

DERBYSHIRE LEA

DEALING WITH COMPLAINTS OF HARASSMENT

A procedure recommended by
Derbyshire LEA and the
recognised Teacher Unions/Associations
for adoption by
Governing Bodies of Derbyshire LEA Schools.

SWANWICK SCHOOL AND SPORTS COLLEGE

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Procedure for Dealing with Complaints of Harassment

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SWANWICK SCHOOL AND SPORTS COLLEGE

DEALING WITH COMPLAINTS OF HARASSMENT

POLICY STATEMENT

1 INTRODUCTION

This school recognises that harassment, which includes discrimination, victimisation and bullying of any nature, is unacceptable and is committed to ending it. Its commitment remains to the promotion of a culture where employees can bring a complaint without fear of ridicule or reprisal.

These procedures represent a formal mechanism for dealing with complaints of harassment. In many instances potential complaints may be resolved informally through intervention by friends, colleagues, trade union representatives or management. This informal process plays a valuable part in resolving matters at an early stage or by providing sufficient support for an employee to feel able to pursue the matter formally if required.

Support and advice is available for employees and every encouragement should be given to them to assist in pursuing and resolving any complaint. This procedure forms the basis on which the Authority can best offer support and has been the subject of negotiation and agreement with the recognised teacher associations. Further details on support and advice are contained at Section 7 of the policy statement.

It is recognised that harassment in the workplace does occur. It can result in ill health, stress, high absence rates, low morale and poor productivity. The costs of harassment in the workplace are, therefore, considerable. The Authority and this school are committed to ensuring that all employees are treated with respect and dignity.

The intention of this document is to therefore ensure that procedures for dealing with harassment are available and that such procedures will, in

the first instance, help to prevent harassment occurring and secondly, where it does occur, ensure that appropriate action is taken.

2 GENERAL

Employees should at all times feel able to raise a complaint against alleged harassment. If at any stage they do not believe their complaint is being taken seriously or dealt with in accordance with the agreed procedures, it remains open to them to raise a grievance against a manager. All such complaints will be dealt with under the school's agreed Grievance Procedure.

At all times, every endeavour will be made to ensure that any employee who raises a complaint is treated fairly and with due sensitivity, confidentiality, respect and understanding for their rights as an employee and individual. Equally, any employee against whom a complaint is made, will be afforded the same rights and treatment as previously stated.

The content of this document shall be regarded as supplementary to and not a substitution for any right to redress through the legal system.

3 SCOPE

These procedures shall apply to all employees and are to be followed in response to all complaints of harassment. It does not cover complaints, which are more appropriately dealt with under the Grievance Procedure.

4 DEFINITION

Harassment can take many forms, ranging from violent physical attack to much more subtle ways of creating uneasiness and discomfort for individuals or groups of individuals, for example, verbal or non-verbal conduct and action contrary to the equal treatment of all employees with regard to employment, training, promotion opportunities and working conditions.

Harassment will normally be based on one or more of the following:-

- ρ Bullying
- ρ Race
- ρ Sex
- ρ Sexuality
- ρ Disability
- ρ Age

Harassment may however, equally be applied to situations which can be deemed to constitute aggressive or intimidatory behaviour and which may not therefore fall into any one of the above categories. It can result from an abuse of power by someone in a more senior position.

Basically any visual, physical or verbal conduct can constitute harassment if:-

- ρ It is unsolicited, and unwelcome.
- ρ When the individual believes his/her employment may be jeopardised by not submitting to such conduct.
- ρ When such behaviour creates an intimidating, hostile or offensive work environment for one or more employees.
- ρ It has the effect of creating an intimidating, humiliating or offensive work environment for one or more employees.

Examples of behaviour which may be viewed as harassment would be:-

- ρ Deliberate abuse.

- ρ Ridicule.
- ρ Embarrassing and/or derogatory remarks or jokes.
- ρ Display of offensive material.
- ρ Excluding someone from conversation.
- ρ Differential treatment eg unfair allocation of work.
- ρ Derogatory statements for example about an individual's dress or appearance.
- ρ Threats with intention to cause harm or distress.

It should be recognised that it is often difficult for individuals to make a complaint of harassment. This can be for a number of reasons eg:-

- ρ Fear that the complaint will be trivialised.
- ρ Fear of retaliation or public humiliation.
- ρ Unfamiliarity with the appropriate procedures.
- ρ Absence of an appropriate procedure.
- ρ Fear that the complaint will not be taken seriously, and the likelihood that no action will be taken against the harasser.

Rather than face these possibilities the victim of harassment may often choose to transfer to another job, leave altogether or may even be wrongly dismissed. These remedies will have a detrimental effect upon the individual's long term job prospects, as promotion, pension rights etc., are often linked to length of service.

