

Medway Council

Harassment and Bullying Policy

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1.0 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.
- 1.2 Sexual harassment is a particularly serious form of harassment and is covered in more detail in our Sexual Harassment Policy. There are also extra steps that must be taken by employers to prevent sexual harassment, and these are also detailed in that policy.
- 1.3 Claims of sexual harassment should be dealt with using the procedure attached to this policy – however, advice should be sought from an Employee Relations (ER) Consultant immediately to advise on whether attempting informal resolution is appropriate to the circumstances.
- 1.4 In some instances, individuals may choose not to pursue informal or formal action. This may be influenced by a range of personal, professional, or emotional factors. While it is essential to respect the wishes of those affected, employers have a legal duty to prevent and address harassment in all its forms.

Therefore, if an allegation of harassment is brought to the attention of a manager and/or HR, and is:

- Sufficiently serious in nature, or
- Supported by substantial evidence,

the organisation may decide to initiate formal action even if the reporting individual does not wish to proceed. In such cases, every reasonable effort will be made to minimise adverse impacts on the individual who raised the concern, including maintaining confidentiality and provision of appropriate support.

Managers must always seek the advice of an ER Consultant before proceeding with any formal action.

2.0 Scope

- 2.1 This procedure applies to all employees of Medway Council apart from school-based staff and the Chief Executive, who are covered by separate policies.
- 2.2 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.

3.0 Equality Statement

3.1 The Council is committed to ensuring that no service user, employee, job applicant, those with care experience, partner, contractor, supplier or member of the public will be unlawfully discriminated, harassed or victimised on the grounds of race; ethnicity; nationality; ethnic or national origin; colour; disability; gender identity or presentation; marital or civil partnership status; maternity or pregnancy; family and caring responsibilities; sex; sexual orientation; age; HIV status; religion or belief; political beliefs; social class; trades union activity; carer or cared-for status; or irrelevant spent convictions.

4.0 Core Values and Council Objectives

4.1 This policy supports the Council’s Values and Behaviours. The Council believes that a consistent approach to employee management and wellbeing is fundamental to the delivery of quality services, one of the aims of the policy is to support this belief.

5.0 Defining Harassment and Bullying

5.1 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:

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 intranet site for further details.

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

5.3 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.

- 5.4 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.
- 5.5 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, always treating others with both dignity and respect.
- 5.6 Examples of harassment 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 MEDSPACE).
 - unwelcome sexual advances – see the Sexual Harassment Policy for more information on harassment of a sexual nature.
 - Victimisation.
- 5.7 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.
- 5.8 Examples of bullying could include:
 - Ridiculing or demeaning someone – picking on them or setting them up to fail.
 - Exclusion.
 - Unfair treatment.
 - Making threats or comments about job security without foundation.
 - Deliberately undermining a competent worker by overloading and constant criticism.
 - Preventing individuals from progressing in their career by blocking promotion or training opportunities.
 - Withholding work-related information.
- 5.9 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 grandparent manager).
- 5.10 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.
- 5.11 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.

6.0 Roles and Responsibilities

6.1 Employees' Responsibilities:

- To treat colleagues with dignity and respect in line with Our Values and Behaviours.
- To work collaboratively to resolve concerns on an informal basis and find an informal resolution where possible before lodging a formal complaint, including participating in mediation.
- To raise complaints with your line manager (or grandparent manager) as soon as possible, rather than allowing issues to build up over time.
- Only raise formal complaints when informal procedures have been exhausted, or when it is of such a serious nature that it cannot be resolved informally, using the complaint form.
- To understand that firm management, including setting clear standards and addressing concerns promptly and directly, does not automatically constitute bullying or harassment.

