union representative.

- Meet with any witnesses - other employees have a responsibility to cooperate in the elimination of harassment and bullying and are obliged to attend.
- Stress the need for confidentiality to all those involved and ensure they understand that events must not be discussed outside of the meeting.
- Explain the purpose of the meeting and remind the person complained about of the allegation.
- Advise employees that notes will be taken and possibly used to produce witness statements. Notes should be signed and dated by the employee and a copy provided at the end of the meeting or as soon as practicable.
- Questions to clarify the facts and explore the issue should be phrased sensitively and objectively, and not give the implication that you have already come to a conclusion about the issue.
- You will need to distinguish between matters of fact and matters of opinion, and bear in mind that it is the effect of the behaviour on the complainant and not the intention behind it that constitutes harassment or bullying.
- Do not be afraid to point out and question any discrepancies or to challenge what the employee is saying.
- At the end of the meeting, confirm what has been discussed, check understandings, and agree what will happen next.

Once the investigation is complete, you will need to decide whether the behaviour complained of occurred, and if so, does it constitute either harassment or bullying. You will also need to make recommendations on what action to take next.

You should normally inform all parties of your decision as soon as possible after the investigation is complete, and confirm this in writing within seven days. You should include an explanation of what action has been or will be taken, or if no action is to be taken, an explanation of your reasons for this.

If you find an employee's complaint is not upheld, you should ensure that the reasons are fully explained to them and that they understand why there will be no further action. However, you should continue to monitor the situation to ensure working relationships are not damaged.

There may be occasions when it is necessary to make amendments to working arrangements whilst the investigation is carried out. This may involve temporary relocation of one or both parties. However, the complainant should only be relocated if it is at their specific request. Other options are changing reporting arrangements or work allocation.

3.5 Possible Outcomes

The possible outcomes of an investigation are:

- The complaint is upheld and harassment or bullying occurred. In these cases you will need to follow the Disciplinary Procedure from this point.
- If the formal procedure has been followed, it may not always be necessary to conduct a further investigation.
- The complaint is not upheld but parties are conciliated (i.e. complainant accepts the decision of the investigator that harassment or bullying has not occurred).
- Complaint is not upheld but complainant remains aggrieved.

In any of these scenarios it is unlikely that the two parties will be able to continue working together without some support to assist this, and it may be necessary to seek further advice from the Advice & Support Team. Even where parties appear to be conciliated, you should continue to monitor the working situation. If no evidence is found of inappropriate behaviour, the impact on all individuals concerned can be far reaching and employees will need support to ensure the working relationship can be rebuilt.

If you find the complaint is upheld, you will need to follow the disciplinary procedure. Even if the behaviour complained about was unintentional and the distress caused is regretted, the disciplinary process will be followed.

Where you find the complaint is not upheld but the complainant remains aggrieved, they may appeal, as detailed in the Harassment & Bullying Procedure. Again, it is likely both parties will need support.

4. Support

4.1 Mediation

Mediation involves a third party assisting those in dispute to reach an agreement and, is particularly beneficial when seeking to repair working relationships. The mediator controls the process, but not the outcome.

Although helpful in resolving differences, mediation should not be used as a first resort, or to avoid your managerial responsibilities. You should encourage informal resolution and not rely on mediation ahead of your own skills and day to day responsibility for managing conflict.

Benefits include:

- A high success rate and corresponding reduction in formal complaints.
- Individuals resolve their own issues, rather than having solutions imposed on them.

- It helps rebuild relationships by reaching mutually acceptable outcomes.
- It allows for communication and a practical solution both parties feel is fair.
- It is both faster and more efficient than traditional dispute resolution processes.

To work, both parties must understand what mediation means and be committed to repairing the working relationship, the process must be voluntary, and to maintain confidentiality, and ensure any resolution is generated from the parties concerned, neither party would be accompanied. It should not be used if the employee has made a formal complaint that they wish to be investigated.

4.2 Counselling

The counselling service is staffed by qualified counsellors who are part of the occupational health team. **They will not advise either party on what action to take and they do not form part of the harassment and bullying procedure.**

Counselling can however play a vital role in complaints about bullying and harassment by providing a confidential avenue where employees can talk about what is happening to them, and how they are feeling, with a counsellor who is not involved in their situation. The counsellors may be able to explore alternative courses of action which may resolve the issue in a different way rather than going down the formal route.

Counselling can be particularly useful where investigation shows no cause for disciplinary action, or where doubt is cast on the validity of the complaint. It may resolve the issue or help support the person complained about as well as the complainant.

Counselling can also be offered to those individuals whose behaviour is deemed as unacceptable and may have been complained about. Simply punishing those responsible for harassment or bullying does not help them understand how their behaviour may impact on colleagues. Counselling can also assist both parties on reintegration to work following a complaint with the support of the occupational health team.

