

## **EMPLOYMENT MATTERS COMMITTEE**

**18 JULY 2012**

### **GRIEVANCE AND HARASSMENT PROCEDURE**

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#### **Summary**

This report details the Council's proposals to implement new Grievance and Harassment Procedures for non-schools and schools based staff.

#### **1. Budget and Policy Framework**

1.1 These procedures lie within the council's policy and budget framework and the committee's terms of reference. Therefore, this is a matter for the Employment Matters Committee.

#### **2. Background**

2.1 Members are advised that the new Grievance and Harassment Policy (attached as appendix one) will introduce some changes in relation to the way the council manages grievances and allegations of bullying and harassment and will replace the existing Dignity at Work Policy.

2.2 It is also considered prudent, at this stage, to update the policies for school-based employees and a revised policy is attached as appendix two. This Policy does not relate to Academies.

2.3 The current (non-schools) Grievance Procedure and Dignity at Work Policy (non-schools) were agreed by Employment Matters Committee on 12 November 2008 and 15 April 2009 respectively.

2.4 The current schools Grievance Procedure was agreed by Employment Matters Committee on 16 March 2011.

2.5 It has been agreed to include both non-schools and schools revised procedures within the same committee report as they are virtually identical apart from terminology.

### **3. Options**

3.1 The decision to replace the current Dignity at Work Policy and produce a combined policy covering both grievance and allegations of bullying and harassment has been made for the following reasons:

- feedback from employees, trade unions and the equality forums is that despite promotion of the policy, the terminology “dignity at work” can be confusing i.e. it is not always linked with bullying and harassment and as a consequence, employees, in some instances have been unsure of the correct policy to use to raise their concern. This has led, on occasion, to time-wasting and confusion in following process.
- harassment, under the Equality Act 2010 makes certain types of harassment unlawful and has been made explicit in the council’s policy document to ensure all employees are aware of their responsibilities under the law.
- both policies were due for review.

### **4. Advice and analysis**

4.1 In the employment arena, a complaint of bullying and harassment is, in effect, a grievance by another name. ACAS’s Code of Practice on disciplinary and grievance procedures includes bullying and harassment as one of the issues that may cause grievance. These reasons also include: terms and conditions of employment; health and safety; work relations; new working practices; working environment; organisational change and discrimination. However, ACAS have also provided a separate set of guidance on dealing with allegations of bullying and harassment as there are distinct differences in the manner in which it is recommended they are dealt with and, as explained in paragraph 4.2, certain types of harassment are unlawful.

4.2 The Equality Act 2010 made certain acts and types of harassment unlawful in relation to the nine Protected Characteristics of: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex and sexual orientation.

4.3 The new Grievance and Harassment Procedure takes into account guidance from the ACAS statutory Code of Practice for Disciplinary and Grievance Procedures, and the ACAS guidance on Bullying and Harassment at Work. It also takes into account comments and advice from the Employee Relations Team and other stakeholders who are detailed in paragraph 6 below (Consultation).

4.4 This procedure introduces the Collective Dispute Procedure. This applies to non-schools only. This will be the only mechanism for involving Members in employee grievances or complaints and is being recommended to this committee under a separate report.

4.4 The main changes to the principles and scope of dealing with grievances and allegations of bullying and harassment compared to the existing policies are outlined below.

- i) the new policy clearly outlines the roles and responsibilities of employees, managers and HR Services when dealing with grievances and allegations of bullying and harassment. In particular, drawing specific attention to all employees of their responsibilities under the Equality Act 2010.
- ii) the scope of the policy now states that a line manager cannot take out a complaint against an employee who they manage. It is expected that managers would resolve any differences or disputes using the procedures available to them with the support of HR Services.
- iii) the removal of the Corporate Consultative Committee and Member involvement relating to collective grievances is recommended. As a consequence, collective grievances will be dealt with in accordance with the new procedure.
- iv) the introduction of a Collective Disputes Procedure as mentioned in paragraph 2.5 is being recommended to the Committee. This may involve Member involvement (how?) in cases where large-scale disputes cannot be resolved.
- v) In cases of grievance (non-schools), the Employee Relations Team will decide upon receipt of a formal grievance whether the matter will go straight to a Formal Stage One meeting or whether further investigation is needed prior to any formal meeting with the employee and their representative.
- vi) The removal of a mechanism for dealing with post-employment grievances and complaints.

#### 4.5 The new process

- 4.5.1 Both the grievance and bullying and harassment process lay significant emphasis on the need to seek resolution at an informal stage as quickly as is meaningfully possible, using mediation where necessary.
- 4.5.2 If informal resolution fails or is deemed unlikely to succeed, or the complaint is deemed too significant to be dealt with informally stage one of the formal process can be invoked.
- 4.5.3 Both processes allow for the employee to have a formal meeting to explain their concern, the right to be accompanied and a right of appeal in accordance with the ACAS guidance.
- 4.5.4 Due to the differing nature of 'straightforward' grievance compared to bullying and harassment allegations, the process for dealing with each differs, however, the Stage Two – Appeal Hearing is used as the final stage for both procedures.

## **5. Risk management**

- 5.1 If grievances and allegations of bullying and harassment are left unchecked or badly handled, serious problems for the council could be created, including:
- poor morale and employee relations;
  - loss of respect for managers and supervisors;
  - poor performance;
  - lost productivity;
  - absence;
  - resignations;
  - damage to council reputation, and
  - tribunal and other court cases and payment of unlimited compensation in cases of discrimination (see paragraph 8 for details)
- 5.2 In order to avoid these problems the new policy will be promoted across the council and a toolkit for managers will be available on the Just4you Intranet site.

## **6. Consultation**

- 6.1 Consultation has taken place with the following stakeholders, no issues of significant concern have been raised but comments are detailed in paragraph 6.2 below.
- the trade unions;
  - members of the Equality and Access Group
  - the employee forums i.e. the DWF, the BWF and the LGBT forum
  - a selection of service managers and managers.
- 6.2 Suggestions were received from members of the Equality and Access Group as follows:
- to provide staff leaflets and posters in easy-read format;
  - to build into the process consideration for those who have difficulty in accessing information and those who have communication issues due to a disability. Further guidance will be included within the toolkit for managers which will be available on the Just4you intranet.
- 6.3 A request from a service manager to clarify certain areas of terminology within the policy. This will be dealt with within the managers toolkit.

## **7. Diversity Impact Assessment**

- 7.1 A Diversity Impact Assessment screening has been undertaken (appendix three). From this, there are no concerns that any particular minority group is or could be marginalised through the use of this policy.
- 7.2 Monitoring is difficult in relation to grievance and bullying and harassment cases as only cases that reach the formal stage are recorded. A key emphasis of the policy is for managers to resolve issues informally at an early stage”, as a consequence monitoring is problematic.

## **8. Financial and legal implications**

- 8.1 The most significant financial implications relate to harassment and victimisation under The Equality Act 2010. In discrimination cases compensation awarded at Employment Tribunal has no upper limit.
- 8.2 Where an employee who is not satisfied with the outcome of their grievance appeal decides to resign and make a claim of constructive dismissal to an Employment Tribunal the maximum compensation limit is £72,300.
- 8.3 Where an Employment Tribunal considers there has been an unreasonable failure by either party to comply with the Acas code of practice on disciplinary and grievance procedures the tribunal may increase or decrease compensation by up to 25% depending on which party is at fault.
- 8.4 The key legal references are set out below below:  
Employment Act 2002  
Employment Rights Act 1996  
Employment Relations Act 1999  
Employment Act 2008  
Equality Act 2010.

## **9. Recommendations**

- 9.1 That Employment Matters Committee agree to the implementation of the Grievance and Harassment Procedures for non-school employees and school employees.
- 9.2 The Employment Matters Committee is asked to instruct officers to review the two procedures bi-annually and report back to the Committee when necessary with any proposed changes

### **Lead officer contact**

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### **Background papers**

*Acas code of practice on disciplinary and grievance procedures*  
<http://www.acas.org.uk/index.aspx?articleid=2179>

*Acas Bullying and Harassment at work. A guide for managers and employers*  
<http://www.acas.org.uk/index.aspx?articleid=1864>





# **Medway Council Grievance and Harassment Procedure (July 2012)**



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## **1.0 Introduction**

1.1 The council is committed to providing a working environment where individuals are treated with fairness, dignity and respect and will take all employee complaints seriously.

1.2 Grievances are concerns, problems or complaints that employees raise with their employer. This procedure allows employees to raise genuine workplace grievances and have them dealt with fairly, consistently, promptly and objectively and with a view of trying to achieve an agreed resolution.

1.3 Complaints of harassment and/or bullying are a specific type of grievance and are also dealt with under this procedure. The process for dealing with a complaint of harassment and/or bullying is attached as appendix one.

1.4 The procedure follows the guidance contained within the ACAS statutory Code of Practice for Disciplinary and Grievance Procedures, and the ACAS guidance on Bullying and Harassment at Work.