6.2 Line Managers' Responsibilities:

- To treat colleagues with dignity and respect in line with Our Values and Behaviours and in a fair and consistent manner, including those who have raised a grievance and any alleged perpetrators.
- To ensure that employees are signposted to other support mechanisms such as CareFirst, Occupational Health, Trade Unions, Wellbeing Champions, etc.
- To make every effort to deal with all complaints in a timely, fair and constructive manner and to attempt to resolve matters informally.
- To meet and listen to the employee's concerns within 2 working days.
- To carry out an initial investigation into the matter, ensuring confidentiality.
- Let the employee know what they plan to do to resolve the issue or explain why there will be no further action.
- Where informal routes have been completely exhausted, or where informal action is not appropriate, to review the Complaint Form 1 (CF1) within 2 working days of receipt. Complete managerial sections in as much detail as possible and forward to HR via Service Desk. Receipt will be acknowledged by an ER Consultant.
- To contact the ER team for support where there are questions or concerns about either informal or formal resolution.

6.3 HR Responsibilities:

- To take all grievances seriously and ensure they are dealt with in a timely manner.
- To support managers to deal with grievances informally at first and advise best practice throughout the grievance process.
- To arrange the required meetings and investigation if appropriate.
- To communicate with and support employees throughout the grievance process, including signposting to other support such as CareFirst.

- To ensure the grievance procedure is fairly and consistently followed by all parties.
- To monitor and review this policy and procedure to maintain efficacy.

7.0 Principles

- 7.1 Complaints of harassment and/or bullying will be treated seriously and resolved fairly and promptly.
- 7.2 Every effort must be made to deal with issues informally before formal procedures are initiated. The employee raising the grievance and reviewing manager should state why an informal resolution was not possible. If the reasons are not considered sufficient, no further formal action will be taken until all informal routes are exhausted.
- 7.3 Employees have the right to be accompanied by a trade union representative or colleague at all formal stages.
- 7.4 Confidentiality must be maintained by all parties. Appropriate records will be kept and treated confidentially in accordance with GDPR.
- 7.5 Where practical, every attempt will be made to maintain the status quo until the outcome of any complaint is settled.
- 7.6 This policy and procedure must not be used to pursue malicious or frivolous complaints, and to understand that if there is substantive evidence that this is the case it will be considered a disciplinary matter.

8.0 Collective Complaint

- 8.1 If a collective complaint 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 complaint then becomes an issue which will follow this policy and the attached procedure.
- 8.2 Any formal collective complaint must have the CF1 signed by all involved parties. This is to ensure that everyone is fairly represented and communicated with. It will also assist in any investigation that may occur.
- 8.3 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.

9.0 Informal Resolution

- 9.1 Guidance for dealing with issues informally can be found in appendix A.
- 9.2 The line manager should aim to informally resolve issues within 2 working days of them being reported.

10.0 Formal Resolution

- 10.1 The formal resolution process can be found in appendix B.
- 10.2 This includes the submission of the Complaint Form 1 (CF1), the Formal Complaint Meeting, investigations, and the appeals process.
- 10.3 Normally, complaints of bullying and/or harassment should be raised within three months of the alleged decision or act relevant to the complaint. In the case of sexual harassment, the scope is increased to six months. Exceptions should be discussed with an ER Consultant in the first instance.
- 10.4 If an employee or their chosen representative is unable to attend a meeting, they should tell the manager/chair as soon as possible letting them know the reasons why and provide dates and times they can be available. The manager will try to rearrange the meeting for a time that works for everyone. If the employee doesn't turn up for the meeting without telling the chair in advance, the meeting will be rearranged, and new details will be confirmed in writing. If the employee doesn't turn up for the rearranged meeting, we'll consider the matter closed and write to confirm this – unless there are exceptional circumstances, in which case we'll rearrange the meeting once more.

The reasons for non-attendance and for proceeding will be recorded. Any re-scheduled meetings will usually be within 10 working days of the original meeting.

