

Corporate Policy and Strategy Committee

10.00am, Tuesday 4 August 2015

Bullying and Harassment at Work Policy

Item number	7.3
Report number	
Executive/routine	
Wards	

Executive summary

The Council's Fair Treatment at Work Policy outlines the process for dealing with complaints relating to unfair treatment at work, mainly bullying and harassment. It has been in place since October 2001 and covers all Council employees. It comprises a phased process for dealing with complaints with recourse to the Grievance Procedure at the formal stage.

It is proposed that this policy is replaced by a new Bullying and Harassment at Work Policy (Appendix 1) with a stronger focus on early intervention and resolution by management. It recognises the sensitivity of these complaints and the need to ensure they are given the utmost priority and that delays in dealing with such complaints are avoided.

The change of policy title reflects the nature of the complaints that will be covered by this policy to avoid any confusion relating to the Grievance Procedure. It makes clear that all complaints relating to bullying and harassment will be dealt with under the new policy.

Links

Coalition pledges	P27
Council outcomes	CO24 ; CO26 ; CO27
Single Outcome Agreement	

The main changes are:

- the Bullying and Harassment at Work Policy and toolkit will replace the Fair Treatment at Work Policy and toolkit;
- a streamlined 3-stage process to encourage early resolution under the policy with no recourse to the Grievance Procedure;
- a monitoring and review period after the formal meeting/process to ensure that agreed actions are progressed within a set timescale;
- a right of appeal will be to an independent Director or Head of Service, not the Personnel Appeals Committee. This will facilitate resolution by senior management who have the authority (unlike the Personnel Appeals Committee) to decide on action to resolve behavioural/working relationship issues and will avoid untimely delays which can often exacerbate the situation for the parties involved;
- the introduction of an assessment process to determine the competency of an appeal before a decision is taken to proceed;
- greater clarity on what is defined as bullying and harassment in the workplace and the relationship with protected characteristics under the Equality Act 2010;
- assists in our satisfying the Public Sector Equality Duty.

Bullying and Harassment at Work Policy

Recommendations

- 1.1 Approve the new Bullying and Harassment at Work Policy which will replace the Fair Treatment at Work Policy;
- 1.2 Agree to a review of the policy 6 months after implementation;
- 1.3 Note the introduction of a monitoring and review process at the formal stage 2;
- 1.4 Note the introduction of an assessment process by the Head of HR/OD at the appeals stage; and
- 1.5 Note that appeals will be heard by an independent Service Director or Head of Service.

Background

- 2.1 The Council's Fair Treatment at Work Policy came into force in October 2001 specifically to deal with complaints relating to unfair treatment at work. These complaints are mainly related to bullying and harassment.
- 2.2 The current policy includes recourse to the Grievance Procedure where attempts at informal resolution have failed. This tends in practice to extend the resolution process unnecessarily. It was universally agreed that this protracted process required a significant review.
- 2.3 The new Bullying and Harassment at Work Policy will replace the Fair Treatment at Work Policy, providing a greater focus on early intervention and resolution and the end to an unnecessarily protracted process.

Main report

- 3.1 Any complaints by employees of bullying or harassment on the grounds of sex, race, disability or other personal factors should be pursued through new Bullying and Harassment at Work Policy. There will be no recourse to the Grievance Procedure in these cases.

The Procedure

- 3.2 The current Fair Treatment at Work policy has 3 phases and encourages informal resolution at phases 1 and 2. There is recourse to the Grievance Procedure at phase 3 if there is no informal resolution. This has often resulted in a very lengthy, protracted process for the parties involved particularly where an appeal is lodged.

- 3.3 It is recognised that the often serious nature and sensitivity of complaints of bullying and harassment need to be given the utmost priority and wherever possible, delays in dealing with complaints of this nature should be avoided.
- 3.4 The streamlined 3 stage process in the new Bullying and Harassment at Work Policy will reduce the potential for delay and uncertainty for the parties involved. Managers are encouraged to deal with complaints quickly and sensitively and wherever possible to resolve them at the informal stage when the employee seeks their support.