## **2.0 Equalities Statement**

2.1 Medway Council is committed to providing equal opportunities and access to all. This policy embraces the spirit of managing a diverse workforce and those managing and dealing with grievance or bullying and harassment complaints must ensure that no employee is discriminated against either directly or indirectly or victimised on the grounds of their race, disability, sex, sexual orientation, religion or belief, age, marital or civil partnership status or any stage of gender reassignment. Likewise the council expects all employees to treat their colleagues and customers with dignity and respect.

## **3.0 Core values and council objectives**

3.1 This policy supports the Council's Core Values. The council believes that a consistent approach to all areas of people management is fundamental to the delivery of quality services to the public.

## **4.0 Scope**

4.1 This procedure applies to all employees of Medway Council with the exception of:

- school based staff;
- the Chief Executive, who is covered by a separate procedure.

4.2 The procedure does not apply to the following situations:

- Issues outside the control of the council in its role of employer.
- Employees appealing against a dismissal or disciplinary action.
- Redundancy.
- Capability.
- Retirement on ill-health grounds.
- Rules governing the pension scheme.
- Job evaluation gradings or appeals against salary gradings.
- Collective disputes between Trade Unions and the council.
- Raising a concern as a 'protected disclosure' under the Whistleblowing Policy.

## **5.0 Roles and responsibilities**

### **5.1 Employees responsibilities:**

- To treat colleagues and customers with dignity and respect.
- To ensure that this procedure is not used to pursue malicious or vexatious complaints and to understand that to do so will be considered a disciplinary matter.
- To make every effort to resolve matters informally and at the lowest possible level before considering the formal stage.
- To actively consider participating in mediation if/when suggested.
- To understand the definitions of harassment and bullying behaviour and the consequences of such behaviour against fellow employees in particular relating to the Equality Act 2010;
- To understand that firm management is necessary in certain circumstances and to accept that this should not automatically be perceived as bullying behaviour.

### **5.2 Line Managers responsibilities:**

- To make every effort to resolve matters at an informal stage and at the lowest possible level.
- To make every effort to resolve matters as quickly and as thoroughly as possible.
- To treat all staff in a fair and consistent manner.
- To understand the definitions of harassment and bullying behaviour and the consequences of such behaviour against fellow employees in particular relating to the Equality Act 2010;
- To deal with grievance matters consistently and fairly.
- To liaise with the Employee Relations Team [employeerelations@medway.gov.uk](mailto:employeerelations@medway.gov.uk) where unsure.

### **5.3 HR Services responsibilities:**

- To support and train managers in the use of this policy to ensure consistency and fairness throughout the organisation.
- To support managers to ensure issues of grievance and/or harassment and bullying are resolved as quickly as possible.
- To promote this policy.
- To review and monitor the use of this policy.

## **6.0 Principles**

6.1 Grievances and complaints of harassment and/or bullying will be treated seriously and resolved as fairly, equitably and quickly as possible.

6.2 Every effort will be made to deal with matters informally before recourse to the formal procedures.

6.3 Collective Grievance - If a collective grievance arises through a group of employees within the same or different departments relating to the same issue, they must nominate a spokesperson to act on their behalf. The grievance then becomes an issue which will follow the procedure outlined in this document.

6.4 Collective Disputes – If a collective dispute arises through a group of employees within the same or different departments relating to a corporate issue, the Collective Dispute Procedure should be used.

- 6.5 The complainant (and alleged perpetrator if applicable) has the right to be accompanied by a relevant Trade Union representative or workplace colleague of their choice but by no one else at all formal stages of the procedure.
- 6.6 In the event that an employee raises a grievance in writing that relates to action being taken in accordance with the disciplinary or capability procedure (at any stage before the final appeal stage of the disciplinary/capability procedure), the grievance will be dealt with as part of that disciplinary/capability process. In these circumstances the employee will be treated as having complied with the grievance procedure.
- 6.7 No employee will be made to feel disadvantaged or victimised in any way because they have raised or pursued a grievance in good faith.
- 6.8 All parties in the procedure must conform with the principle of mutual confidentiality.
- 6.9 Should the employee make a complaint against multiple parties any documentation shared would need to be redacted to protect each party named.
- 6.10 Employees raising grievances which are frivolous, vexatious or malicious will be subject to disciplinary action.
- 6.11 Where practical, every attempt will be made to maintain the status quo until the final outcome of any grievance is settled.
- 6.12 Reference in the procedure to a manager/Assistant Director/Director will be taken to mean those officers responsible for the employee in that department (i.e. the line manager). However, if the grievance is specifically related to or directed at any of those officers, another equivalent level officer or the line manager's manager can act in their place. The Employee Relations team [employeerelations@medway.gov.uk](mailto:employeerelations@medway.gov.uk) can provide advice on this.
- 6.13 Grievance and harassment and/or bullying complaints should normally be made within three months of the decision or act about which the employee wishes to complain. If an employee wishes to complain outside of this period, they will need to show that:
- within this timescale, they have made reasonable attempts outside of the grievance procedure to resolve the matter informally; or
  - they could not be reasonably expected to have known about the decision or act and have raised a complaint within three months of first becoming aware of it.
- 6.14 An employee or representative who cannot attend a meeting because of illness or other unforeseen circumstances should notify the Employee Relations team [employeerelations@medway.gov.uk](mailto:employeerelations@medway.gov.uk) at the earliest opportunity and give full reasons. The meeting will be re-arranged but if the employee or representative fails to attend a second time then the meeting may proceed in their absence. The reasons for non-attendance and for proceeding will be recorded.
- 6.15 Every effort will be made to operate within the prescribed time limits, although time limits may be altered by mutual consent.
- 6.16 If an employee leaves the council's employ during the grievance process the grievance process will cease however in exceptional circumstances the council reserves the right to treat the matter as a complaint.

- 6.17 It is expected that, wherever possible managers will use other council procedures to deal with staff who may aggrieve them.
- 6.18 Appropriate records will be kept and treated confidentially in accordance with the Data Protection Act 1998.

## **7.0 Informal resolution process**

7.1 It is in everyone's interest for work place concerns to be dealt with on an informal basis and both employees and managers have a responsibility to resolve concerns at the lowest possible level.

7.2 The employee must first try to resolve the matter informally.

### **7.3 In the event of alleged harassment and/or bullying**

7.4 Guidance for dealing with issues informally together with the formal process for dealing with complaints of harassment and/or bullying can be found in appendix one.

### **7.5 In the event of a grievance which is not harassment and/or bullying**

7.6 The employee should firstly speak to their immediate line manager, (unless the line manager is the subject of the grievance). The employee should explain the nature of their concern(s) and what action they feel should be taken to enable a resolution to be met, and agree, where possible, any appropriate action necessary to resolve their grievance.

7.7 The manager should arrange a confidential time and place to meet with the employee, as soon as possible, to discuss the matter. The employee will be given a full opportunity to explain their grievance.

7.8 The manager should ensure that they have a full understanding of the employee's grievance and how the employee thinks it should be resolved.

7.9 Wherever possible the manager should seek a means of resolving the grievance to the employee's satisfaction taking into account council policies, procedures, rules and the need for consistency and fairness.

7.10 Issues should be resolved within 20 working days if possible.

7.11 To conclude the informal process, managers should provide the employee with a brief summary in writing of the outcome, including any actions agreed.

### **7.12 Mediation**

7.13 An independent third party or mediator can often help resolve grievance issues thereby avoiding the need for the formal process to be instigated, however a mediator can be deployed at any stage of the procedure.

7.14 Mediation is a voluntary process where the mediator helps two or more people in dispute to attempt to reach an agreement. Any agreement comes from those in dispute, not from the mediator.

7.15 Managers should contact the Employee Relations team (employeerelations@medway.gov.uk) to discuss whether mediation would be a worthwhile option and to discuss the most appropriate provider.

## **8.0 Formal Resolution**

- 8.1 If a grievance cannot be settled informally the employee may commence formal action by raising the issues in writing using the Complaint Form One (attached as appendix two) with their line manager (or their line manager's manager if the complaint is about the line manager). The employee should complete the form as fully as possible outlining clearly the reason(s) for their grievance with details of any events/actions (including dates, times and witnesses), that triggered the complaint and how they would like this resolved.
- 8.2 Once Complaint Form One has been received the manager will acknowledge receipt of the grievance in writing normally within five working days and send a copy to the Employee Relations Team, (3<sup>rd</sup> Floor, Gun Wharf, Dock Road, Chatham, Kent, ME4 4TR email [employeerelations@medway.gov.uk](mailto:employeerelations@medway.gov.uk)).
- 8.3 The Employee Relations Team, upon receipt of the form will determine the next course of action and advise the employee and manager accordingly.
- 8.4 The next course of action would be either:
- (i) arrange a Grievance Stage One – Meeting normally within ten working days of the manager acknowledging Complaint Form One; or
  - (ii) arrange an investigation to collect more facts in relation to the grievance, in which case the Employee Relations Team will advise the employee that the Grievance Stage One - meeting may be delayed but normally by no more than 20 working days.
- 8.5 If an individual has been named as the subject of the grievance at this point they will be informed in writing by the Employee Relations Team.

