



West Lothian
Council

Dealing with Complaints of Bullying and Harassment at Work

Policy and Procedure



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POLICY AND PROCEDURE FOR DEALING WITH COMPLAINTS OF BULLYING AND
HARASSMENT AT WORK

(Covers all council employees)

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POLICY AND PROCEDURE FOR DEALING WITH COMPLAINTS OF BULLYING AND HARASSMENT AT WORK

(Covers all council employees)

1. POLICY STATEMENT AND PRINCIPLES

- 1.1 The council is committed to protecting its staff from bullying, harassment and discriminatory behaviour whether it originates in the workplace or from the council's clients, service partners or customers.
- 1.2 This policy applies to all employees during working hours and outside normal working hours in the course of employment where an individual employee's action detrimentally affects the council or another council employee. The phrase "in the course of employment" is significant in so far as it extends the scope of the policy in certain circumstances to situations that happen outside the immediate workplace.
- 1.3 Where a complaint, raised by an employee, relates to the behaviour of a council client or customer, the matter would be dealt with under the Council's [Unacceptable Actions Policy](#).
- 1.4 Central to this policy is the prevention of discrimination, victimisation and harassment against employees on any grounds, but particularly in relation to the following protected characteristics:
- age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.
- In addition, prevention of discrimination, victimisation and harassment in relation to language, social origin, employment status, political belief, trade union membership or activity, or responsibility for dependants is key to this policy.
- 1.5 The council recognises that all employees have the right to:
- be treated with respect and dignity whilst in the course of employment;
 - fair, reasonable and equitable treatment in the course of employment;
 - a working environment which is supportive and discrimination free and which sets out clear standards of expected performance and behaviour;
 - complain about bullying and harassment and not to be victimised as a result of making such a complaint.
- 1.6 It is essential that this policy and procedure is interpreted and applied in conjunction with the [Code of Practice on Promoting Appropriate Working Relationships and Behaviours](#). The Code provides a key reference point for managers and employees in determining whether or not the policy and procedure is the most appropriate means of addressing a workplace issue or whether an alternative approach may be more effective in the circumstances.

2. POLICY AIMS

2.1 A key aim of this policy is to encourage the informal resolution of complaints of alleged bullying and harassment wherever it is appropriate and realistic in the circumstances to do so. The policy also aims to:

- establish, communicate and promote acceptable standards of behaviour at work;
- ensure that equal opportunities and fair treatment are afforded to all employees;
- ensure that all employees are treated with dignity and respect at work;
- ensure that the council and employees comply with their statutory duties and good practice in relation to equalities legislation;
- provide training for managers in implementing the policy and offer support as necessary to employees under the provisions of the policy.

3. PREVENTING BULLYING AND HARASSMENT

3.1 Employees have a clear role in helping to create a climate at work in which bullying and harassment is unacceptable. They can contribute to preventing bullying and harassment by adopting a zero tolerance attitude to it and by ensuring that the standards of conduct for themselves and for colleagues do not cause offence.

3.2 Employees themselves can do much to discourage bullying and harassment by making it clear that they find such behaviour unacceptable and by supporting colleagues who suffer such treatment and are considering making a complaint.

3.3 Similarly, the council recognises its responsibility to provide a safe and suitable working environment. To this end, the council accepts that the prevention of bullying, harassment and intimidation is essential through effective training and education of managers and other employees to ensure that the health of employees is not put at risk.

4. DEFINITION OF UNACCEPTABLE BEHAVIOUR INCLUDING BULLYING AND HARASSMENT

4.1 In general terms, unacceptable behaviour is defined, for the purposes of this policy, as any act or omission by an employee or third party which is illegal by virtue of anti-discrimination legislation, criminal or common law or which otherwise causes unnecessary offence or distress to an employee.

4.2 The council's [Code of Practice on Promoting Appropriate Working Relationships and Behaviours](#) provides examples of behaviour in the workplace that the council views as unacceptable.

4.3 Unacceptable behaviour falls into the following broad categories:

- bullying;
- harassment;
- victimisation;
- intimidating, threatening or other behaviour which contravenes anti-discrimination legislation.

4.4 Bullying may be characterised as:

'offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.'

Harassment is:

'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the individual'

4.5 Protection against discrimination and harassment on the grounds of age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, and sexual orientation is provided by law. In addition protection against discrimination on the grounds of pregnancy and maternity is provided by law. Employees who have suffered harassment at work may be able to seek remedies through the civil or criminal law. The council's policies should not be regarded as attempting in any way to restrict an employee's legal rights. The policy aims are to address all forms of harassment including bullying and threatening behaviour in the workplace and to promote fair and equal treatment for all employees.

