

**Dealing with Complaints of Harassment
and Bullying by Employees
Model Procedure for Schools**

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Foreword

The County Council's policy is that all employees are entitled to be treated with dignity and respect at work, and should be allowed to carry out their work without being subjected to harassment or bullying from other employees.

This model procedure is intended for adoption by the governing bodies of schools maintained by the County Council as the local education authority. It sets out the standard of practice which the County Council expects governing bodies to adopt for dealing with complaints of harassment or bullying received from employees.

School governing bodies are strongly recommended to adopt this model policy and affirm their intention to ensure that any complaints will be considered seriously and dealt with fairly and expeditiously.

David Peachey
County Director of Education

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1. Scope and Application

- 1.1 This procedure is for use in dealing with complaints from teachers and non-teaching employees about the behaviour of other employees at the same school, where the employees concerned are the responsibility of the governing body under the terms of the relevant legislation covering the local management of schools. It does not apply to complaints of harassment or bullying by others. Other avenues may be available for raising complaints of this nature (see Appendix A).

2. Using the Harassment Procedure

- 2.1 The purpose of this procedure is to stop any harassment or bullying which may occur and bring about prompt and effective solutions, which minimise any embarrassment and respect confidentiality for all parties concerned.
- 2.2 This procedure should be used to deal with complaints about behaviour which falls within the defined categories. It is not intended to replace the Grievance Procedure by which employees should seek to resolve any general complaints about their employment. A complainant may not use both procedures to pursue the same complaint.
- 2.3 This procedure is not intended to preclude the exercise of normal management functions, nor the issuing of reasonable and lawful instructions in an appropriate manner.
- 2.4 The procedure does not apply to authorised investigations into the conduct or capability of employees (including attendance and/or health), nor to the proper application of disciplinary, capability or similar procedures. Complaints about the conduct of such investigations and/or procedures should be raised through the appropriate appeals process or grievance procedure.

3. Definition of Harassment

- 3.1 Harassment is defined by the effect of the behaviour on the receiver. For the purposes of these procedures, harassment means behaviour or conduct by an employee (or employees) towards another employee (or employees) which is uninvited, unwanted and unwelcome, which the receiver finds objectionable, and which causes humiliation, offence or distress. As normally understood, harassment consists of repeated behaviour of this nature, but the definition does not preclude single incidents being treated as harassment, particularly where the single incident is serious.
- 3.2 The definition of harassment is not restricted to deliberate acts which are calculated to have a detrimental effect on the recipient. Where behaviour gives offence unintentionally, it may still come within the definition and scope of this procedure in as much as the recipient perceives it as harassment. If it appears that the behaviour which causes offence is not intended to do so, it may be more appropriate and productive to use the informal procedure, unless the behaviour is repeated after advice, counselling or warning.

4. Examples of Harassment

- 4.1 It is not possible to provide a comprehensive catalogue of behaviour which may constitute harassment. Words (written or spoken), gestures and physical contact are the most recognisable forms. Requests for sexual favours, threats, coercion or suggestive comments are clear examples. Insults or offensive remarks, innuendo, jokes and graffiti may be equally easily recognisable as harassment. Harassment may also involve unwanted physical contact, (actual or suggested by body language) or, at its most extreme, physical assault.
- 4.2 Harassment may also be conducted through more subtle forms of behaviour which have the effect of patronising, demeaning or pressurising other employees. Pointedly ignoring another employee, or excluding them from the normal social interactions which happen at work, unfairly allocating work, especially if it is difficult or unpleasant, or unfairly refusing opportunities for training and development may under certain circumstances form a pattern of behaviour which constitutes harassment.
- 4.3 Harassment is not necessarily confined to personal encounters. Telephone conversations or other means of communication such as e-mail may also be the means of harassing another employee.
- 4.4 The examples given in paragraphs 4.1 to 4.3 exclude genuine friendly banter, repartee or physical contact which is acceptable to all the employees participating. However, employees are expected to be sensitive to the effect of their behaviour on others who may be present and witness such encounters, and who may interpret such behaviour as being directed against them, or may otherwise find it unacceptable. Overt sexual, racial or similar comments are unacceptable in all contexts.