## **9.0 Grievance Stage One - Meeting**

- 9.1 The employee will have a right to be accompanied by a relevant trade union representative or workplace colleague at the meeting. Legal representation is not permitted at any stage in this procedure.
- 9.2 At the meeting the manager (who may be accompanied by an Employee Relations representative) nominated to consider the grievance should ask the employee or their representative to re-state their grievance and explain why any informal attempt to resolve the grievance has been unsuccessful. The employee will be given the opportunity to call witnesses and explain any documentary evidence.
- 9.4 Where the nominated manager is able, they will consider the grievance and reply to the employee, giving the decision verbally on conclusion of the meeting. The decision will be confirmed in writing within five working days.
- 9.5 Where the nominated manager is unable to answer the grievance without further investigation they will immediately make the necessary enquiries to seek an outcome to enable a written response to be provided, normally within ten working days.
- 9.6 Where the grievance is not upheld the reasons will be explained in the letter. The employee will be told at this stage that they can appeal (i.e. move to Formal Stage Two – appeal Hearing) if they are not content with the action taken.

9.7 If an individual has been named as the subject of the grievance at this point they will be informed of the outcome in writing by the Employee Relations Team.

## **10.0 Formal Stage Two – Appeal Hearing**

- 10.1 Where an employee feels that their grievance or harassment and/or bullying complaint has not been satisfactorily resolved they have the right of appeal. The Formal Stage Two – Appeal Hearing is the final stage of the grievance procedure and the process for dealing with cases of harassment and/or bullying.
- 10.2 The appeal should be registered by the employee in writing using Complaint Form Two (see appendix three) to the appropriate Director/Assistant Director. This should be made within five working days of receiving:
- the outcome letter from the Grievance Stage One – meeting, or
  - in the case of harassment and/or bullying the written advice as detailed in para.s 4.10 and 4.12 of the Process for dealing with allegations of harassment and/or bullying.
- 10.3 Employees must register their appeal within this period otherwise they will be deemed to have accepted the decision of the Grievance Stage One - meeting. Appeals will not be accepted after this period.
- 10.4 The Director/Assistant Director should send a copy of the form to the Employee Relations Team, (3<sup>rd</sup> Floor, Gun Wharf, Dock Road, Chatham, Kent, ME4 4TR or email [employeerelations@medway.gov.uk](mailto:employeerelations@medway.gov.uk)).
- 10.5 The employee will be asked to explain clearly on the form why they are dissatisfied with the outcome decision, and what alternative solution they are seeking to resolve their grievance or complaint of harassment and/or bullying.
- 10.6 At this stage, the alleged perpetrator (if appropriate) will be notified by the Employee Relations Team that an appeal has been submitted.
- 10.7 The Formal Stage Two – Appeal Hearing will be arranged and the employee will be given no less than five working days notice in writing. The employee has the right to be accompanied at this meeting by a trade union representative or work place colleague.
- 10.8 The appeal will be heard by a relevant manager providing they have not previously been involved in the case, supported by a member of the Employee Relations Team.
- 10.9 The manager will consider any representations made by the employee and/or their companion, those of the investigating officer and/or the manager who conducted the Grievance Stage One - Meeting and made the decision. The manager hearing the appeal must decide on the basis of both sets of representations, together with any subsequent facts that may have come to light, and whether or not to uphold the decision.
- 10.10 The manager hearing the appeal will carefully consider the matter and will write to the employee with a decision as soon as reasonably practicably (usually within five working days). If it is not possible to make a decision within five working days, the employee will be given an explanation for the delay and told when the decision can be expected. The employee will be told that this is the final stage of the procedure.
- 10.11 The alleged perpetrator (if appropriate) will be told of the outcome at this stage by the Employee Relations Team.

## **11.0 Guidance for line managers**

11.1 A toolkit for line managers will be made available on the *Just4you* intranet site.

## **12.0 Monitoring and review**

12.1 A Diversity Impact Assessment will be undertaken at each review of this policy.

12.2 HR Services will monitor the outcome and impact of the Grievance and Harassment Procedure on protected groups of staff as per the Council's equal opportunities obligations.

12.3 The Grievance and Harassment procedure will be reviewed periodically in line with developments in good practice.

## Process for managing allegations of harassment and/or bullying

### 1.0 Harassment and Bullying - introduction

1.1 Harassment and bullying is unacceptable behaviour and will not be tolerated. The council is committed to providing a working environment for all its staff that is comfortable and free from all forms of bullying and harassment. Any employee who is found to have harassed or bullied a colleague will be subject to disciplinary action which may include dismissal. **Defining the difference between harassment and bullying**

1.3 Although both types of behaviour can cover a similar spectrum of conduct, there is a difference between the two. The key distinction is that harassment relates to a personal characteristic of the recipient of the unwanted behaviour, and action is backed up by the various strands of anti-discrimination law as follows:

1.4 **Harassment** (ACAS definition) is unwanted conduct related to any personal characteristic that has the purpose or effect of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment. Harassment can be physical, verbal or non-verbal and a wide range of different types of behaviour at work may potentially be perceived as harassment. Managers are encouraged to refer to the toolkit available on the *Just4you* intranet site for further details.

### 1.5 Harassment and The Equality Act 2010

1.6 The Equality Act 2010 makes harassment unlawful across the following "protected characteristics" age, disability, gender reassignment, race, religion or belief, sex and sexual orientation.

1.7 Harassment also includes the following:

- Harassment based on association – it is unlawful to harass any individual for association with another individual who has a protected characteristic under the Equality Act 2010 (other than marriage and civil partnership and pregnancy and maternity which are not covered by the law but are nevertheless unacceptable).
- Harassment based on perception – it is unlawful to harass any individual based on a perception that he or she has a particular protected characteristic under the Equality Act 2010 (other than marriage and civil partnership, and pregnancy and maternity which are not covered by the law but are nevertheless unacceptable) when they do not have the protected characteristic.
- Third-party harassment – employees have the right to complain if they believe they have been bullied or harassed by a third party, for example a customer or client.

### 1.8 Victimisation and The Equality Act 2010

1.9 Victimisation occurs where an employee is subjected to a detriment, such as being denied a training opportunity or promotion, because he or she made or supported a complaint or raised a grievance under the Equality Act 2010, or because they are expected of doing so.



- 1.10 The council does not have a definitive list of what is acceptable or unacceptable behaviour as it expects all employees to abide by the Employee Code of Conduct and behave in a professional manner treating others with both dignity and respect at all times.
- 1.10 Examples of unacceptable harassment behaviour could include:
- spreading malicious rumours, or insulting someone (particularly on the grounds of age, race, sex, disability, sexual orientation and religion or belief);
  - homophobic discrimination (see guidance for line managers on supporting lesbian, gay and bisexual staff available on the Just4you intranet);
  - unwelcome sexual advances – touching, standing too close, display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected;
  - victimization.
- 1.11 **Bullying** has no strict legal definition. The ACAS definition describes bullying behaviour as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.
- 1.12 Examples of bullying behaviour could include:
- ridiculing or demeaning someone – picking on them or setting them up to fail;
  - exclusion;
  - unfair treatment;
  - overbearing supervision or other misuse of power of position;
  - making threats or comments about job security without foundation;
  - deliberately undermining a competent worker by overloading and constant criticism;
  - preventing individuals progressing by intentionally blocking promotion or training opportunities;
  - withholding work-related information.
- 1.13 Any employee who believes that another employee's conduct amounts to bullying or harassment has the right to complain to their manager (or if their line manager is the subject of the complaint they should complain to their line manager's manager).
- 1.14 An employee who believes they are being bullied by their manager should consider seriously whether they have misjudged firm management for bullying behaviour before making an allegation.
- 1.15 The council will take all such complaints seriously and an employee who makes a genuine complaint of harassment and/or bullying will be protected and will not be penalised or victimised in any way. Vexatious, malicious or frivolous allegations will be dealt with under the Disciplinary Procedure.

## **2.0 Informal resolution process – harassment and bullying**

- 2.1 It is in everyone's interest for work place concerns to be dealt with on an informal basis and both employees and managers have a responsibility to resolve concerns at the lowest possible level wherever possible.

## **2.2 Employee – informal action**

- 2.3 The employee should talk directly and informally to the person whom they believe is harassing them and explain clearly what aspect of the person's behaviour is unacceptable, or is causing offence, and request it to stop. It may be that the person whose conduct is causing offence is genuinely unaware that their behaviour is unwelcome or objectionable and that a direct approach can resolve the matter without the need for formal action.
- 2.4 Where an employee would like support to make such an approach they should ask their line manager (or other manager if not appropriate).
- 2.5 If the employee is unable to do this verbally then a polite request in writing, given to the alleged bully/harasser may be effective. It should include:
- specific detail of the offensive behaviour;
  - when and where it occurred;
  - why it causes offence;
  - why it should stop;
  - how the employee expects to be treated in the future.
- 2.6 The employee should keep a copy of the letter and share a copy with their manager (or other manager if appropriate).
- 2.7 If, however, the employee feels unable to undertake either of the above courses of action, or if they have already approached the person to no avail, or if the harassment is of a very serious nature (eg a deliberate or malicious act), they may choose to raise a formal complaint following the procedure set out in paragraph 3.0 of this process.