The 3 stage process is as follows:-

Stage	Action
Stage 1 - Informal	By complainant and/or their line manager
Stage 2 - Formal complaint to Line Manager	Where appropriate, line manager to arrange to undertake an investigation into the complaint Line Manager to advise the person complained about Line Manager arranges formal meeting (may be chaired by a manager at the level above, where appropriate) Line Manager undertakes to monitor and review actions agreed at the formal meeting and set a suitable time period for this to avoid delays
Stage 3 - Appeal to Service Area Director (Appeal Form copied to Head of HR and OD)	Director to acknowledge receipt of appeal Head of HR & OD assesses appeal to make sure it is competent Appeal Hearing scheduled

- 3.5 Where a complaint is raised under the Stage 2 formal stage, there will be closer monitoring and review of any actions agreed to resolve issues and to progress updates with the complainant. To ensure this happens, the Manager will be required to complete a Monitoring and Review Form which they will share with the complainant. Thereafter, there will be regular review meetings with the complainant over an agreed period of between 3 and 6 months to update them on progress. If followed correctly, this will reduce the likelihood of appeals which are often raised because of time lapses in achieving outcomes/improvements and lack of communication.

Appeals

- 3.6 In a change to current practice, appeals will be heard by an independent Director or Head of Service. The Personnel Appeals Committee has limited powers in relation to operational staffing matters and are unable to resolve these types of complaints. The Personnel Appeals Committee Chair raises this as an issue when grievance appeals are brought to them. Having an independent senior manager hearing the appeal will allow the complaint to be resolved more quickly at service area level.

Measures of success

- 4.1 Earlier resolution of complaints because of streamlined process and timescales;
- 4.2 Fewer appeals as a result of the introduction of a monitoring and review period after formal stage 2;
- 4.3 Improved staff morale because complaints are being dealt with promptly and within timescales;
- 4.4 Greater productivity and work output related to improved staff morale/motivation.

Financial impact

- 5.1 Early resolution reduces the time and costs associated with Stages 2 and 3 of the formal process and, in some cases, Employment Tribunal hearings.

Risk, policy, compliance and governance impact

- 6.1 The changes do not pose any risk with regards to compliance and legislative requirements, in that the changes assist compliance with the Public Sector Equality Duty.

Equalities impact

- 7.1 The policy applies to all employees and recognises that there are staff groups who have separate procedures for dealing with employment related matters.
- 7.2 There are no adverse equality issues arising from this report which will impact on employee groups with protected characteristics as defined by the Equality Act 2010. The equality relevance assessment score is 0.
- 7.3 The policy promotes obligations under the Equality Act 2010 with regard to protection from harassment.

Sustainability impact

8.1 None.

Consultation and engagement

- 9.1 The Trades Unions have been consulted on these recommendations. They support and agree:
- the replacement of Fair Treatment at Work Policy with the Bullying and Harassment at Work Policy; and
 - the streamlined 3 stage process.
- 9.2 It was agreed that policy will be the subject of a joint review with the trades unions 6 months after implementation.

Background reading / external references

ACAS Guide for Managers and Employers on Bullying and Harassment at work

Alastair Maclean

Chief Operating Officer

Deputy Chief Executive

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Links

Coalition pledges	P27 - Seek to work in full partnership with Council staff and their representatives
Council outcomes	CO24 - The Council communicates effectively and internally and externally and has an excellent reputation for customer care CO26 - The Council engages with stakeholders and works in partnership to improve services and deliver on agreed objectives. CO27 - The Council supports, invests in and develops our people
Single Outcome Agreement	SO1 – Edinburgh’s economy delivers increased investment, jobs and opportunities for all
Appendices	Appendix 1: Bullying and Harassment at Work Policy

Bullying and Harassment at Work Policy

Implementation date:

Control schedule

Approved by

Approval date

Senior Responsible Officer Martin Glover, Interim Head of HR and OD

Author Louise Milliken

Scheduled for review Annually

Version control

Version	Date	Author	Comment
0.1		Louise Milliken	Committee Version

Committee decisions affecting this policy

Date	Committee	Link to report	Link to minute
4 August 2015	Corporate Policy and Strategy Committee		

Bullying and Harassment at Work Policy

Policy statement

- 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. Bullying or harassment of employees by other employees and by service users will not be tolerated or condoned and is regarded as a breach of the Council's commitment to encourage and develop an anti-discriminatory culture.
- 1.2 All employees rightly expect to be treated with dignity and respect at work by colleagues, managers and work contacts. Much of Council business is based on contact between people and therefore mutual respect is critical to effective working relations and service provision.
- 1.3 Specifically, this policy aims to:-
 - (a) promote awareness of the types of behaviour which, whether intended or not, can cause offence or injury to employees;
 - (b) make sure that all employees understand that such behaviour is unacceptable and may lead to disciplinary action being taken;
 - (c) clearly identify the responsibilities of all employees in developing an anti-discrimination culture where all employees are treated fairly and with dignity and respect;
 - (d) make sure that employees are aware of the Council's expectations and their responsibilities in relation to bullying and harassment; and
 - (e) provide a procedure for resolving concerns raised by employees, where concerns are taken seriously and dealt with promptly.
- 1.4 This policy also seeks to promote a culture where employees can raise concerns without fear of victimisation or recrimination, but in the knowledge that complaints shown to be malicious or vexatious will lead to disciplinary action. It provides a procedure for employees to raise a concern or complaint and have it addressed quickly.
- 1.5 Central to this policy is the prevention of discrimination, bullying, harassment, victimisation, intimidation or other unacceptable behaviour on any grounds, but

particularly in relation to the following protected characteristics that qualify for protection under the Equality Act 2010:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex; and
- sexual orientation

Scope

- 2.1 The policy applies to all employees in the course of their employment. It can also apply where action or behaviour outside normal working hours has an impact on another employee or colleague.
- 2.2 You cannot use this policy if you have left the Council's employment.

Definitions

3.1 What is not workplace bullying and harassment?

(i) Effective management

We expect our managers to lead and manage employees. This involves setting performance standards and making sure employees understand them. It also involves dealing in a respectful and constructive way with employees who fall below the expected standards.

However, if performance standards can be objectively shown to be discriminatory, unfair or unachievable, this may constitute bullying or harassment.

(ii) Organisational change

Organisational change is both essential and inevitable. We recognise that change can at times result in employees feeling apprehensive, upset and resistant to change. Organisational change is never intended to undermine or humiliate employees but will always be aimed at improving Council services or meeting economic challenges. In itself organisational change does not amount

to bullying or harassment. However, employees can expect to be treated fairly and with dignity through any period of organisational change. To aid the Council, employees and trade unions to manage change effectively and fairly, reference must be made to the [Stress Management Policy](#).

3.2 What is Bullying?

Whilst there is no legal definition of workplace bullying the Council recognises that it has a duty to all employees to protect their health, safety and wellbeing at work.

With this duty in mind we recognise that bullying, or other unacceptable behaviours, if left unchecked, may have a significant and detrimental impact upon the health and wellbeing of an individual.

In general bullying is characterised as negative behaviour being targeted at individuals, repeatedly or persistently, over time. Whilst this list is not exhaustive, such behaviours may include:

- Ignoring or excluding you;
- Giving you unachievable tasks or 'setting you up to fail';
- Spreading malicious rumours or gossip;
- Giving you meaningless tasks or unpleasant jobs;
- Making belittling personal remarks;
- Undermining your integrity;
- Withholding information deliberately;
- Making you look stupid in public/in front of fellow employees;
- Undervaluing your contribution –not giving credit where it is due;
- An abuse or misuse of the power or authority through means intended to unfairly criticise or injure the recipient.”

3.3 What is Cyber Bullying?

Cyber bullying is bullying or harassment which is conducted via social networking channels, often using blogs or social networking sites to post photographs or offensive or threatening comments.