Under some circumstances, harassment may not only contravene certain related legislation ie Health and Safety at Work etc. Act 1974, Sex Discrimination Act 1975, Race Relations Act 1976, Disability Discrimination Act 1995, Employment Protection (Consolidation) Act 1978, as well as Common Law, but may constitute an actual criminal offence under the Criminal Justice and Public Order Act 1994 and Protection from Harassment Act 1997.

5 IDENTIFICATION OF HARASSMENT

The following list is not exhaustive and may arise from causes other than harassment. However, where they do appear, Governing Bodies should consider if they are a result of harassment practices:

- ρ high level of sickness and absence rates
- ρ lack of motivation
- ρ low morale
- ρ rapid staff turnover
- ρ decline in performance/productivity
- ρ whole departments appearing to be ineffective
- ρ reluctance of individuals to voice opinions

6 RESPONSIBILITIES

Responsibility of Employees to Stop Harassment

It is the responsibility of all employees to ensure that the conduct of themselves and others does not give offence, and to assist in the creation of an environment where behaviour, which constitutes harassment is not tolerated.

All employees have an obligation to:-

- ρ Notify their manager of any harassment in the workplace.
- ρ Help to stop any such harassment or unacceptable behaviour.
- ρ Not collude with any inappropriate behaviour.

- ρ Co-operate fully in any investigation undertaken by the Council and any subsequent proceedings relating to allegations of misconduct.

Responsibility of Management to Stop Harassment

Generally, employers are liable for acts of harassment against employees in the course of their work. Management therefore has an overall responsibility to ensure that all employees receive fair and equal treatment and work in an environment free from harassment.

Managers have a duty to ensure members of their staff are aware of the policy and also to intervene at the earliest opportunity and take appropriate action to resolve the situation, should they become aware of such harassment. This action may extend to the manager making a complaint under the procedure in respect of a third party. They should provide necessary support and advice to staff experiencing discriminatory treatment whether or not a formal complaint is made.

Training for Managers/Supervisors

It is recognised that managers and any other employees, including trade union representatives, who have responsibility for implementing the policy and/or for advising and assisting complaints should receive adequate training.

As far as is reasonably practical, every effort will be made to ensure that all managers and others receive appropriate training.

7 SUPPORT AND ADVICE

School Support Officers, trade union representatives and the Council's Equality Officers are available to offer support and advice to an employee who feels that they may be a victim of harassment. The Employee Welfare Service is also available to offer confidential counselling and support. All matters will be dealt with in the strictest confidence.

The trade union representative may also represent the employee at all stages in the procedure.

8 MONITORING

The Headteacher should be kept informed and keep confidential records of all harassment cases.

The Governing Body will monitor all cases by means of confidential reports from the Headteacher on at least an annual basis.

This will enable the Governing Body to monitor and review the procedure.

9 The Governing Body's procedure for dealing with complaints of harassment is included as Appendix 1.

APPENDIX 1

SWANWICK SCHOOL AND SPORTS COLLEGE

PROCEDURE FOR DEALING WITH COMPLAINTS OF HARASSMENT

1 PURPOSE

All allegations of harassment will initially be dealt with under this procedure. Where such allegations are subsequently substantiated, this may constitute a disciplinary offence and will be dealt with in accordance with the school's agreed Disciplinary Procedure.

2 BASIC PRINCIPLES

This Governing Body recognises that harassment of any nature is unacceptable and is committed to ending it. Its commitment remains to the promotion of a culture where employees can bring a complaint without fear or ridicule or reprisal.

These procedures represent a formal mechanism for dealing with complaints of harassment. In many instances potential complaints may be resolved informally through intervention by friends, colleagues, trade union representatives or management. This informal process plays a valuable part in resolving matters at an early stage or by providing sufficient support for an employee to feel able to pursue the matter formally if required.

Support and advice is available for employees and every encouragement will be given to them to assist in pursuing and resolving any complaint. Further details on support and advice are contained in Section 7 of the policy statement.

Employees should at all times feel able to raise a complaint against alleged harassment. If at any stage they do not believe their complaint is being taken seriously or dealt with in accordance with the agreed procedures, it remains open to them to raise a grievance against a manager. All such complaints will be dealt with under the school's agreed Grievance Procedure.

At all times, every endeavour will be made to ensure that any employee who raises a complaint is treated fairly and with due sensitivity, confidentiality, respect and understanding for their rights as an employee and individual. Equally, any employee against whom a complaint is made will be afforded the same rights and treatment as previously stated.

The intention of this document is to therefore ensure that procedures for dealing with harassment are available and that such procedures will, in the first instance, help to prevent bullying occurring and secondly, where it does occur, ensure that appropriate action is taken.