## **2.8 Manager - informal action**

- 2.9 The manager, having been approached by an employee about alleged harassment or bullying should approach both parties confidentially as soon as possible after having been approached by the complainant to explore and discuss the allegations and endeavour to work out a way forward. Advice may be sought from the Employee Relations Team [employeerelations@medway.gov.uk](mailto:employeerelations@medway.gov.uk).
- 2.10 The manager should provide both parties with a copy of this policy and make both parties aware of their options in terms of the support available (contact details are available on the *Just4you* intranet site). This includes:
- the council's employee assistance provider Care first who can provide face-to-face counselling, telephone support and an information line;
  - the staff forums i.e. the Disabled Workers Forum (DWF), the Black Workers Forum (BWF) and the Lesbian, Gay, Bi-sexual and Trans Forum (LGBT);
  - the trade unions.
- 2.11 The informal resolution stage should be resolved within twenty working days if possible.

## **2.12 Mediation**

- 2.13 Mediation can be a good way of dealing with bullying, discrimination or harassment situations depending upon the nature of any allegations. Discrimination or bullying actions can range

from unintentional misunderstandings and lack of awareness through to deliberate and malicious acts.

- 2.14 An independent third person or mediator can often help resolve these grievance issues. Mediation is a process where the mediator helps two (or more) people in dispute to find a solution to the issue that they can both agree to. The mediator does not take sides or tell those in dispute what to do.
- 2.15 Mediation is most likely to be successful if both parties understand what mediation involves, enter into the process voluntarily and are seeking to repair the working relationship.
- 2.16 Advice on how to access mediation should be sought from the Employee Relations team (employeerelations@medway.gov.uk).

### **2.17 Informal resolution reached**

- 2.18 Where a resolution is reached through the informal stage of the process, with both parties' agreement, a copy of the outcome should be given to both parties by the manager.

## **3.0 Formal Resolution**

- 3.1 If a harassment and/or bullying complaint cannot be resolved informally the employee may commence formal action under this procedure by raising the issues in writing using Complaint Form One (see appendix two ) with their manager (or other manager where appropriate). The employee should outline clearly the reason(s) for their complaint.
- 3.2 Once Complaint Form One has been received the manager will acknowledge receipt of the complaint in writing normally within five working days and send a copy to the Employee Relations Team, (3<sup>rd</sup> Floor, Gun Wharf, Dock Road, Chatham, Kent, ME4 4TR employeerelations@medway.gov.uk).
- 3.3 Upon receipt of the form a member of the Employee Relations Team will make contact with the employee to discuss the most appropriate way forward normally within five working days. Unless there is an exceptional reason this would be to instigate an investigation into the complaint.
- 3.4 Following this discussion the Employee Relations Team will write to the alleged harasser/bully to advise of the complaint against them and that an investigation under the grievance procedure has begun. The alleged harasser/bully at this stage will be advised of the support available to them and that should the investigation result in a case to answer this may result in the matter being dealt with under the Disciplinary Procedure.

## **4.0 The investigation**

- 4.1 The aim of the investigation is to establish the facts of the case as promptly and thoroughly as practicable and to determine whether, on the balance of probabilities there is a case to answer.
- 4.2 An Investigating Officer will be appointed. Sometimes it may be appropriate for an external Investigating Officer to be appointed, for example where particular expertise is required.
- 4.3 A member of the Employee Relations Team will be available to provide procedural guidance to the Investigating Officer, but will not normally form part of the investigation itself.
- 4.4 The Investigating Officer will meet with the employee to establish further and full details of the complaint normally within ten working days of the Employee Relations Team contacting the

complainant. The employee will have the right to be accompanied by a work place colleague or trade union representative at this meeting.

- 4.5 The Investigating Officer will determine during the investigation process the most appropriate time to meet with the alleged bully/harasser. The alleged bully/harasser will have the right to be accompanied by a work place colleague or trade union representative at any meeting. The employee should be clear that the interview is part of the investigation, not part of a disciplinary process.
- 4.6 The Investigating Officer will obtain written statements from witnesses and record all the facts.
- 4.7 The council reserves the right to suspend or temporarily redeploy either the employee to whom the allegation has been made against or the employee raising the complaint during the investigation if it is considered in the interests of the individual(s) or the council to do so. Suspensions in these circumstances does not constitute disciplinary action and will be on full pay.
- 4.8 On conclusion of the investigation, the Investigating Officer will decide, in consultation with an Employee Relations representative, whether on the balance of probabilities there is a case to answer. A copy of the investigation report will be provided to the appropriate Assistant Director. The next course of action will depend on the outcome as follows:
- 4.9 Result: On the balance of probabilities there is no case to answer**
- 4.10 If it is determined that on the balance of probabilities there is no case to answer both the employee making the complaint and the alleged bully/harasser will be advised of this in writing by the Investigating Officer. The written advice will include a summary of findings and how the conclusion has been reached. If the employee who made the complaint is not satisfied with the result of the investigation they may proceed to Stage 2 of the Grievance Procedure (see page 8).
- 4.11 Result: On the balance of probabilities there is a case to answer**
- 4.12 If it is determined that there is a case to answer both the employee making the complaint and the alleged bully/harasser will be advised in writing by the Investigating Officer. The written advice will include a summary of findings and how the conclusion has been reached.
- 4.13 A decision will be made by the appropriate manager whether there is to be a disciplinary hearing or whether some other action may be necessary e.g. increased supervision, mediation, counselling etc
- 4.14 Should there be a disciplinary hearing the investigation report will be used to assist in the determination of any disciplinary sanction.

## **5.0 Managers toolkit – Bullying and Harassment**

- 5.1 A toolkit for managers is available on the *Just4you* intranet.



**Medway Council Grievance and Harassment Procedure**

**Complaint Form One to be used for individual and collective grievances.**

This form is intended for use by any employee who wants to make a formal complaint about the behaviour of a colleague, their manager or a third party, or any other workplace issue. NB. Where an employee, because of a disability cannot complete this form they will be permitted to convey their concerns using the appropriate method of communication.

In cases of collective grievance the nominated employee should complete the form and a continuation sheet should be attached with the names of other employees within the group.

Employees should bear in mind before using this form that they should, wherever possible, try to resolve the matter informally by raising the issue with their manager or where the complaint is about their manager, their manager's manager).

Where the employee requests that the complaint be dealt with formally, this form should be completed and the council's grievance procedure will be invoked.

In all circumstances, this form should be completed and delivered to your manager (or their manager if appropriate) in an envelope marked "confidential" or sent as an email attachment with "confidential" in the subject line.

**You must complete all boxes:**

<b>Employee name:</b>	<b>Employee Job title:</b>
<b>Employee Department:</b>	<b>Date:</b>
<b>Who is your grievance/complaint about?</b>	
<b>Does your grievance or complaint of harassment or bullying relate to your line manager, if yes, please state the name of line manager.</b>	
<p><b>Summary of complaint:</b> Set out the details of your complaint (providing as much detail as possible, particularly dates, times, locations and the identities of those involved). You may attach additional sheets if required.</p>	

**Individuals involved in the alleged incident/complaint** – Provide here the names and contact details of any people involved in your complaint, including witnesses.

**Informal action to resolve the issue:** State the nature of any informal action that has taken place to resolve your grievance/ complaint and why this did not work.

**Outcome requested:** Please set out what outcome you are seeking from your complaint, and why and how you believe that this will resolve the issue.

**Declaration:**

I confirm that the above statements are true to the best of my knowledge, information and belief. I understand that making any false, malicious or untrue allegations may result in disciplinary action being taken against me by Medway Council. (In the most serious cases, making false, malicious or untrue allegations can be treated as gross misconduct.

Form completed by:	
Signature	
<b>For completion by the manager receiving the form</b>	
Date form received:	
Name of recipient and job title	
Signature	
Date form acknowledged (within five working days)	
Date copy sent to the Employee Relations Team	



## Medway Council Grievance and Harassment Procedure

### Complaint Form Two – Employee grievance appeal

This form is intended for use by an employee of Medway Council who wants to appeal a decision made by the council regarding a formal grievance/complaint of harassment or bullying raised by them. This form must be received within five working days of receiving the outcome letter. NB. Where an employee, because of a disability cannot complete this form they will be permitted to convey their concerns using the appropriate method of communication.

In the case of collective grievances this form should be completed by the nominated employee and a continuation sheet should be attached with the names of all staff in the group.

This form should be completed and delivered to the appropriate Director or Assistant Director. It should be placed in an envelope marked "confidential" or sent as an email attachment with "confidential" in the subject line.

In accordance with the council grievance policy, the council aims to arrange a formal grievance appeal hearing with you and you will be notified of the date no less than ten working days before the hearing.