4.3 Trade Unions

Recognised trade union representatives are a source of support for their members facing harassment or bullying.

They can provide confidential support and discussion and provide advice on courses of action open to individuals. Discussion with the trade union does not automatically mean a complaint has to be made.

The trade unions will also provide representation for members accused of harassment or bullying and ensure that the correct process is followed, whilst bearing in mind that all employees have a responsibility to participate fully in investigations if required.

However, the emphasis on resolving complaints remains a manager's responsibility.

5. Other Considerations

5.1 Confidentiality

Complaints of bullying or harassment must be treated in the strictest confidence. This applies whether at an informal level or through more formal procedures, such as obtaining relevant information at investigatory or disciplinary stages and the requirement for confidentiality should be stressed to all participants. This includes the complainant, the person complained about, and any witnesses. Information to those other than the main parties should be strictly limited to the basic essentials required for investigating the allegations.

Make clear that a failure to respect confidentiality may result in disciplinary action. It may become obvious to colleagues that there is an issue, particularly if changes to working arrangements have been made, but any speculation should be nipped in the bud to avoid further stress to the parties involved and to avoid undue damage to reputations. It may only be possible to say that "the changes are important because of a confidential matter".

5.2 Time Limits

Generally complaints regarding harassment and bullying will not be considered where they are in relation to incidents that occurred more than 3 months previously.

However, there are exceptions to this. For example, where it is alleged that there has been a long term pattern of bullying or harassment and the event that triggers the complaint is the latest incident, or, where the incident complained of is of such a serious nature that it would be in the interest of the Authority to continue with the complaint.

5.3 Managing performance

As a manager, you have a responsibility to manage employee performance, and to make reasonable requests of staff. Fair observation on an employee's performance or behaviour or encouraging staff to meet objectives, does not constitute bullying or harassment. Nor do legitimate actions taken within formal procedures e.g. disciplinary or capability procedures. However, it is not acceptable to condone bullying behaviour under the pretext of management style.

Appendix 1

Examples of Unacceptable Behaviour

There is no absolute definition of what constitutes unacceptable behaviour. Often it is the effect on the recipient that makes the behaviour unacceptable even if there was no intent to cause offence, and it is likely that an individual making a complaint will illustrate the behaviour they have found to be unacceptable. Below are some suggestions regarding behaviours that may be deemed “unacceptable”. This is not intended to be an exhaustive list.

Harassment

- Typical behaviours that might be considered harassment, whether actual, perceived or through a person’s association with others:
- Exclusion from normal workplace conversation / activities / interaction / ostracising of individuals.
- Making assumptions about lifestyle / interests / capabilities.
- Sending or displaying information containing offensive content.
- Intrusive or inappropriate personal questions about an individual’s personal life / lifestyle choice / abilities.
- Stereotyping.
- Using derogatory or inappropriate terms / names.
- Making inappropriate comments or jokes.
- Unwanted comments on dress or appearance.
- Denial of opportunities.
- Actual or threatened disclosure of someone’s sexuality or prior gender identity.
- Excluding same sex partners from social events.
- Behaviours directly linked to specific areas could be:
- On age grounds by considering someone as “too old” or “too young”.
- On disability grounds – by refusing to make reasonable adjustments or holding events at inaccessible venues.
- Gender reassignment grounds such as refusing time off for treatment for gender reassignment.
- Refusing to address a person by their preferred name or new gender.
- On gender grounds – unwelcome sexual advances, sexually explicit jokes.

Bullying

May be physical, verbal or non-verbal conduct and is not always obvious. It is generally not about an occasional angry response, but is about persistent and deliberate behaviour. Obvious examples could be:

- Abuse of power, coercing others by fear.
- Singling out, demeaning, or humiliating and de-valuing an individual publicly.
- A culture that endorses a "macho" style of management.
- Shouting, using abusive language, aggressive behaviour or body language.
- Public reprimands / picking on individuals / ridicule or demeaning others.
- A gradual wearing down process through undermining, discouraging, behaviour.
- Personal insult, name calling, sarcastic remarks.
- Instantaneous rages often over trivial matters.
- Ignoring or excluding someone from activities / meetings.
- Allocating unachievable tasks or deadlines, forcing someone to fail.
- Allocating trivial or meaningless tasks.
- Constantly undervaluing someone's work performance.
- Physical or psychological threats.
- Overbearing / intimidating supervision.
- Cyber bullying – e.g. bullying, harassment or victimisation conducted through social media.

Victimisation

To treat someone less favourably because they have made or supported a complaint, or raised a grievance, under the Equality Act 2010, or because they are thought to have made such a complaint is unlawful and both the individual and the council can be held liable for such actions.

Examples are:

- Ignoring someone.
- Blocking opportunities – training or promotion.
- Refusing a reference.
- Not offering them a post.