4.6 Any employee who complains about unacceptable behaviour under the terms of this policy will be protected against possible victimisation or retaliation for bringing such a complaint. Any such victimisation or retaliation will itself be considered unacceptable behaviour and may give rise to employment tribunal claims against the council and the employee responsible for the offending conduct.

5. RAISING A COMPLAINT ABOUT UNACCEPTABLE BEHAVIOUR

5.1 Wherever possible, employees who are subjected to unacceptable behaviour at work should make every reasonable attempt to resolve the matter informally. The formal procedure should only be used if the informal approach does not bring about the desired result or if the employee concerned feels that an informal approach is not possible or is inappropriate due to the serious nature of the behaviour.

5.2 The policy and procedure is designed to ensure that employees feel able to raise complaints in the knowledge that they will be taken seriously and dealt with fairly and quickly.

6. INFORMAL RESOLUTION OF COMPLAINTS

6.1 Given that most employees simply want unacceptable behaviour to stop, an informal approach can be helpful in achieving an early resolution and avoid unnecessary escalation of the situation. Informal resolution can avoid the need to invoke the formal procedure which can be uncomfortable and stressful for the parties involved and once embarked upon, can damage working relationships to the extent that they can be difficult to restore. For those reasons, the focus of this policy is on informal resolution of issues/complaints wherever possible.

6.2 In an attempt to resolve the matter informally, the employee should raise the matter with their line manager and with the other party concerned. If the complaint is against the employee's line manager, the employee should consider approaching the

next higher level of management or another manager as appropriate within the service concerned in an attempt to resolve the matter.

- 6.3 Line managers should keep a record of informal complaints which may inform any subsequent formal procedure.
- 6.4 Pursuing an informal resolution involves the employee or somebody on their behalf approaching the individual concerned with a view to:
- alerting him or her to the distressing nature of their behaviour;
 - making it clear that the behaviour is unwelcome and unacceptable;
 - indicating that the behaviour should stop immediately and should not be repeated; and
 - setting future acceptable standards of conduct.
- 6.5 Where it is possible to raise the matter directly with the other person, both parties may find it useful to make a personal record of the discussion.

Informal Resolution Support

- 6.6 If it proves to be too difficult or embarrassing for an employee to approach the person concerned directly, the employee should firstly consider seeking support from Human Resources and/or a Trade Union representative.
- 6.7 Advice, assistance and support in dealing with a matter informally, is available from Human Resources staff who have an awareness and understanding of the nature of harassment in its various forms. Human Resources Staff will:
- assist employees in accessing the relevant supporting council employment policies and procedures; and
 - advise employees on the possible courses of action open to them in seeking to prevent further occurrences of unacceptable behaviour.
- 6.8 The council's Equality Officer can provide confidential assistance to employees seeking support specifically on issues related to sexual orientation or gender identity.
- 6.9 Where a member of Human Resources assists at an informal stage, that person shall not also be involved in any subsequent formal proceedings.
- 6.10 Alternatively, employees may wish to engage the support of a trade union representative or another work colleague.

7. FORMAL COMPLAINTS

7.1 Initiating a Complaint

If despite pursuing an informal approach, further unacceptable behaviour occurs, or the behaviour is considered by the complainant to be so serious that an informal approach is inappropriate or impossible, the employee may submit a formal complaint to their Head of Service using the Complaint Form set out at Appendix 1.

The Head of Service will consider the circumstances set out in the complaint and will, where appropriate, meet with the employee concerned to establish whether the

issues raised appear to be sufficiently serious to merit a formal investigation. In doing so, the Head of Service will consider the following factors:

- whether the issue could be better dealt with by more appropriate means (e.g. [Grievance Procedure \(Non-Teaching Staff\)](#) or [Grievance Procedure \(Teachers\)](#)) subject to the circumstances being discussed with the relevant trade union representative or other appropriate person;
- the potential seriousness of the allegations in terms of the council's legal obligations and the standards set out in the [Code of Practice on Promoting Appropriate Working Relationships and Behaviours](#);
- the views of the employee and their trade union/representative as appropriate;
- advice given by Human Resources on the appropriateness of any proposed action.

7.2 Appointment of Nominated Officer

If, having considered the circumstances including the points highlighted in Section 7.1 above, a Head of Service concludes that a formal investigation is required, he/she will nominate an officer to arrange for that process to be undertaken. The Nominated Officer will also be responsible for deciding on any subsequent action that requires to be taken.

The investigatory process must be seen to be fair and transparent by all parties involved. In appointing a Nominated Officer, care should be taken to ensure that the individual concerned is in a position to come to an impartial conclusion on the findings of the subsequent investigation. The Nominated Officer should also be appointed with the nature of the allegation/complaint in mind and as such, should possess the necessary level of powers under the service's [Scheme of Delegation for Officers](#) to take appropriate action should the allegation/complaint be substantiated, which may extend to dismissal in serious cases.