#### You must complete all boxes

<b>Employee name:</b>	
<b>Employee Job title:</b>	
<b>Employee Department:</b>	
<b>Date you submitted Complaint Form One:</b>	
<b>Date you were given the decision that you are appealing against.</b>	
<b>Does your grievance or complaint of harassment or bullying relate to your line manager, if yes, please state the name of line manager.</b>	

**Summary of appeal:** Set out here the grounds of your appeal (providing as much detail as possible, including any grounds for considering the grievance procedure to have been flawed, misinterpretation or lack of evidence and why you consider the outcome to have been erroneous in those circumstances?. You may attach additional sheets if required.

**Individuals involved in the appeal** – Provide here the names and contact details of any people involved in your appeal, including witnesses you wish to call during the appeal.

**Outcome requested:** Set out here what outcome you would like to see from your appeal, and why and how you believe that this will resolve the issue.

**Declaration:** I confirm that the above statements are true to the best of my knowledge, information and belief. I understand that making any false, malicious or untrue allegations may result in disciplinary action being taken against me by Medway Council. (In the most serious cases, making false, malicious or untrue allegations can be treated as gross misconduct).

Form completed by:	
Signature	
<b>For completion by the manager receiving the form</b>	
Date form received:	
Name of recipient and job title	
Signature	
Date form acknowledged	
Date copy sent to the Employee Relations Team	



**xxxxxSchool  
Grievance and Harassment Procedure  
(July 2012)**

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## **1.0 Introduction**

1.1 The school is committed to providing a working environment where individuals are treated with fairness, dignity and respect and will take all employee complaints seriously.

1.2 Grievances are concerns, problems or complaints that employees raise with their employer. This procedure allows employees to raise genuine workplace grievances and have them dealt with fairly, consistently, promptly and objectively and with a view of trying to achieve an agreed resolution.

1.3 Complaints of harassment and/or bullying are a specific type of grievance and are also dealt with under this procedure. The process for dealing with a complaint of harassment and/or bullying is attached as appendix one.

1.4 The procedure follows the guidance contained within the ACAS statutory Code of Practice for Disciplinary and Grievance Procedures, and the ACAS guidance on Bullying and Harassment at Work.

## **2.0 Equalities Statement**

2.1 The school is committed to providing equal opportunities and access to all. This policy embraces the spirit of managing a diverse workforce and those managing and dealing with grievance or bullying and harassment complaints must ensure that no employee is discriminated against either directly or indirectly or victimised on the grounds of their race, disability, sex, sexual orientation, religion or belief, age, marital or civil partnership status or any stage of gender reassignment. Likewise the school expects all employees to treat their colleagues and wider community with dignity and respect.

## **3.0 Scope**

3.1 This procedure applies to all employees of the school, regardless of grade or position, hours worked or whether the contract is permanent, temporary or fixed term.

3.2 The procedure does not apply to the following situations:

- Issues outside the control of the school/council in its role of employer.
- Employees appealing against a dismissal or disciplinary action.
- Redundancy.
- Capability.
- Retirement on ill-health grounds.
- Rules governing the pension scheme.
- Job evaluation gradings or appeals against salary gradings.
- Raising a concern as a 'protected disclosure' under the Whistleblowing Policy.

## **4.0 Roles and responsibilities**

4.1 **Employees responsibilities:**

- To treat colleagues, parents and pupils with dignity and respect.
- To ensure that this procedure is not used to pursue malicious or vexatious complaints and to understand that to do so will be considered a disciplinary matter.

- To make every effort to resolve matters informally and at the lowest possible level before considering the formal stage.
- To actively consider participating in mediation if/when suggested.
- To understand the definitions of harassment and bullying behaviour and the consequences of such behaviour against fellow employees in particular relating to the Equality Act 2010.
- To understand that firm management is necessary in certain circumstances and to accept that this should not automatically be perceived as bullying behaviour.

#### **4.2 Headteacher/Line Manager responsibilities:**

- To make every effort to resolve matters at an informal stage and at the lowest possible level.
- To make every effort to resolve matters as quickly as possible.
- To treat all staff in a fair and consistent manner.
- To understand the definitions of harassment and bullying behaviour and the consequences of such behaviour against fellow employees in particular relating to the Equality Act 2010;
- To deal with grievance matters consistently and fairly.
- To liaise with the HR Schools Team where unsure.

## **5.0 Principles**

- 5.1 Grievances and complaints of harassment and/or bullying will be treated seriously and resolved as fairly, equitably and as quickly as possible.
- 5.2 Every effort will be made to deal with matters informally before recourse to the formal procedures.
- 5.3 In the event of grievance or complaint being about the Headteacher, the Chair of Governors will be responsible for the operation of these procedures.
- 5.4 The complainant (and alleged perpetrator if applicable) has the right to be accompanied by a relevant Trade Union representative or workplace colleague of their choice but by no one else at all formal stages of the procedure.
- 5.5 In the event that an employee raises a grievance in writing that relates to action being taken in accordance with the disciplinary or capability procedure (at any stage before the final appeal stage of the disciplinary/capability procedure), the grievance will be dealt with as part of that disciplinary/capability process. In these circumstances the employee will be treated as having complied with the grievance procedure.
- 5.6 No employee will be made to feel disadvantaged or victimised in any way because they have raised or pursued a grievance in good faith.
- 5.7 All parties in the procedure must conform with the principle of mutual confidentiality.
- 5.8 Should the employee make a complaint against multiple parties any documentation shared would need to be redacted to protect each party named.
- 5.9 Employees raising grievances which are frivolous, vexatious or malicious will be subject to disciplinary action.
- 5.10 Where practical, every attempt will be made to maintain the status quo until the final outcome of any grievance is settled.

- 5.11 Grievance and harassment and/or bullying complaints should normally be made within three months of the decision or act about which the employee wishes to complain. If an employee wishes to complain outside of this period, they will need to show that:
- within this timescale, they have made reasonable attempts outside of the grievance procedure to resolve the matter informally; or
  - they could not be reasonably expected to have known about the decision or act and have raised a complaint within three months of first becoming aware of it.
- 5.12 An employee or representative who cannot attend a meeting because of illness or other unforeseen circumstances should notify the school at the earliest opportunity and give full reasons. The meeting will be re-arranged but if the employee or representative fails to attend a second time then the meeting may proceed in their absence. The reasons for non-attendance and for proceeding will be recorded.
- 5.13 Every effort will be made to operate within the prescribed time limits, although time limits may be altered by mutual consent.
- 5.14 It is expected that, wherever possible managers will use other council procedures to deal with staff who may aggrieve them.
- 5.14 If an employee leaves the school's employ during the grievance process the grievance process will cease however in exceptional circumstances the matter will be treated as a complaint and the former employee will be notified of the findings.

## **6.0 Informal resolution process**

- 6.1 It is in everyone's interest for work place concerns to be dealt with on an informal basis and both employees and headteachers/line managers have a responsibility to resolve concerns at the lowest possible level.
- 6.2 The employee must first try to resolve the matter informally.
- 6.3 In the event of alleged harassment and/or bullying**
- 6.4 Guidance for dealing with issues informally together with the formal process for dealing with complaints of harassment and/or bullying can be found in **appendix one**.
- 6.5 In the event of a grievance which is not harassment and/or bullying**
- 6.6 The employee should firstly speak to their immediate line manager, (unless the line manager is the subject of the grievance). The employee should explain the nature of their concern(s) and what action they feel should be taken to enable a resolution to be met, and agree, where possible, any appropriate action necessary to resolve their grievance.
- 6.7 The line manager should arrange a confidential time and place to meet with the employee, as soon as possible, to discuss the matter. The employee will be given a full opportunity to explain their grievance.
- 6.8 The line manager should ensure that they have a full understanding of the employee's grievance and how the employee thinks it should be resolved.

6.9 Wherever possible the line manager should seek a means of resolving the grievance to the employee's satisfaction taking into account school policies, procedures, rules and the need for consistency and fairness.

6.10 Issues should be resolved within 20 working days if possible.

6.11 To conclude the informal process, line managers should provide the employee with a brief summary in writing of the outcome, including any actions agreed.

### **6.12 Mediation**

6.13 An independent third party or mediator can often help resolve grievance issues thereby avoiding the need for the formal process to be instigated, however a mediator can be deployed at any stage of the procedure.

6.14 Mediation is a voluntary process where the mediator helps two or more people in dispute to attempt to reach an agreement. Any agreement comes from those in dispute, not from the mediator.

6.15 Headteachers/ line managers should contact the Schools HR Team to discuss whether mediation would be a worthwhile option and to discuss the most appropriate provider.

## **7.0 Formal resolution process**

7.1 If a grievance cannot be settled informally the employee may commence formal action by raising the issues in writing using the Complaint Form One (**attached as appendix two**) with their headteacher (or their chair of governors if the complaint is about the headteacher). The employee should complete the form as fully as possible outlining clearly the reason(s) for their grievance with details of any events/actions (including dates, times and witnesses), that triggered the complaint and how they would like this resolved.

7.2 Once Complaint Form One has been received the headteacher will acknowledge receipt of the grievance in writing normally within five working days and seek guidance from the Schools HR Team.

7.3 The next course of action would be either:

- (i) arrange a Grievance Stage One Meeting normally within ten working days of sending the acknowledgement to Complaint Form One; or
- (ii) arrange an investigation to collect more facts in relation to the grievance, in which case the headteacher should advise the employee that the Grievance Stage One - Hearing may be delayed but normally by no more than 20 working days. Either the headteacher or an independent investigating officer will carryout the investigation.