5. Recognised Types of Harassment

- 5.1 The following types of harassment are specifically recognised. They are contrary to the standards of conduct expected of all employees and may also be unlawful.
- 5.2 Sexual harassment includes all cases of harassment which arise, or are perceived by the recipient to arise, from his/her sexual orientation or because s/he has undergone a change of sexual identity.
- 5.3 Sexual orientation harassment includes all cases of harassment which arise, or are perceived by the recipient to arise, from his/her sexual orientation or because s/he has undergone a change of sexual identity.
- 5.4 Racial harassment includes any harassment directed against employees on the grounds of their race, colour, ethnic origin or nationality. It includes all harassment of black employees, or those who may belong to an ethnic or national group who are in a minority at the school.
- 5.5 Disability harassment includes any form of harassment related to an employee's physical or mental disability, disfigurement or long term medical condition, or any measures s/he may need to take as a result of their condition.

5.6 Other forms of harassment may be directed against employees who are perceived to be “different” through some actual or assumed characteristic, such as their age or religion.

6. Bullying

6.1 The use or threat or force to intimidate or coerce other employees constitutes bullying. Many of the types of behaviour which characterise harassment also characterise bullying. Behaviour such as shouting or swearing at an employee, public humiliation or ridicule, persistent unjustified criticism are examples of bullying behaviour. Deliberately withholding information or resources which an employee needs to carry out his /her work, setting impossible targets, or otherwise making working life unpleasant are also characteristic of bullying.

7. Making a Complaint of Harassment or Bullying

7.1 Employees who experience harassment or bullying may:

- do nothing (this course of action is not recommended), or;
- confide in someone but take no action, or;
- follow the informal procedure (Section 8, or;
- make a formal complaint (Section 9).

The decision as to what action to take rests with the employee, and this choice will normally be respected. Employees may wish to consult their own professional association or trade union before deciding.

7.2 Although the wishes of the complainant will normally be respected, in exceptional circumstances, the Headteacher or Governing Body may take action on their own initiative where allegations are received of the following nature:

- assault or threat of assault;
- deliberate, inappropriate physical contact (e.g of a sexual nature);
- “stalking” whether at work or elsewhere;
- serious verbal abuse (e.g. racist abuse);
- other behaviour contrary to the school’s disciplinary code

In these and similar cases, where it appears that the behaviour complained of is likely to constitute a significant breach of the schools’ disciplinary code, the Headteacher or Chair of Governors may determine that the matter may be more appropriately treated under the school’s disciplinary procedure. This determination may also be made where it appears that unacceptable behaviour has been repeated despite previous instructions or warnings.

- 7.3** Although it is not obligatory, employees may find it helpful in presenting their complaint to use the pro forma included as Appendix C, either by completing it as it stands or as a prompt to summarise their complaint and the behaviour which has led to it.
- 7.4** Any complaint of harassment or bullying made under this procedure will be received and treated seriously. No action will be taken against an employee making such a complaint, unless it can be demonstrated that the complaint was without foundation and raised maliciously, mischievously or vexatiously.
- 8. Informal Procedure**
- 8.1** An employee who believes that s/he has grounds for complaint under this procedure (the “complainant”) may take reasonable steps to resolve the matter informally. It is anticipated that most complaints will be dealt with informally, particularly where it appears that the behaviour which is the subject of the complaint was not intended to cause offence.
- 8.2** The complainant may present his/her complaint directly to the employee who has caused offence, in person, by telephone or by letter. The complainant may seek assistance from his/her trade union representative or a suitable friend in representing his/her complaint. The complainant may ask the representative or friend to accompany him/her, or to act on his/her behalf. Unless circumstances render this impractical, any approach should be made on school premises and in, immediately before, or immediately after normal working time. Any written communication should normally be sent to the school’s address and not to a home address. The aim of this direct approach should be to meet with the employee whose behaviour has caused offence and seek a resolution which is mutually acceptable. If an acceptable solution is agreed and implemented, the complaint may end at this stage.
- 8.3** If the employee who has caused offence is unwilling to respond to a direct approach, or, having responded, will not agree to a resolution acceptable to the complainant, or does not subsequently implement an agreed solution, the complainant may present his/her complaint to the Headteacher or a suitable person acting on her/his behalf (e.g. a deputy headteacher or senior colleague). The complainant may seek assistance or support from a trade union representative or friend, if required. Alternatively, a complainant may take this step, from the outset, without making a direct approach as set out at Paragraph 8.2.
- 8.4** On presentation of a complaint under paragraph 8.3, the Headteacher (or person acting on his/her behalf) will meet with both the complainant and the employee whose behaviour is the subject of the complaint (either together or separately). S/he will use her/his best endeavours to resolve the matter and implement a solution acceptable to the parties. If it is agreed that the behaviour which is the subject of complaint took place, but it was not intended to cause offence, an apology and/or an assurance that it will not be repeated will normally be the outcome.
- 8.5** The complainant, the employee against whom the complaint is made, any trade union representative, or friend and the headteacher (if involved) will treat any complaint and its resolution in complete confidence.

