



HARASSMENT & BULLYING PROCEDURE

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Version History

Version	Date	Detail	Author
1.00	28/06/2013	Restoring Elected Member appeal process	Nigel Hughes
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1.05	23/11/2016	Following Departmental Management Consultation	Tracey Wall
1.06	23/10/2017	Replace Chief Executive with Head of Paid Service	Tracey Wall
1.07	31/01/2018	Amendment to Appeals Process (delegation of function to Strategic Directors)	Tracey Wall
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1.09	14/07/2020	Amendments to terminology only following HR Review	Roxanne Hardman

Links and Dependencies

- ACAS Bullying and Harassment at Work – A Guide for Managers and Employers
- ACAS Code of Practice on Disciplinary and Grievance Procedures
- 'A Fair Deal for Derbyshire' - Labour Manifesto 2013
- Acceptable Use of Social Media Policy

Harassment & Bullying Procedure

1. Purpose

The purpose of this procedure is to develop a working environment where harassment and bullying are unacceptable and where individuals have the confidence to complain in the knowledge that their complaint will be addressed fairly, promptly, and confidentially, and to provide a framework to process any such complaint.

Derbyshire County Council is committed to maintaining a workplace that encourages and supports the right to dignity at work and all employees are expected to respect the rights of individuals to:

- Dignity in their working life;
- Be treated fairly;
- Be respected for their individuality and diversity.

The Council recognises the harmful effects of harassment and bullying which can include:

- anxiety, distress, and other mental health issues;
- reduced job satisfaction and productivity;
- sickness absence;
- poor working relationships;
- high staff turnover.

The Council is committed to implementing policies and procedures to:

- prevent bullying and harassment at work;
- promote the provisions of this procedure;
- handle complaints seriously, fairly and confidentially;
- ensure complainants do not suffer further treatment which could be considered to be bullying or harassment as a result of raising concerns regarding their treatment.

Any form of intimidating behaviour including harassment and bullying may be treated as a disciplinary matter and will be investigated under the disciplinary procedure. This applies not only at the workplace during working hours but at other work related activities – for example training courses, conferences and social functions.

It may also apply to conduct outside of work, for example the use of social media tools in relation to bullying and harassment.

2. Scope

This policy applies to all employees, except those employed in schools where the Governing Body performs the function of the employer.

3. Definitions

Harassment is unwanted conduct that violates an individual's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for that individual. In the case of harassment, it is conduct that may be related to a protected characteristic; sex, race, religion or belief, disability, sexual orientation, age, gender reassignment, marriage or civil partnership, or pregnancy and maternity, or any other personal characteristic.

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

In both cases, it is behaviour that the recipient finds demeaning, offensive or unacceptable, which meets the above definitions. It may be persistent or an isolated incident.

There are many forms of harassment and bullying and some examples are detailed below. This is not an exhaustive list.

- Spreading malicious rumours, or insulting someone,
- Unwelcome personal comments or personal insults,
- Offensive jokes, language or gossip,
- Humiliation, for example criticising a colleague in front of others,
- Failure to safeguard confidential, personal information,
- Ridiculing or demeaning someone – picking on them or setting them up to fail,
- Aggression or intimidation,
- Exclusion or victimisation,
- Unfair treatment including due to a protected characteristic as detailed above,
- Overbearing supervision or other misuse of power or position,
- Unwelcome sexual advances or physical contact,
- Coercion for sexual favours,
- Making threats or comments about job security without foundation,
- Persistent overloading, criticism or setting impossible deadlines,
- Preventing individuals progressing by intentionally blocking promotion or training opportunities,

- Cyber bullying – such as posting inappropriate photographs, offensive or threatening comments or sensitive personal information on social media sites.

Bullying and harassment are not necessarily face to face – they may be written, verbal, visual, (displaying posters etc.), physical or electronic.

Employees should be aware that it is the effect of the behaviour that determines whether bullying or harassment has occurred; even if the alleged harassment is unintentional, this can still be considered as harassment.

An employee can submit a claim that behaviour amounts to bullying or harassment even if the behaviour is not directed at the employee who complains, but the behaviour creates an environment that any individual who witnesses the behaviour finds intimidating, hostile, degrading, humiliating or offensive.

4. Key Principles

This procedure has been developed in line with ACAS guidance and the Council's Equality and Diversity Policy.

The Council believes that harassment, discrimination, bullying or unfair treatment of any kind is unacceptable and is committed to promoting dignity and respect at work. Accordingly, any such act may be considered to constitute an act of misconduct in accordance with the Council's disciplinary procedure.

The primary focus should be on attempting to resolve such matters at the earliest opportunity, with the aim of achieving early conciliation between those concerned.