Please refer to the [ICT Acceptable Use Policy](#) regarding the appropriate use of social media.

3.4 What is Harassment?

Unlike bullying, harassment can relate to unlawful discrimination, which can be on the grounds of the protected characteristics of age, sex, gender reassignment, race, religion or belief, sexual orientation, disability, pregnancy and maternity, marriage and civil partnership. It's unwanted conduct that:

- Violates another person's dignity; or
- Creates an intimidating, hostile, degrading, humiliating or offensive environment for that person

It takes many forms including physical, verbal or non-verbal conduct. It can include comments, actions, jokes or suggestions that may be viewed as demeaning and unacceptable to the recipient. It may be an isolated incident or repeated actions that may create a stressful working environment.

Policy content

Dealing with bullying and harassment

4. Informal resolution of complaints

- 4.1 It is preferable that complaints are dealt with within the service and informally where appropriate. The aim is to produce solutions quickly to resolve issues and reduce the impact on all involved.
- 4.2 It is important that employees make a distinction between behaviour that is perceived as causing offence or distress and behaviour which is merely causing annoyance. Sometimes the person might not understand the impact of their behaviour on someone else and making them aware of it can stop the behaviour and resolve the matter quickly.
- 4.3 The employee should talk to the person directly about their behaviour, explain how it has affected them and ask them to stop behaving in that way. It is advisable for the employee expressing the concern to retain a personal note of any such approach.
- 4.4 If they find it too difficult to do this on their own they can ask a colleague, trade union representative or their line manager to do this for them. If the person is their line manager they can ask a more senior manager to talk to them.
- 4.5 If a complaint of bullying or harassment is made directly to a manager, the manager should make every effort to resolve the complaint quickly and, where possible, informally.

- 4.6 If the complaint of bullying or harassment is of a more serious nature, the manager may advise the employee to raise their complaint through the formal process.
- 4.7 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. In some cases bullying and harassment can be unlawful and result in discrimination claims, criminal claims for assault or civil claims for harassment or negligence

5. Support and advice

- 5.1 Employees who are 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 Council's [Employee Assistance Programme](#) provider should be offered and employees also directed to the 24 hour helpline.
- 5.2 It is important to recognise that inappropriate behaviour can be unintentional and that, in such cases, the employee being complained about can suffer similar distress to the employee who raised the concerns. In such circumstances, the Manager should make sure that both parties are provided with advice and support.
- 5.3 Advice, assistance and support for the line manager in dealing with a matter informally is also available from an HR Adviser by contacting the HR and Payroll Service Centre.
- 5.4 There are many other points of contact who can offer assistance and further details are in the toolkit which is available on the Orb.
- 5.5 Mediation may also be used at this stage or later in the process and is a voluntary process in which a trained mediator assists 2 or more people in a disagreement to find a solution they can all agree to. The mediator does not take sides or tell the parties what to do. Mediation is most likely to be successful if the people involved:-
- Understand the purpose of mediation;
 - Enter into the process voluntarily;
 - Want to find a solution
- 5.6 Mediation is often more appropriate in dealing with misunderstandings and disagreements at work which affect working relationships. It is unlikely to be

appropriate in dealing with serious and/or deliberate or malicious acts of bullying, harassment or discrimination.

6. Making a formal complaint

- 6.1 If despite pursuing an informal approach and 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 the appropriate line manager by completing the Formal Complaint Form on the Orb. Further details of the formal complaints process are available in the toolkit. If the employee's complaint relates to a line manager whose behaviour is considered inappropriate, then the approach should normally be made to the next level of management.
- 6.2 At this stage an investigation will be undertaken to determine if the behaviours fall under the definitions of the bullying and harassment policy.
- 6.3 At the conclusion of the investigation, the line manager must decide on a course of action to address the complaint. The options include:-
- Determining that the concerns are unfounded – the line manager may inform the employee that no further action will be taken in cases where it is considered that the concerns are unfounded.
 - Management intervention – a manager may attempt to find a joint resolution between the parties by facilitating discussion and trying to restore/develop amicable and co-operative working relationships.
 - Instruct a disciplinary investigation – this would follow the normal investigation process under the Disciplinary Procedure and may lead to a counselling or formal disciplinary action.