7.4 If an individual has been named as the subject of the grievance at this point they will need to be informed in writing by the school.

## **8.0 Grievance Stage One- Meeting**

8.1 The employee will have a right to be accompanied by a relevant trade union representative or workplace colleague at the meeting. Legal representation is not permitted at any stage in this procedure.

- 8.2 At the meeting the headteacher (who may be supported by a member of the schools HR Team) will hear the grievance and should ask the employee or their representative to re-state their grievance and explain why any informal attempt to resolve the grievance has been unsuccessful. The employee will be given the opportunity to call witnesses and explain any documentary evidence.  
NB in the event of the grievance being against the headteacher the Chair of Governors will hear the Stage 1 meeting.
- 8.3 Where the headteacher is able, they will consider the grievance and reply to the employee, giving the decision verbally on conclusion of the meeting. The decision will be confirmed in writing within five working days.
- 8.4 Where the headteacher is unable to answer the grievance without further investigation they will immediately make the necessary enquiries to seek an outcome to enable a written response to be provided, normally within ten working days.
- 8.5 Where the grievance is not upheld the reasons will be explained in the letter. The employee will be told at this stage that they can appeal (i.e. move to Formal Stage Two – appeal Hearing) if they are not content with the action taken.
- 8.6 If an individual has been named as the subject of the grievance at this point they will be informed of the outcome in writing by the headteacher.

## 9.0 Formal Stage Two – Appeal Hearing

- 9.1 Where an employee feels that their grievance or harassment and/or bullying complaint has not been satisfactorily resolved they have the right of appeal. The Formal Stage Two – Appeal Hearing is the final stage of the grievance procedure and the process for dealing with cases of harassment and/or bullying.
- 9.2 The appeal should be registered by the employee in writing using Complaint Form Two (**see appendix three**) to the Chair of Governors. This should be made within five working days of receiving:
- the outcome letter from the Grievance Stage One – Meeting, or
  - in the case of harassment and/or bullying the written advice as detailed in para.s 4.10 and 4.12 of the Process for dealing with allegations of harassment and/or bullying.
- 9.3 Employees must register their appeal within this period otherwise they will be deemed to have accepted the decision of the Grievance Stage One Meeting. Appeals will not be accepted after this period.
- 9.4 The Chair of Governors should seek the advice of the Schools HR Team.
- 10.4 The employee will be asked to explain clearly on the form why they are dissatisfied with the outcome decision, and what alternative solution they are seeking to resolve their grievance or complaint of harassment and/or bullying.
- 10.5 At this stage, the alleged perpetrator (if appropriate) will be notified by the school that an appeal has been submitted.

- 10.7 The Formal Stage Two – Appeal Hearing will be arranged by the school and the employee will be given no less than five working days notice in writing. The employee has the right to be accompanied at this meeting by a trade union representative or work place colleague.
- 10.8 The appeal will be heard by a panel of governors who have not been directly involved in the matters connected to the grievance to date, supported by a member of the Schools HR Team.
- 10.9 The panel of governors will consider any representations made by the employee and/or their representative, those of the headteacher who conducted the Grievance Stage One - Meeting and made the decision. The panel hearing the appeal must decide on the basis of both sets of representations, together with any subsequent facts that may have come to light, and whether or not to uphold the decision.
- 10.10 The panel of governors hearing the appeal will carefully consider the matter and will write to the employee with a decision as soon as reasonably practicably (usually within five working days). If it is not possible to make a decision within five working days, the employee will be given an explanation for the delay and told when the decision can be expected. The employee will be told that this is the final stage of the procedure.
- 10.11 The alleged perpetrator (if appropriate) will be told of the outcome at this stage by the school.

## **11.0 Guidance for line managers**

- 11.1 A toolkit for headteachers/line managers will be made available on the *Just4you* intranet site.

## **12.0 Monitoring and review**

- 12.1 A Diversity Impact Assessment will be undertaken at each review of this policy.
- 12.2 The Grievance and Harassment procedure will be reviewed periodically in line with developments in good practice.



### Process for managing allegations of harassment and/or bullying

#### 1.0 Harassment and Bullying - introduction

1.1 Harassment and bullying is unacceptable behaviour and will not be tolerated. The school is committed to providing a working environment for all its staff that is comfortable and free from all forms of bullying and harassment. Any employee who is found to have harassed or bullied a colleague will be subject to disciplinary action, up to and including dismissal.

#### 1.2 Defining the difference between harassment and bullying

1.3 Although both types of behaviour can cover a similar spectrum of conduct, there is a difference between the two. The key distinction is that harassment relates to a personal characteristic of the recipient of the unwanted behaviour, and action is backed up by the various strands of anti-discrimination law as follows:

1.4 **Harassment** (ACAS definition) is unwanted conduct related to any personal characteristic that has the purpose or effect of violating a persons dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment. Harassment can be physical, verbal or non-verbal and a wide range of different types of behaviour at work may potentially be perceived as harassment. Headteachers/line managers are encouraged to refer to the toolkit available on the *Just4you* intranet site for further details.

#### 1.5 Harassment and The Equality Act 2010

1.6 The Equality Act 2010 makes harassment unlawful across the following “protected characteristics” age, disability, gender reassignment, race, religion or belief, sex and sexual orientation.

1.7 Harassment also includes the following:

- Harassment based on association – it is unlawful to harass any individual for association with another individual who has a protected characteristic under the Equality Act 2010 (other than marriage and civil partnership and pregnancy and maternity which are not covered by the law but are nevertheless unacceptable).
- Harassment based on perception – it is unlawful to harass any individual based on a perception that he or she has a particular protected characteristic under the Equality Act 2010 (other than marriage and civil partnership, and pregnancy and maternity which are not covered by the law but are nevertheless unacceptable) when they do not have the protected characteristic.
- Third-party harassment – employees have the right to complain if they believe they have been bullied or harassed by a third party, for example a customer or client.

#### 1.8 Victimisation and The Equality Act 2010

1.9 Victimisation occurs where an employee is subjected to a detriment, such as being denied a training opportunity or promotion, because he or she made or supported a complaint or raised a grievance under the Equality Act 2010, or because they are expected of doing so.

- 1.10 The school does not have a definitive list of what is acceptable or unacceptable behaviour as it expects all employees to abide by the schools 'Employee Code of Conduct' and behave in a professional manner treating others with both dignity and respect at all times.
- 1.10 Examples of unacceptable harassment behaviour could include:
- spreading malicious rumours, or insulting someone (particularly on the grounds of age, race, sex, disability, sexual orientation and religion or belief);
  - homophobic discrimination (see guidance for line managers on supporting lesbian, gay and bisexual staff available on the Just4you intranet);
  - unwelcome sexual advances – touching, standing too close, display of offensive materials, asking for sexual favours, making decisions on the basis of sexual advances being accepted or rejected;
  - victimization.
- 1.11 **Bullying** has no strict legal definition. The ACAS definition describes bullying behaviour as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.
- 1.12 Examples of bullying behaviour could include:
- ridiculing or demeaning someone – picking on them or setting them up to fail; exclusion;
  - unfair treatment;
  - overbearing supervision or other misuse of power of position;
  - making threats or comments about job security without foundation;
  - deliberately undermining a competent worker by overloading and constant criticism;
  - preventing individuals progressing by intentionally blocking promotion or training opportunities;
  - withholding work-related information.
- 1.13 Any employee who believes that another employee's conduct amounts to bullying or harassment has the right to complain to their manager (or if their line manager is the subject of the complaint they should complain to their line manager's manager).
- 1.14 An employee who believes they are being bullied by their line manager or headteacher should consider seriously whether they have misjudged firm management for bullying behaviour before making an allegation.
- 1.15 The school will take all such complaints seriously and an employee who makes a genuine complaint of harassment and/or bullying will be protected and will not be penalised or victimised in any way. Vexatious, malicious or frivolous allegations will be dealt with under the Disciplinary Procedure.

## **2.0 Informal resolution process – harassment and bullying**

- 2.1 It is in everyone's interest for work place concerns to be dealt with on an informal basis and both employees and headteachers/line managers have a responsibility to resolve concerns at the lowest possible level wherever possible.

## **2.2 Employee – informal action**

- 2.3 The employee should talk directly and informally to the person whom they believe is harassing them and explain clearly what aspect of the person's behaviour is unacceptable, or is causing offence, and request it to stop. It may be that the person whose conduct is causing offence is genuinely unaware that their behaviour is unwelcome or objectionable and that a direct approach can resolve the matter without the need for formal action.
- 2.4 Where an employee would like support to make such an approach they should ask their line manager (or other manager if not appropriate).
- 2.5 If the employee is unable to do this verbally then a polite request in writing, given to the alleged bully/harasser may be effective. It should include:
- specific detail of the offensive behaviour;
  - when and where it occurred;
  - why it causes offence;
  - why it should stop;
  - how the employee expects to be treated in the future.
- 2.6 The employee should keep a copy of the letter and share a copy with their line manager (or other manager if appropriate).
- 2.7 If, however, the employee feels unable to undertake either of the above courses of action, or if they have already approached the person to no avail, or if the harassment is of a very serious nature (eg a deliberate or malicious act), they may choose to raise a formal complaint following the procedure set out in paragraph 3.0 of this process.