9. The Formal Procedure

- 9.1** The formal procedure will normally be appropriate for all cases where the informal procedure has been used but has proved ineffective in stopping the behaviour complained of, or in cases where there has been no previous complaint, but where it is evident to the headteacher (or the person acting on his/her behalf) that a serious incident (or incidents) may have occurred. However, an employee who believes that they have been subjected to harassment or bullying may choose to pursue his/her complaint through the formal procedure from the outset.
- 9.2** A formal complaint must be raised with the Headteacher. The Headteacher will require the complainant to make a full statement of their complaint and may require that statement to be made in writing. (The sample form set out in Appendix C may be used). The complainant may seek the support and assistance of a friend or trade union representative to present his/her complaint.
- 9.3** The Headteacher will arrange an investigation of the complaint. S/he may undertake an investigation in person, through a suitable colleague, or through a suitable officer or adviser of the Local Education Authority. The employee whose behaviour is the subject of a complaint will be informed of the general nature of the complaint and that an investigation will be undertaken.
- 9.4** If, at any stage of the investigation, it appears to the Headteacher that, if substantiated, the behaviour complained of is likely to constitute a significant breach of the school's disciplinary code, s/he may, at his/her discretion, pursue the investigation and any subsequent action under the school's disciplinary procedure.
- 9.5** All employees who are interviewed in the course of an investigation are required to maintain confidentiality in respect of any information which they may hold, or may provide to the investigation. Both the complainant and the employee who is the subject of complaint may be accompanied by a trade union representative or friend, if they so wish, during any investigatory interviews. The full co-operation of all parties is expected and required.
- 9.6** Where it appears appropriate and practicable, the Headteacher may arrange for counselling or similar support to the complainant, with his/her consent. The Headteacher may take any reasonable and appropriate measures to separate the complainant and the employee whose behaviour is complained of, during the course of the investigation.
- 9.7** The Headteacher will consider the finding of the investigation and determine what action is appropriate. In the event that the complaint is upheld, this determination may take into account, among other relevant factors, the seriousness of the complaint, the attitude of the employee under investigation and his/her willingness to accept the standards of behaviour which the school requires. Less serious situations may be dealt with by issuing instructions about future conduct. More serious situations, or situations involving behaviour repeated in breach of previous instructions will normally be treated as a disciplinary offence.

10. Appeal Rights

- 10.1** A complainant who is dissatisfied with the Headteacher's determination may lodge a grievance in accordance with the school's grievance procedure, within fourteen days of being informed of the outcome, if s/he feels that the complaint has not been taken seriously or investigated properly.

10.2 If the complaint has been dealt with under the school's disciplinary procedure, the complainant may not appeal against the findings of any ensuing disciplinary hearing nor against any disciplinary sanction imposed on another employee.

10.3 An employee who is subject to disciplinary proceedings will have the normal appeal rights set out in the school's disciplinary procedure.