- 10.5 If an employee does not engage with the informal resolution process or fails to agree to a meeting date/time within three working days, the complaint may be considered withdrawn.
- 10.6 Wherever possible, managers must use other Council procedures to deal with staff who may aggrieve them.
- 10.7 The outcome of a complaint will depend on whether it is upheld, partially upheld, or not upheld. In cases where a complaint is not upheld, this will be communicated to involved parties with full reasoning. Where partially or fully upheld, it may result in:
 - Disciplinary action
 - Policy or procedural review
 - Amendments to working arrangements
 - Provision of training and/or guidance
 - Apology and acknowledgement
- 10.8 The outcome of the complaint will be communicated to all parties in writing at the conclusion of the process.

11.0 Appeals

- 11.1 When an employee is unhappy with the outcome of a complaint, they have the right to appeal under specific circumstances. Using Complaint Form 2 (CF2), they may outline reasons for appeal which must meet one or more of the following criteria:
 - It is alleged that the complaints procedure has not been properly applied or an appropriate investigation conducted.

- New evidence has come to light which was not available at the time of decision, and which may make a difference to the original decision.
- It is alleged that the outcome is inconsistent with other applications of this policy and procedure, resulting in unfairness.
- It is believed that the outcome is disproportionate to the issue(s) raised.

11.2 Reasons should be explained in full in the CF2 with any supporting evidence. If the reasons for appeal do not fall under the criteria above, the appeal will not continue and the decision will be explained in writing. There will be no further opportunity of appeal.

12.0 Complaints During Disciplinary or Other Procedures

12.1 Where a complaint is raised during a disciplinary process, this will be dealt with as part of the disciplinary procedure. Please see the Disciplinary Procedure for more information.

12.2 Complaints that are raised during other procedures will be managed on a case-by-case basis depending on the circumstances. Please see advice from an ER Consultant for further guidance specific to your situation.

13.0 Anonymous Complaints

13.1 The Council is unable to accept anonymous complaints due to the limitations this imposes on the ability to carry out a successful investigation and provide a reasonable outcome.

13.2 The only exception for this is in cases of sexual harassment, in which case you should make use of our Speak Up (formerly Whistleblowing) Policy. Please consult this policy for more information.

14.0 Leaving the Council

14.1 If the complainant leaves the Council's employ during the complaint process, or submits a complaint after they have left employment, the grievance process will cease. However, in exceptional circumstances the Council reserves the right to treat the matter as a complaint.

14.2 Where the decision is made to proceed, the Formal Complaint Meeting will be conducted with the Complaint Chair and ER Consultant. They will either reach a conclusion or adjourn to commission an investigation where required.

14.3 The outcome of the process will be shared with the ex-employee in writing, confirming the reason(s) for the decision and any actions taken. The appeals process does not apply in such cases.

15.0 Mediation

15.1 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. A mediator can be deployed at any stage of the procedure.

- 15.2 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.
- 15.3 Managers should contact the ER Team via the Service Desk to discuss whether mediation would be a worthwhile option and to discuss the most appropriate provider.

16.0 Legal Framework

- 16.1 Equality Act 2010
- 16.2 Employment Rights Bill
- 16.3 ACAS Statutory Code of Practice for Disciplinary and Grievance Procedures
- 16.4 ACAS Guidance on Bullying and Harassment at Work

17.0 Data Protection and Privacy

- 17.1 Medway Council will manage records efficiently and systematically, consistent with the General Data Protection Regulation (GDPR), the Data Protection Act 2018 (DPA18) and the Lord Chancellor's Code of Practice on Records Management, supporting the business objectives of the Council and meeting legislative, regulatory, funding and ethical requirements.

18.0 Monitoring of Policy Objectives/Aims/Effectiveness

- 18.1 HR Services will monitor the outcome and impact of the Harassment Procedure on protected groups of staff as per the Council's equal opportunities obligations.
- 18.2 The Harassment procedure will be reviewed periodically in line with developments in good practice.

Version history

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Author: (if new Author advise Name and Job Title)

Responsible officer: (If there has been a change please update)

Appendix A: Informal Resolution Guidance

Appendix B: Formal Resolution Process

Appendix C: Complaint Form 1

Appendix D: Complaint Form 2