## **2.8 Line Manager - informal action**

- 2.9 The line manager, having been approached by an employee about alleged harassment or bullying should approach both parties confidentially as soon as possible after having been approached by the complainant to explore and discuss the allegations and endeavour to work out a way forward. Advice may be sought from the Schools HR Team. The line manager should provide both parties with a copy of this policy and make both parties aware of their options in terms of the support available - i.e.
- the school's employee assistance provider \* Care first who can provide face-to-face counselling, telephone support and an information line;
  - the Medway staff forums i.e. the Disabled Workers Forum (DWF), the Black Workers Forum (BWF) and the Lesbian, Gay Bi-sexual and Trans Forum (LGBT);(*applicable to Medway employees*)
  - the trade unions.
- 2.10 The informal resolution stage should be resolved within twenty working days if possible.

*\*NB – carefirst is provided to all Medway Schools. In the instance of an Academy adopting this policy, they need substitute their own arrangements where 'carefirst' is mentioned in this document..*

## **2.11 Mediation**

- 2.12 Mediation can be a good way of dealing with bullying, discrimination or harassment situations depending upon the nature of any allegations. Discrimination or bullying actions can range from unintentional misunderstandings and lack of awareness through to deliberate and malicious acts.
- 2.13 An independent third person or mediator can often help resolve these grievance issues. Mediation is a process where the mediator helps two (or more) people in dispute to find a solution to the issue that they can both agree to. The mediator does not take sides or tell those in dispute what to do.
- 2.14 Mediation is most likely to be successful if both parties understand what mediation involves, enter into the process voluntarily and are seeking to repair the working relationship.
- 2.15 Advice on how to access mediation should be sought from the Schools HR Team.

## **2.16 Informal resolution reached**

- 2.17 Where a resolution is reached through the informal stage of the process, with both parties' agreement, a copy of the outcome should be given to both parties by the line manager.

## **3.0 Formal Resolution**

- 3.1 If a harassment and/or bullying complaint cannot be resolved informally the employee may commence formal action under this procedure by raising the issues in writing using Complaint Form One (**see appendix two**) with their Headteacher. (in the event of the allegations being against the Headteacher, the complaint should be forwarded to the Chair of Governors. The employee should outline clearly the reason(s) for their complaint.
- 3.2 Once Complaint Form One has been received the headteacher will acknowledge receipt of the complaint in writing normally within five working days advising that an investigation will be undertaken. Advice should be sought from the Schools HR Team.
- 3.4 The headteacher will write to the alleged harasser/bully to advise of the complaint against them and that an investigation under the grievance procedure has begun. The alleged harasser/bully at this stage will be advised of the support available to them and that should the investigation result in a case to answer this may result in the matter being dealt with under the Disciplinary Procedure.

## **4.0 The investigation**

- 4.1 The aim of the investigation is to establish the facts of the case as promptly and thoroughly as practicable and to determine whether, on the balance of probabilities there is a case to answer.
- 4.2 The headteacher (or nominated investigating officer) will conduct the investigation. Sometimes it may be appropriate for an external Investigating Officer to be appointed, for example where particular expertise is required.
- 4.3 A member of the Schools HR Team will be available to provide procedural guidance to the Investigating Officer, but will not normally form part of the investigation itself.
- 4.4 The headteacher (or nominated investigating officer) Investigating Officer will meet with the employee to establish further and full details of the complaint normally within ten working days of the discussions about the most appropriate way forward. The employee will have the

right to be accompanied by a work place colleague or trade union representative at this meeting.

- 4.5 The headteacher (or nominated investigating officer) will determine during the investigation process the most appropriate time to meet with the alleged bully/harasser. The alleged bully/harasser will have the right to be accompanied by a work place colleague or trade union representative at any meeting. The employee should be clear that the interview is part of the investigation, not part of a disciplinary process.
- 4.6 The headteacher (or nominated investigating officer) will obtain written statements from witnesses and record all the facts.
- 4.7 The school reserves the right to suspend or temporarily redeploy either the employee to whom the allegation has been made against or the employee raising the complaint during the investigation if it is considered in the interests of the individual(s) or the school to do so. Suspensions in these circumstances does not constitute disciplinary action and will be on full pay.
- 4.8 On conclusion of the investigation, the headteacher (or nominated investigating officer) will decide, in consultation with a Schools HR representative, whether on the balance of probabilities there is a case to answer. The next course of action will depend on the outcome as follows:
- 4.9 Result: On the balance of probabilities there is no case to answer**
- 4.10 If it is determined that on the balance of probabilities there is no case to answer both the employee making the complaint and the alleged bully/harasser will be advised of this in writing by the headteacher. The written advice will include a summary of findings and how the conclusion has been reached. If the employee who made the complaint is not satisfied with the result of the investigation they may proceed to Stage 2 of the Grievance Procedure.
- 4.11 Result: On the balance of probabilities there is a case to answer**
- 4.12 If it is determined that there is a case to answer both the employee making the complaint and the alleged bully/harasser will be advised in writing by the headteacher. The written advice will include a summary of findings and how the conclusion has been reached.
- 4.13 A decision will be made by the headteacher whether there is to be a disciplinary hearing or whether some other action may be necessary e.g. increased supervision, mediation, counselling etc. In the event of a disciplinary hearing, a panel of governors will hear any disciplinary case.
- 4.14 Should there be a disciplinary hearing the investigation report will be used to assist in the determination of any disciplinary sanction.

## **5.0 Managers toolkit – Bullying and Harassment**

- 5.1 A toolkit for headteachers/managers is available on the *Just4you* intranet.

## Schools Grievance and Harassment Procedure

### Complaint Form One to be used for individual and collective grievances.

This form is intended for use by any employee who wants to make a formal complaint about the behaviour of a colleague, their manager or a third party, or any other workplace issue.

In cases of collective grievance the nominated employee should complete the form and a continuation sheet should be attached with the names of other employees within the group.

Employees should bear in mind before using this form that they should, wherever possible, try to resolve the matter informally by raising the issue with their manager (or where the complaint is about their manager, their manager's manager).

Where the employee requests that the complaint be dealt with formally, this form should be completed and the school's grievance procedure will be invoked.

In all circumstances, this form should be completed and delivered to your line manager (or their manager if appropriate) in an envelope marked "confidential" or sent as an email attachment with "confidential" in the subject line.

#### You must complete all boxes:

<b>Employee name:</b>	<b>Employee Job title:</b>
<b>School:</b>	<b>Date:</b>
<b>Who is your grievance/complaint about?</b>	
<b>Does your grievance or complaint of harassment or bullying relate to your line manager, if yes, please state the name of line manager.</b>	
<p><b>Summary of complaint:</b> Set out the details of your complaint (providing as much detail as possible, particularly dates, times, locations and the identities of those involved). You may attach additional sheets if required.</p>	

**Individuals involved in the alleged incident/complaint** – Provide here the names and contact details of any people involved in your complaint, including witnesses.

**Informal action to resolve the issue:** State the nature of any informal action that has taken place to resolve your grievance/ complaint and why this did not work.

**Outcome requested:** Please set out what outcome you are seeking from your complaint, and why and how you believe that this will resolve the issue.

**Declaration:**

I confirm that the above statements are true to the best of my knowledge, information and belief. I understand that making any false, malicious or untrue allegations may result in disciplinary action being taken against me by the School. (In the most serious cases, making false, malicious or untrue allegations can be treated as gross misconduct.

Form completed by:	
Signature	
<b>For completion by the line manager receiving the form</b>	
Date form received:	
Name of recipient and job title	
Signature	
Date form acknowledged (within five working days)	
Date consulted with Schools HR Team	

## Schools Grievance and Harassment Procedure

### Complaint Form Two – Employee grievance appeal

This form is intended for use by an employee of the School who wants to appeal a decision made by the school regarding a formal grievance/complaint of harassment or bullying raised by them. This form must be received within five working days of receiving the outcome letter.

In the case of collective grievances this form should be completed by the nominated employee and a continuation sheet should be attached with the names of all staff in the group.

This form should be completed and delivered to the Chair of Governors at the school. It should be placed in an envelope marked “confidential” or sent as an email attachment with “confidential” in the subject line.

In accordance with the schools grievance policy, the school aims to arrange a formal grievance appeal hearing with you and you will be notified of the date no less than ten working days before the hearing.

#### You must complete all boxes

<b>Employee name:</b>	
<b>Employee Job title:</b>	
<b>School:</b>	
<b>Date you submitted Complaint Form One:</b>	
<b>Date you were given the decision that you are appealing against.</b>	
<b>Does your grievance or complaint of harassment or bullying relate to your line manager, if yes, please state the name of line manager.</b>	

**Summary of appeal:** Set out here the grounds of your appeal (providing as much detail as possible, including any grounds for considering the grievance procedure to have been flawed, misinterpretation or lack of evidence and why you consider the outcome to have been erroneous in those circumstances?. You may attach additional sheets if required.