Care must also be taken to ensure that the Nominated Officer is of sufficient seniority and standing in the organisation in relation to the person who is subject to investigation. Complaints against senior officers should not be heard by more junior members of staff.

The Nominated Officer will write to the person against whom the complaint has been made, setting out the nature of the complaint as detailed in the [Complaint Form](#) received and advising of the process that will be followed.

7.3 Appointment of Investigating Officer

In the interest of a fair and transparent process, the officer appointed to investigate a complaint must have the scope and the authority to act independently of the Nominated Officer and should not be directly line managed by that person nor compromised through personal friendship. In this regard to ensure impartiality and integrity of the process, the Investigating Officer should be appointed from outwith the immediate service area and depending on the circumstances, it may be appropriate to appoint an officer from another service entirely.

As with the appointment of the Nominated Officer, care must also be taken to ensure that the Investigating Officer is of sufficient seniority and standing in the organisation

in relation to the person who is subject to investigation. Complaints against senior officers should not be investigated by more junior members of staff.

The following skills/criteria should be considered when identifying an appropriate individual for the role of Investigating Officer:

- ability to objectively examine a situation
- experience in gathering evidence or carrying out research
- analytical skills
- interviewing skills – ability to question in an appropriate, thorough and relevant manner
- ability to deal with sensitive matters
- competent in report writing
- good presentational skills
- good communicator

7.4 Timescales

The Investigating Officer will seek to conclude the investigation as quickly as possible and normally within six working weeks of the decision to proceed with a formal complaint. However where this timescale cannot be met as a result of factors out with the control of the Investigating Officer (e.g. unavailability of key witnesses due to sickness, holidays etc), the Nominated Officer and the other parties involved will be notified accordingly of the revised timescales for completion.

7.5 Right to be Accompanied

The complainant and the person against whom the complaint has been made, together with any other witnesses, will be afforded the right to be accompanied by a trade union representative, colleague, or other person of their choice at all stages of the process.

7.6 Confidentiality

All parties involved in an investigation are under an obligation to maintain confidentiality throughout the process.

7.7 Malicious Complaints

All complaints will be taken seriously. However, if after investigation any complaint is found to have been made maliciously, this will be viewed as a very serious matter and may result in disciplinary action being taken against the complainant.

7.8 Managing the Process – Temporary Measures

If appropriate, pending conclusion of the investigation process, consideration will be given to temporarily redeploying either of the parties concerned to avoid unnecessary stress. Consideration may also be given in appropriate circumstances to granting the complainant special leave with pay during the investigation process.

If the alleged unacceptable behaviour is considered to be sufficiently serious, the person against who the complaint has been made may be suspended on full pay pending the outcome of the investigation.

7.9 Outcome of Investigation

On conclusion of the investigation the Investigating Officer will report his/her findings to the Nominated Officer. The Nominated Officer will then determine what action may be necessary in the circumstances, including whether or not there are grounds to convene a disciplinary hearing under the council's [Disciplinary Procedure \(Non-Teaching Staff\)](#) or [Disciplinary Procedure \(Teachers\)](#)

Where the Nominated Officer concludes that there are no grounds for a formal disciplinary hearing, he/she will arrange to meet separately with the parties concerned (and their representatives if any) to advise of the outcome of the investigation together with the reasons for the conclusions reached. A full review of the findings of the investigation will only be merited if, based on representations from the parties involved, the Nominated Officer accepts that in hindsight an omission or flaw has occurred in the process that impacts materially on the original conclusion.

For reasons of confidentiality and the need to avoid or minimise any potential impact on members of the wider team who may have been party to the investigation, the Investigating Officer's report will not be released.

The complainant will be informed of any action short of formal disciplinary action that is to be taken in the circumstances. The outcome will be confirmed in writing to each party.

Where it is agreed by the parties concerned that it would be helpful in trying to establish ground rules for a sustainable working relationship going forward, the Nominated Officer will arrange for input from an individual trained in mediation techniques. Mediation in these circumstances is intended to provide an opportunity for the parties to jointly acknowledge previous misunderstandings and/or injury to feelings that may have occurred with a view to modifying future behaviour and/or management style. In determining the appropriate remedial action to be taken going forward, the representatives of the parties involved will be consulted and kept advised of developments.

Where the Nominated Officer concludes that there are grounds for a formal disciplinary hearing, the complainant and the person against whom the complaint has been made will be informed of this in writing and notified that it will be necessary for them to give evidence in person at a disciplinary hearing. Other witnesses will also be advised in writing if they are required to appear at the disciplinary hearing.

7.10 Mediation

Mediation is a voluntary process in which the mediator assists two (or more) people in a dispute to find a solution to which the parties can agree. The mediator does not take sides or tell the parties what to do. Mediation is most likely to be successful if both parties:

- understand the purpose of mediation;
- enter into the process voluntarily;
- are seeking to preserve or restore the working relationship.