11. Complaints against a headteacher

11.1 In the event that the complaint is made about a Headteacher's conduct, it would clearly be inappropriate for her/him to carry out any of the roles assigned to the Headteacher in either the informal procedure (Section 8) or the formal procedure (Section 9). This section explains how those roles should be assigned to deal with any complaint against a Headteacher, within the spirit and intention of this procedure.

11.2 An employee who believes that s/he has grounds for complaint against his/her Headteacher under this procedure may make a direct approach to him/her within the informal procedure as set out in paragraphs 8.1 and 8.2 above.

11.3 Alternatively, where an employee does not feel able to make a direct approach to her/his Headteacher, or believes that a direct approach has failed to produce a satisfactory solution, s/he may present a complaint to an appropriate third party under the informal procedures (as described in paragraph 8.3). The complaint may be presented to the school's Chair of Governors. Alternatively, a complaint may be presented to the Area Education Manager, the Area Personnel Officer, or some other appropriate officer or adviser of the LEA. In the case of voluntary aided schools a complaint may be raised with the appropriate representative of the Diocesan Authority. The person to whom the complaint is made may act in the role of mediator, which is assigned to the Headteacher in paragraph 8.4, provided that s/he is acceptable to all the parties concerned in this role.

11.4 If the person to whom the complaint has been made is not acceptable to all parties as a mediator, s/he will refer the matter to the Chair of Governors. The Chair of Governors may appoint a suitably experienced and qualified person to undertake the role of mediator, who will use his/her best endeavours to resolve the matter as described in paragraph 8.4.

11.5 An employee may choose to make a complaint through the formal procedure either from the outset, or because s/he does not believe that measures taken under the informal procedure have been effective (c.f. paragraph 9.1). A complaint under the formal procedure should be addressed to the Chair of Governors of the school and should be in writing. The employee may seek the advice and support of a friend or trade union representative in making and presenting his/her complaint.

Formal Procedure

11.6 The Chair of Governors will notify the County Director of Education of the complaint and arrange for a suitably qualified and experienced person to undertake an investigation as described in paragraphs 9.3 to 9.6. In most cases it is expected that this will be a suitable officer of the Local Education Authority.

11.7 If the Chair of Governors determines, either before the investigation starts or during the course of the investigation, that the complaint is apparently well founded and the behaviour complained of is likely to constitute a significant breach of the school's disciplinary code, the matter may be pursued under the disciplinary procedure (c.f. paragraph 9.4).

11.8 The report of an investigation produced under the formal procedure will be presented to an appropriate committee of the Governing Body. This committee may, at its discretion, hear representations from the complainant and the Headteacher who is the subject of complaint (both of whom may be accompanied by a trade union representative or friend, if they so wish). The committee will decide how to conduct its proceedings and whether any representations made by the parties are to be heard separately or together. The committee will then determine what action is appropriate, as set out in paragraph 9.7. Any appeal against the decision of the committee by the complainant, as set out in Section 10, will be to an appropriate appeals committee of the Governing Body.

12. Confidentiality and Records

12.1 Much, if not all the material of a complaint of harassment or bullying is of a sensitive nature. All the parties involved in these procedures, including the complainant, the person who is the subject of complaint, and any witnesses who provide information in the course of an investigation, have a right to expect that the information which they provide will be treated in confidence.

12.2 The employee's complaint of harassment or bullying, any response by the person who is the subject of complaint, any statements by witnesses and similar material must be treated in confidence by all parties, their representatives and advisers. They should normally only be disclosed to those who have a role within the procedure, or for the purposes of seeking professional advice, and for legitimate purposes to expedite the procedure.

12.3 Any written instruction to an employee, or the outcome of any disciplinary proceedings associated with a complaint of bullying or harassment will normally be kept on the personal file of the employee receiving the instruction or warning. No other record of a harassment complaint will normally appear on an employee's personal file.

12.4 Minutes of the proceedings of any committee of the Governing Body will be confidential to members of the committee, although the decision and outcome of the committee's deliberations will normally be reported to the Governing Body. Other records, complaints, statements etc. collected during the process of investigation and assessment of the complaint should be held securely. If schools so wish, they may be held by the appropriate Area Education Manager.