**Individuals involved in the appeal** – Provide here the names and contact details of any people involved in your appeal, including witnesses you wish to call during the appeal.

**Outcome requested:** Set out here what outcome you would like to see from your appeal, and why and how you believe that this will resolve the issue.

**Declaration: I confirm that the above statements are true to the best of my knowledge, information and belief. I understand that making any false, malicious or untrue allegations may result in disciplinary action being taken against me by the school. (In the most serious cases, making false, malicious or untrue allegations can be treated as gross misconduct).**

Form completed by:	
Signature	
<b>For completion by the C of Govs receiving the form</b>	
Date form received:	
Name of recipient	
Signature	
Date form acknowledged	
Date consulted with Schools HR Team	



## Diversity Impact Assessment: Screening Form

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<b>Directorate</b>  <b>Business Support Department</b>	<b>Name of Policy</b>  <b>Grievance and Harassment Policy</b>	
Officer responsible for assessment  Tricia Palmer, Assistant Director, Organisational Services	Date of assessment  <b>15 June 2012</b>	New or existing?  <b>New</b>
<b>Defining what is being assessed</b>		
<b>1. Briefly describe the purpose and objectives</b>	The Grievance and Harassment Policy replaces the existing Grievance Procedure and Dignity at Work Policy. The policy's purpose is to provide a clear process for dealing with grievances and allegations of bullying and harassment and to draw attention to employees responsibilities in relation to the Equality Act 2010. There are two separate policies i.e. relating to non-school based employees and school-based employees.	
<b>2. Who is intended to benefit, and in what way?</b>	(i) The Council and employees will benefit in the following ways:  <b>Council:</b> if grievances and allegations of bullying and harassment are left unchecked or badly handled, serious problems for the council could be created, including: <ul style="list-style-type: none"> <li>- poor morale and employee relations;</li> <li>- loss of respect for managers and supervisors;</li> <li>- poor performance;</li> <li>- lost productivity;</li> <li>- absence;</li> <li>- resignations;</li> <li>- damage to council reputation, and</li> <li>- tribunal and other court cases and payment of unlimited compensation in cases of discrimination.</li> </ul> <b>Employees:</b> To provide employees with a mechanism to raise any concerns, problems or complaints that they may have with their employer. To provide a mechanism for these complaints to be dealt with in a consistent and fair manner. To draw attention to employees of their responsibilities under the Equality Act 2010 in relation to harassment.	
<b>3. What outcomes are wanted?</b>	A clear process to enable employee concerns to be brought to resolution as quickly as possible ensuring thoroughness, fairness and consistency at all times.	

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<b>4. What factors/forces could contribute to or detract from the outcomes?</b>	<b>Contribute</b> - Commitment to the policy from everyone at all levels of the organisation. - Staff and managers being aware of their responsibilities as outlined within the policy. - Training of those involved in all stages of the process. - Good communication of the new policy to all employees.	<b>Detract</b> Failure to communicate the policy effectively could lead to: - staff not knowing how to raise an issue; - managers not dealing with complaints in a consistent and fair manner. - failing to provide training.
<b>5. Who are the main stakeholders?</b>	Everyone employed by Medway Council, Members and Trade Union officials.	
<b>6. Who implements this and who is responsible?</b>	Tricia Palmer, Assistant Director, Organisational Services.	
<b>Assessing impact</b>		
<b>7. Are there concerns that there <u>could</u> be a differential impact due to <i>ethnicity/ racial groups</i>?</b>	<b>No</b>	The policy provides a process where all employees from minority ethnic communities can raise any concerns they have with their employer and feel confident that these concerns will be managed in a fair and consistent manner.
<b>What evidence exists for this?</b>	Consultation has been undertaken with the trade unions, the Black Workers Forum (BWF), members of the Equality & Access Group, and a selection of managers. No issues of concern have been raised relating to those from minority ethnic groups.	
<b>8. Are there concerns that there <u>could</u> be a differential impact due to <i>disability</i>?</b>	<b>No</b>	The policy provides a process where all employees with a disability can raise any concerns they have with their employer and feel confident that these concerns will be managed in a fair and consistent manner.
<b>What evidence exists for this?</b>	Consultation has been undertaken with the trade unions, the Disabled Workers Forum (DWF), members of the Equality & Access Group, and a selection of managers. Where comments have been received these have been considered and taken on board where it is considered relevant. Provision has been made in the policy to enable those who would not be able to submit a written complaint due to their disability to do so verbally.	
<b>9. Are there concerns that there <u>could</u> be a differential impact due to <i>gender</i>?</b>	<b>No</b>	The policy provides a process where all male, female, and transgender employees can raise any concerns they have with their employer and feel confident that these concerns will be managed in a fair and consistent manner.
<b>What evidence exists for this?</b>	Consultation has been undertaken with the trade unions, the employee forums, members of the Equality & Access Group, and a selection of managers. No issues of concern have been raised	

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		relating to gender.
<b>10. Are there concerns there <u>could</u> be a differential impact due to <i>sexual orientation</i>?</b>		The policy provides a process where lesbian, gay and bisexual people can raise any concerns they have with their employer and feel confident that these concerns will be managed in a fair and consistent manner.
	No	
<b>What evidence exists for this?</b>		Consultation has been undertaken with the trade unions, the Lesbian, Gay, Bi-Sexual and Transgender (LGBT) Forum, members of the Equality & Access Group, and a selection of managers. No issues of concern have been raised relating to sexual orientation. A managers guide to supporting LGBT staff has been produced and will be uploaded on the <i>Just4you</i> intranet.
<b>11. Are there concerns there <u>could</u> be a have a differential impact due to <i>religion/belief</i>?</b>		The policy provides a process where employees observing particular religions or beliefs (Including none) can raise any concerns they have with their employer and feel confident that these concerns will be managed in a fair and consistent manner.
	<b>NO</b>	
<b>What evidence exists for this?</b>		Consultation has been undertaken with the trade unions, the employee forums, members of the Equality & Access Group, and a selection of managers. No issues of concern have been raised relating to religion or belief.
<b>12. Are there concerns there <u>could</u> be a differential impact due to <i>age</i>?</b>	<b>YES</b>	The policy provides a process where employees of any age can raise any concerns they have with their employer and feel confident that these concerns will be managed in a fair and consistent manner.
	<b>NO</b>	
<b>What evidence exists for this?</b>		Consultation has been undertaken with the trade unions, the employee forums, members of the Equality & Access Group, and a selection of managers. No issues of concern have been raised relating to age.
<b>13. Are there concerns that there <u>could</u> be a differential impact due to <i>being transgendered or transsexual</i>?</b>		The policy provides a process where transsexuals or those being transgendered can raise any concerns they have with their employer and feel confident that these concerns will be managed in a fair and consistent manner.
	No	
<b>What evidence exists for this?</b>		Consultation has been undertaken with the trade unions, the employee forums, members of the Equality & Access Group, and a selection of managers. No issues of concern have been raised relating those being transgendered or those who are transsexuals.

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14. Are there any <i>other groups</i> that would find it difficult to access/make use of the policy, or who might experience unfavourable treatment (eg people with caring responsibilities or dependants, those with an offending past, or people living in rural areas)?		The policy provides a process where all employees can raise any concerns they have with their employer and feel confident that these concerns will be managed in a fair and consistent manner.
	NO	
What evidence exists for this?	Consultation has been undertaken with the trade unions, the employee forums, members of the Equality & Access Group, and a selection of managers. No issues of concern have been raised relating to other groups.	
15. Are there concerns there <u>could</u> be a differential impact due to <i>multiple discriminations</i> (eg disability and age)?	NO	The policy provides a process where all employees can raise any concerns they have with their employer and feel confident that these concerns will be managed in a fair and consistent manner.
What evidence exists for this?	Consultation has been undertaken with the trade unions, the employee forums, members of the Equality & Access Group, and a selection of managers. No issues of concern have been raised relating to multiple discriminations.	

### Conclusions & recommendation

16. Could the differential impacts identified in questions 7-15 amount to there being the potential for adverse impact?		Not applicable
	NO	
17. Can the adverse impact be justified on the grounds of promoting equality of opportunity for one group? Or another reason?	YES	Not applicable
	NO	

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Recommendation to proceed to a full impact assessment?		
No	This policy complies with the requirements of the legislation and there is evidence to show this is the case.	
NO, BUT ...	What is required to ensure this complies with the requirements of the legislation? (see DIA Guidance Notes)	
YES	Give details of key person responsible and target date for carrying out full impact assessment (see DIA Guidance Notes)	N/A

Action plan to make minor modifications		
Outcome	Actions (with date of completion)	Officer responsible

Planning ahead: Reminders for the next review		
Date of next review		
Areas to check at next review (eg new census information, new legislation due)		
Is there <i>another group</i> (eg new communities) that is relevant and ought to be considered next time?		
Signed (completing officer/service manager)	Date	
Signed (service manager/Assistant Director)	Date	

Related documents