It is inherent in this procedure that both the complainant and the alleged harasser have a right to representation at any stage.

The Headteacher will be available to offer advice. The Headteacher will seek advice, as necessary, from the Director of Education or representative.

This procedure does not in any way prejudice the right of a complainant to exercise his/her legal rights.

3 TIME LIMITS

Complaints should be submitted as promptly as possible and shall be within three months from the date of the incident(s) complained of. This time limit may be extended where considered just and equitable to do so.

4 STAGE ONE

Employee Action

Wherever possible the employee(s) should ask the harasser to stop or make it clear that the behaviour is unwelcome.

In circumstances where it is too difficult or embarrassing for the individual to do this on their own behalf, the initial approach may be their manager/supervisor, a friend, employee welfare officer or trade union representative.

If this does not result in the harassment ceasing it is advisable that written details are kept of the alleged harassment. The following information will be useful in the event of a formal complaint.

- ρ Date of incident(s).
- ρ Location of incident(s).
- ρ Nature of incident(s); to cover behaviour and statements made by both parties.
- ρ The feelings of the complainant during the course of the harassment/discrimination together with an indication of whether these feelings were made known in some way to the alleged harasser.
- ρ Names of parties.
- ρ Names of witnesses.

In some cases it will not be appropriate for this stage of the procedure to be followed (for example if the action was so distressing that it led to a complete breakdown in communication) and a complaint to the immediate manager will need to be made immediately in accordance with Stage Two below.

Management Action

The immediate manager should intervene at the earliest opportunity and take appropriate action to resolve the situation, should they become aware of any harassment. They should provide necessary support and advice to staff experiencing discriminatory treatment.

5 STAGE TWO

Employee Action

The complainant should arrange to discuss the matter with his/her immediate manager. The alleged harassment and factual background should be clearly identified.

If the manager is the alleged harasser, the complainant should approach the Headteacher.

If the Headteacher is the alleged harasser, the complainant should approach the Chair of Governors or the Director of Education or representative.

Management Action

The immediate manager will respond orally to a request for a meeting within five working days. The manager will arrange to meet with the complainant and mutually agree the action to be taken to resolve the situation. These actions may range from interview of harasser by manager through to initiation of formal procedure.

Should the agreed action involve the alleged harasser, his/her immediate manager will be notified, within five working days, of the action being agreed.

The agreed action should also be confirmed in writing to the complainant and, where necessary the alleged harasser.

A date will be agreed for the manager and complainant to review the situation.

If the Headteacher is the alleged harasser the management action outlined above will be undertaken by the Chair of Governors or the Director of Education, or representative.

6 STAGE THREE

Employee Action

Should action at Stages One and Two above not resolve the situation satisfactorily, the complainant should make a written statement to the Headteacher.

If the Headteacher is the alleged harasser, the complainant should make a written complaint to the Chair of Governors or the Director of Education.

The statement of complaint should contain the following information;

- ρ Names of parties
- ρ Names of witnesses
- ρ Date(s) of incident(s)
- ρ Location(s) of incident(s)
- ρ Nature of Incident(s); to cover behaviour and statements made by all parties
- ρ The feelings of the complainant during the course of the harassment together with an indication of whether these feelings were made known in some way to the alleged harasser.

Management Action

Upon receipt of a written statement the complainant's Headteacher (or nominated representative) should arrange to investigate the complaint within 10 working days of receipt of the formal complaint.

The role of the investigation will be to:-

- ρ Investigate the facts and circumstances surrounding the suspected or alleged harassment;
- ρ Reach a decision whether or not there are sufficient grounds for an allegation of harassment.

In conducting the investigation the Headteacher, will interview the complainant, alleged harasser and any other persons they feel appropriate. All interviews will be conducted separately and will afford the complainant and/or harasser the right to make representations. The Headteacher, may decide on his/her own procedures within the guidelines

listed at Appendix 2. Advice should be sought from the Director of Education or representative.

The Headteacher will complete the investigation as quickly as possible. This will ordinarily be within 15 working days.

Where in the view of the Headteacher it is deemed impossible for complainant(s) and alleged harasser(s) to remain in the present work situation during the investigation period, the Headteacher will decide on action to permit work to continue by either transferring the alleged harasser to an alternative work location/duties or by suspension on full pay of one or both parties to the complaint. Advice should be sought from the Director of Education or representative as to the appropriateness of suspension in all cases. All such action will be regarded as neutral and will not prejudice the conclusions of the Headteacher or any further proceedings that might result.

The Headteacher shall examine all documentary evidence relating to the complaint. All evidence and submissions to the Headteacher must be kept properly recorded, and held in the strictest confidence. So far as practicable, parties should not be able to be identified from all documentation relevant to the case.