13. Responsibilities of all employees

13.1 All employees are expected to co-operate in the implementation of this procedure, which is intended to secure fair and reasonable treatment, and equality of opportunity for all employees, regardless of sex, race, disability, age or any other difference not relevant to their ability to carry out their work.

13.2 All employees are reminded that they are expected to observe the highest standards of behaviour towards all members of the school community and that intentional harassment of other employees will be regarded as a disciplinary offence.

- 13.3** It is a disciplinary offence to victimise an employee who has made a complaint of harassment or bullying, or an employee who gives evidence in good faith about a matter under investigation.
- 13.4** It is also a disciplinary offence to make a malicious complaint of harassment or bullying.

Appendix A**Complaints of Harassment Against People who are not Employees Under the Control of the Governing Body****1. Complaints against employees of the county council not coming under the school governing body's control**

Employees should make a complaint to their headteacher. Complaints about other employees may be appropriately dealt with under the procedures which apply to them.

2. Complaints about school governors

School governing bodies should be prepared, if the occasion arises, to deal with a complaint against a member of the Governing Body. Complaints about school governors should be made to the Headteacher, or if the complaint is from the Headteacher, to the Chair of Governors. Complaints by headteachers may be addressed to the County Director of Education (or an appropriate senior member of his staff), or in the case of voluntary aided schools to an appropriate officer of the Diocesan Authority, who may be able to assist particularly if the complaint lies against the Chair of Governors. However, the complaint must ultimately be referred to and dealt with by the Governing Body, which should follow the principles set out in this procedure.

If the complaint is made under the formal procedure, the Governing Body should commission an investigation by the Area Education Manager (or some other independent person suitably qualified and experienced who is able and willing to investigate and/or reconcile the parties, or to recommend/undertake any other appropriate action under this procedure). The Governing Body should convene a committee of suitable governors to consider any report and recommendations for action. This committee should determine an appropriate course of remedial action for consideration by the Governing Body.

3. Complaints about pupils, parents, members of the public and others

Employees should report any complaints to their headteacher, who will determine, with appropriate assistance where required, what action may be taken. In some cases, it may be appropriate to report incidents, particularly incidents of violence (including physical or verbal abuse) through the incident reporting procedure.

Appendix B

A Note on Legal Obligations and Good Practice

Harassment or bullying in any workplace is clearly undesirable. Not only can it have a detrimental effect on health and well being of an employee who suffers it, but it can generally undermine good working relationships, affect staff morale and reduce a school's overall effectiveness.

In that harassment or bullying constitutes a "detriment" to an individual employee, it is likely to be unlawful under employment law. The employer's obligations to ensure that employees falling into the relevant categories do not suffer any "detriment" under the provisions of the Sex Discrimination Act 1975, the Race Relations Act 1996 and the Disability Discrimination Act 1995 are specifically delegated to governing bodies by statute. Governing bodies are answerable in law for any complaint made under these acts to an employment tribunal (including vicarious liability for the acts of employees under their control).

To the extent that it may have an effect on an employee's health, failure to deal with harassment effectively may be contrary to the obligation placed on every employer to secure the health safety and welfare of people at work. The employer's obligations under the Health and Safety at Work Etc Act 1974 to secure safe systems of work must be discharged by governing bodies, as exercising (through the headteacher) control over the operational management of their school.

In extreme cases, employees who harass their colleagues may be committing a criminal offence under the Protection from Harassment Act 1997.

Confidential**Report of Harassment Complaint**

Name of person making a complaint:

School:

Name(s) of alleged harasser(s):

.....

Date of period of incident(s):

Place(s):

Please give an outline of what took place
(*continue on a separate sheet if necessary*)

Names of anyone else who witnessed behaviour complained of:

.....

(DO NOT GIVE THESE NAMES TO THE PERSON CAUSING OFFENCE)

If you have chosen not to discuss the incident(s) with the person causing offence, please record below your reasons for not doing so. (*This may be helpful if the harassment continues and further action is needed.*)

Please state how you would like your complaint resolved (e.g. through informal or formal procedures).

Signed: Date:

Signature of person receiving the complaint:

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