High performance and productivity are dependent on effective working relationships, and the fair and reasonable handling of complaints is an important element in creating and maintaining those relationships.

Managers and employees should approach complaints constructively, deal with issues promptly and not delay meetings, decisions or confirmation of those decisions.

Harassment and bullying are to be distinguished from a manager making reasonable requests to a member of staff.

The employee has a right to be accompanied at formal meetings, normally by a colleague or trade union representative.

Mediation should be considered where accessible and appropriate.

Behaviour can still amount to harassment in the absence of any deliberate intention – the key issue is the effect on the person on the receiving end of the behaviour.

Neither party is allowed to electronically record meetings held as part of this procedure. The use of recording equipment by either party without consent may constitute a disciplinary matter.

5. Exclusions

The harassment procedure will not apply:

- Where there are separate, specific Council procedures to address an issue e.g. Grievance Procedure, Confidential Reporting Code, Recruitment and Selection Procedure.
- Where the complaint is considered to be frivolous, malicious or vexatious, this may be treated as misconduct and lead to disciplinary action, for which the right of appeal would lie within the disciplinary procedure.
- To matters relating to personal grievances or for addressing personal differences between employees.
- To incidents which happened more than 3 months previously. However, complaints may be considered which are out of time where there are extenuating circumstances.

The Advice & Support team can provide further advice on whether or not a complaint is covered by or outside the scope of this procedure.

6. Roles and Responsibilities

Employees have a responsibility to:

- Protect the dignity of colleagues.
- Avoid behaviour that may cause an individual to feel the subject of harassment or bullying.
- Challenge inappropriate behaviour from other employees.
- Familiarise themselves with the harassment and bullying procedure.
- Participate in an investigation when requested to do so by an investigating officer.

Managers have a responsibility to:

- Promote a working relationship in which harassment and bullying cannot flourish.

- Familiarise themselves with the harassment and bullying procedure and ensure it is complied with.
- Protect their employees from harassment and bullying.
- Take prompt action to stop any harassment or bullying they become aware of, whether a complaint has been raised or not.
- Ensure their staff are aware of the Council's policy on harassment and Bullying.
- Ensure the workplace is free of offensive posters, documents or use of language which may constitute harassment or bullying.
- Attempt to resolve such complaints fairly, promptly, and confidentially.

The Advice & Support Team have a responsibility to:

- Provide support and advice to managers and employees on the operation of the procedure.
- Provide support and advice to facilitate the resolution of complaints raised through the procedure.

Manager guidance supplements this procedure.

7. Addressing a Complaint of Harassment or Bullying

Informal Stage

Employees and their managers should aim to settle any complaint informally before implementing the formal procedure as an informal approach can often resolve matters quickly and effectively. Where this is not possible, the formal process should be followed.

If possible, the complainant should make it clear to the person against whom the complaint is being made that their behaviour is inappropriate and ask the harasser to stop. If the employee feels unable to do this, they may ask their manager, colleague or trade union representative to act on their behalf, or to accompany them. Alternatively, they may prefer to contact the Advice & Support Team or the Council's employee counselling service.

If the complaint is about the employee's manager, another more senior manager should be involved. Employees should take advice from the Advice & Support Team on who to approach.

Initial steps should be taken to resolve the matter through face to face discussion and mediation, if necessary, to determine the most appropriate course of action.

Where complainants wish to attempt to resolve the issue informally, they should be supported in this wherever possible. However, if the investigation

shows that an informal approach is inappropriate, due to the seriousness of the allegations, or fear that the complainant may be at risk, formal action should be considered.

Mediation

The purpose of mediation is to find a solution acceptable to each party. Mediation is a voluntary process and both parties must agree to it. Either party may choose to withdraw at any point. The mediator is impartial and cannot impose a decision. The resolution must be reached by voluntary agreement between the two parties so parties to mediation cannot be accompanied.

Mediation is most successful when both parties:

- understand what is involved,
- enter into the process voluntarily,
- are prepared to attempt to repair the working relationship.

It can be particularly helpful in cases where the person against whom the allegation has been made is unaware of the impact of their actions and also in situations where, whether the allegation is proven or not, there is a need to restore the employment relationship.

Formal Stage 1 – Meeting

Employee

If the employee considers:

- that they have a complaint regarding an incident which occurred in the last three months; or
- that their complaint has not been resolved to their satisfaction informally; or
- their complaint is so serious that an informal approach is not appropriate.

They should submit their complaint in writing to a more senior manager within three months of the alleged incident and include:

- Name/s of the individuals concerned.
- Details of the allegation/s including relevant dates, locations and nature of the incident.
- Details of any witnesses or supporting evidence.
- Details of what efforts the employee and others have made to resolve the complaint.