The Headteacher's terms of reference will be to investigate the formal complaint of harassment and to produce a written report of the findings. The Headteacher shall submit a formal report indicating *their* findings to the Governing Body of both the complainant and harasser within two weeks of the completion of the investigation. When the Headteacher finds a complaint of harassment to have been established the Headteacher will make a recommendation to the Governing Body as to whether disciplinary proceedings are appropriate.

If the Governing Body decides to take disciplinary action the agreed Disciplinary Procedure will be invoked.

Should the Governing Body decide not to invoke the Disciplinary Procedure, conciliatory action should be taken.

If the Headteacher is the alleged harasser the management action outlined above will be undertaken by the Chair of Governors or the Director of Education, or representative.

7 STAGE FOUR: (APPEALS PROCEDURE)

There is no right of appeal against the findings of the Headteacher or of the decision taken by the Governing Body in respect of action to be taken.

If the Headteacher is the alleged harasser there is no right of appeal against the findings of the Chair of Governors or the Director of Education, or representative, or of the decision taken by the Governing Body in respect of action to be taken.

Appeals against any decision of the Disciplinary Panel will be dealt with under the agreed Disciplinary Appeals Procedure.

If the complainant does not believe their complaint has been taken seriously or dealt with in accordance with the agreed procedures, it remains open to them to pursue the matter through the Governors' Grievance Procedure.

8 GOVERNORS

Where the alleged harasser is a Governor, the complaint should be raised with the Chair of Governors.

The complaint will be investigated by the Chair of Governors and the Headteacher who will respond in writing direct to the complainant detailing their findings. This will normally be within 15 working days of being called upon to investigate the matter.

If the claim of harassment is found to be substantiated, appropriate disciplinary action will be taken by the Chair of Governors, with any subsequent appeal by the Governor involved against sanction(s) imposed being heard by a specially constituted Appeals panel appointed by the Governing Body.

Applications for appeal must be made in writing to the Chair of Governors within 14 days of receipt of notification of the decision.

9 CHAIR OF GOVERNORS

Where the alleged harasser is the Chair of Governors, the complaint should be raised with the Director of Education, with the matter being investigated by the Director of Education or representative.

Any disciplinary action taken will be in accordance with the Governors' agreed disciplinary procedures.

APPENDIX 2

INVESTIGATION OF ALLEGED HARASSMENT

1 GUIDELINES

The following guidelines provide general advice only on the guiding principles to be applied when investigating alleged or suspected acts of harassment.

In accordance with the procedure, the investigation should ideally be completed within 15 working days.

The investigation should:-

- ρ Attempt to ascertain the facts and circumstances surrounding the suspected or alleged harassment.
- ρ Take a balanced view of the information that emerges.
- ρ Reach a decision whether or not there are sufficient grounds for an allegation of harassment.

Where, in the opinion of the person undertaking the investigation, the outcome of a complaint is likely to be prejudiced by the continued presence of the alleged harasser(s) it may be appropriate to suspend the alleged harasser(s). This will always be on full pay, will be regarded as a neutral act, and will not prejudice the conclusions of the investigation or any further proceedings that might result. Advice should be sought from the Director of Education or representatives as to the reasonableness and appropriateness of suspension in all cases.

2 CONDUCTING THE INVESTIGATION

The alleged harasser should be informed in writing that an allegation of harassment has been received and that an investigation into the circumstances will be undertaken. He/She must also be informed of the requirement to co-operate with the investigation.

An integral part of the investigation is usually a preliminary interview or investigatory meeting with the alleged harasser. This gives him/her a chance to admit or deny the allegation.

Equally, interviews should be held with the complainant and any other persons who may have relevant or corroborative information about the alleged act.

Written records of the interviews should be maintained, with written, signed and dated statements being obtained from witnesses where appropriate.

The right of trade union or other representation should be afforded to the complainant and harasser.

3 STATUS OF THE INVESTIGATION

The investigation of an alleged act of harassment is a neutral act and does not imply the guilt of an employee nor is it part of the formal disciplinary procedure. Relevant material collated during the investigation, together with the report detailing the findings, may be considered in any subsequent disciplinary action. At any subsequent disciplinary hearing, the management case will be presented by the Headteacher or nominated representative. Where the alleged harasser is the Headteacher or a Governor, the Chair of Governors or nominated representative, or the Director of Education or nominated representative, will present the management case. Where the alleged harasser is the Chair of Governors, the Director of Education or nominated representative will present the management case.

It should be noted that Members of the Disciplinary Hearing Panel should not have been previously involved with or implicated in the case. Equally, the constitution of the Panel should be representative of, and sensitive to, the circumstances of the case.