Mediation is often more appropriate in dealing with misunderstandings and workplace conflict and disagreements whereas formal investigation and disciplinary action may be necessary in dealing with deliberate and malicious acts of bullying, harassment or discrimination.

Where mediation is appropriate and agreed by the parties involved, a suitably trained council employee will be appointed to act as mediator.

8. BULLYING AND HARASSMENT AND DISCIPLINARY ACTION

- 8.1 Bullying and harassment are regarded as misconduct. The council's [Disciplinary Code](#) stipulates that, in serious cases, bullying and harassment may constitute gross misconduct and, where this is established, such misconduct will normally result in summary dismissal.
- 8.2 In cases where action short of dismissal is considered to be appropriate, consideration should be given to the possible transfer on disciplinary grounds of the person against whom the complaints have been substantiated. Where a complaint of harassment is upheld, and the complainant requests a transfer, every reasonable effort will be made to identify a suitable post of the same grade and status. In such cases, a guaranteed interview will be offered to the individual concerned.
- 8.3 The complainant will be advised in writing of the conclusion of the disciplinary process and any measures that have been put in place to ensure the bullying and harassment does not occur again. Should a subsequent appeal be lodged by the person against whom the complaint was made, the complainant will be advised of the outcome and any implications for the measures put in place.

9. USE OF THE GRIEVANCE PROCEDURE

- 9.1 The primary aim of this policy and procedure is to ensure that issues raised are dealt with quickly and effectively and that any unacceptable behaviour ceases immediately. A possible consequence of applying the policy and procedure is that formal disciplinary action, or some other form of action, may require to be taken by the council against an employee.
- 9.2 The nature of any disciplinary or other action to be taken is at the sole discretion of the council under the terms of the council's [Disciplinary Procedure \(Non-Teaching Staff\)](#) or [Disciplinary Procedure \(Teachers\)](#). It is not possible, therefore, for a complainant to subsequently raise a grievance on the grounds that, in the opinion of the complainant, the action taken (if any) by the council in a particular case is inadequate or inappropriate.
- 9.3 If, following the conclusion of any disciplinary process or action taken, the complainant feels that the unacceptable behaviour in question has not ceased, the complainant is entitled to raise the matter under the terms of the council's [Grievance Procedure \(Non-Teaching Staff\)](#) or [Grievance Procedure \(Teachers\)](#) on the basis that the council has not properly enforced the terms of this policy.
- 9.4 The appropriate level to raise a grievance in these particular circumstances is at Stage 2 of the council's [Grievance Procedure \(Non-Teaching Staff\)](#) or [Grievance Procedure \(Teachers\)](#)

10. COUNSELLING

- 10.1 Employees who are the victims of bullying and harassment at work may suffer emotional or psychological reactions to their experiences. It is essential that the management response to these situations is quick, sympathetic and supportive. In all cases counselling provided by the Occupational Health Service should be offered.
- 10.2 In serious cases, the possibility of utilising external agencies or individuals to provide support and counselling to employees who have experienced bullying or harassment at work should be considered. If appropriate, reasonable time off work with pay shall be given in such cases.

11. LINKS TO OTHER POLICIES

- 11.1 This policy and procedure should be read in conjunction with the following supporting documents;
- [Code of Practice on Promoting Appropriate Working Relationships and Behaviours](#)
 - [Grievance Procedure \(Non-Teaching Staff\)](#) or [Grievance Procedure \(Teachers\)](#)
 - [Disciplinary Code](#) and [Disciplinary Procedure \(Non-Teaching Staff\)](#) or [Disciplinary Procedure \(Teachers\)](#)
 - [Policy and Procedure on the use of Internet, Social Media and E- Mail](#)
 - [Unacceptable Actions Policy](#)
 - [Disclosure of Information by Employees \(Whistle-blowing\) Procedure](#)

12. REVIEW OF POLICY

- 12.1 The council will review this policy and procedure as necessary in consultation with the recognised trade unions.

PROCEDURE FOR DEALING WITH COMPLAINTS OF BULLYING AND HARASSMENT**FORMAL COMPLAINT**

Name:	
Service Area:	
Employee Number:	
Contact Address (Home or Work):	
Contact Telephone Number:	
Name of Representative (TU or other work colleague)	

Please outline the main points of your complaint:

Please give full details such as times, dates, comments, actions etc:

If there is more than one event, please set out in date order.

Attach an additional sheet if necessary.

Name and work details of any witnesses:

Please detail the informal action that you have taken to date and the outcome of this:

If you have not attempted to resolve the situation informally, consider whether this would be appropriate prior to submitting a formal complaint.

Please state what resolution you seek:

Signature:

Date:

Submit this completed form to your Head of Service.