- The reason(s) why the employee remains dissatisfied with the outcome of the informal stage of the procedure, or why the informal procedure is inappropriate.
- Details of any outcomes sought.

Manager

Potential Misconduct

At this stage the manager should consider whether the nature of the allegation constitutes potential misconduct, according to the Council's disciplinary procedure.

If so, from this point, the Council's disciplinary procedure should be followed and the complainant should be advised of this decision.

Further Investigation Required

If the complaint does not appear to concern behaviour which could be considered to be misconduct, but it is felt by the manager that further investigation will be required to clarify the issue and to determine what action should be taken, then the manager will undertake that investigation.

- At this stage, advice should be sought from the Advice & Support Team. Separate meetings should be held with the complainant and the person against whom the allegation has been made, as soon as practically possible, but within seven calendar days of receipt of the employee's written complaint.
- Both the complainant and the person against whom the complaint has been made may choose to be accompanied at these meetings, by a colleague or trade union representative.
- If necessary, other witnesses should be interviewed, if this is considered necessary, to ascertain facts which may have a bearing on the case.
- Should the relationship between the two parties create an unworkable situation, alternative working arrangements can be considered, if this appears to be the only option. The Advice & Support Team advice should be sought in these cases and this step should only be considered as a short term temporary measure.
- Having concluded interviews, if the allegation is found to be unsubstantiated, attempts should be made to conciliate between the two parties. Following satisfactory conciliation, the process is complete.
- Where the allegation is found not to be substantiated, but it is not possible to reach conciliation (the complainant remains aggrieved) there is a right of appeal. In these cases, both employees may need further support to successfully re-establish good working relationships.

- Where the claim appears to be substantiated, (i.e. harassment has occurred) then the manager should pursue the allegations of misconduct derived from the findings of the investigation under the disciplinary procedure. In these circumstances, it may not always be necessary to conduct a separate investigation.

All parties should be notified in writing of the decision taken and of any actions to be put in place.

Formal Stage 2 – Appeal

- If the complainant is not satisfied with the outcome of the formal stage, there is a right of appeal to the employee's Executive Director which must be registered in writing to the Director of Organisational Development & Policy within seven calendar days of receipt of the written notification of the outcome of the formal Stage 1.
- The grounds for appeal are that the Claimant believes that:
 - new substantial and relevant evidence has come to light.
 - there is evidence that the complaint was not adequately or properly investigated in accordance with the procedure.
 - there is evidence that the complaint was not fairly investigated.
- The grounds of the appeal should be set out in the appeal letter and the employee or their representative will use those grounds to establish their case at the beginning of the appeal.
- The Executive Director will reply to the appeal letter within seven calendar days of receipt, acknowledging the registering of the appeal and arrange the hearing as soon as practicable. There will be a minimum of seven calendar days' notice of the appeal date.
- Any statements of case or evidence on which either management or the employee intends to rely should be provided to the Appeal Hearing Officer and other party at least seven calendar days prior to the hearing.
- The employee has the right to be accompanied at the appeal, by a colleague or trade union representative.
- The employee will be informed of the outcome in writing within seven calendar days.

That outcome is the final stage within the Council's procedures.

There is no right of appeal for the complainant regarding sanctions imposed on the harasser following disciplinary action.

8. Further Guidance

For advice on what constitutes harassment or bullying and for examples, please see Manager Guidelines to Harassment.

Harassment by third parties

There may be circumstances in which an individual is subjected to unwanted conduct from a third party such as a client or contractor, abusive, offensive or threatening behaviour will not be tolerated.

If an employee makes a complaint about a third party, an investigation should be carried out and action taken to prevent a reoccurrence. When a complaint is upheld, consideration should be given to actions necessary to rectify the situation. This may include mediation, conciliation and, where the third party is a service user, may result ultimately in the withdrawal of service provision.

Social Media and Bullying

Social media has presented opportunities for bullying in a different form – through the internet. This form of bullying may not be so tangible, as the victim may not see it personally, though colleagues may, and it can carry on away from the workplace. Cyber bullying will be dealt with in the same way as other forms of bullying, as it can be as damaging to the individual as any other form of bullying.

Harassment by Elected Members

Complaints against Elected Members should be made in writing to the employee's Executive Director. Such complaints will then be reported by the Executive Director to the Council's Monitoring Officer (the Director of Legal Services).

Harassment by Chief Officers

Complaints against an employee's Executive Director should be made in writing to the Head of Paid Service who will consider the complaint in accordance with the procedure.

9. Monitoring

Cases of harassment or bullying will be monitored by the Advice & Support Team and reported quarterly to the Executive Director – Commissioning, Communities and Policy, reporting in line with Public Sector Equality requirements as required.