False accusations

- 6.4 If in good faith an employee makes an accusation which following investigation is not confirmed as bullying or harassment, no action will be taken against the employee. If an employee makes a malicious complaint which doesn't have grounds, substance or evidence and was made to deliberately cause upset and distress, we may take action in line with our Disciplinary Procedure.
- 6.5 Further information on the investigation process is available in the toolkit.

Action(s) following the outcome of the investigation

- 6.6 Where a Manager decides after the investigation that a complaint is substantiated they should inform the complainant of the formal course of action they intend to take to ensure the matter is resolved. This may involve a formal meeting. Any action to resolve the issue(s) should be fully implemented as soon as is reasonably practicable.

Monitoring and Review

- 6.7 To ensure action is taken within a reasonable timescale and to reassure the complainant that their issue(s) is being dealt with, the Manager will complete a Monitoring and Review Form. This will be shared with the complainant outlining the suggested course of action, timescales and their intention to hold regular review meetings with the complainant to check progress.

7. Grounds for appeal

- 7.1 Employees can appeal where they are dissatisfied with the outcome at the formal stage. An appeal can only be made on one or more of the following grounds.

Where the complainant considers:

- That it was unreasonable for the manager/investigating officer to have reached their conclusion on the basis of the evidence and information obtained;
 - That the assessment/investigation was fundamentally flawed;
 - That the procedure was not followed and this has adversely affected the outcome of the complaint; or
 - That the behaviour complained of and found to be unacceptable has not stopped.
- 7.2 The appeal is about looking at what happened in the investigatory process and the action(s) taken to resolve the complaint including remedying any defects. The appeal will be heard by:-
- the relevant Director who in turn can nominate a Head of Service
 - a senior manager or chief officer with no prior involvement in the case
- 7.3 The employee should complete the Notification of Appeals Form which is then passed to the Service Area Director. At the same time, the Head of HR and Organisational Development will also receive a copy of the appeal form and an assessment will be undertaken to determine the competency of the appeal using the criteria set out in section 7.1 above.

8. Use of the Grievance Procedure

- 8.1 The Council's Grievance Procedure mainly covers matters which are specific to an individual in relation to their service and/or conditions of service with the Council.
- 8.2 Any complaints by employees of bullying or harassment should be pursued through this Policy. There will be no recourse to the Grievance Procedure in these cases.

Implementation

- 9.1 The policy will be implemented by developing a communications strategy along with a training plan for managers which will involve:-
- Communication with all staff through Newsbeat;
 - Placing the Policy and Toolkit on the Orb;
 - Developing an e-learning package for use by managers;
 - Briefing sessions for Managers.

Roles and responsibilities

- 10.1 All **Directors, Heads of Service and Service Managers** have a particular responsibility for promoting and maintaining a working environment where employees feel comfortable and confident about raising complaints/issues regarding their employment. They should set out clear standards of expected performance and behaviour and:
- communicate the policy to all employees within their area of responsibility and by setting an example of appropriate conduct and behaviour;
 - understand the provisions of the policy and offer appropriate advice and support to employees;
 - monitor working relationships within their area and respond to concerns raised promptly and appropriately;
 - undertake performance management activities such as discussing work activities, monitoring employees' effectiveness and setting objectives in a fair and consistent manner;
 - stop unacceptable behaviour and deal quickly with any complaints they receive.
- 10.2 **Managers** have a responsibility to uphold and promote the bullying and harassment policy. They should treat employees fairly and with dignity and respect and make sure the working environment is free from bullying, harassment and victimisation. They should:
- encourage an atmosphere of tolerance and respect;

- lead by example through a fair and open management style;
- make sure that all employees they are responsible for are aware of and understand the bullying and harassment policy;
- be aware of their team member's behaviours and take steps to address any action which may cause offence or distress;
- be supportive of employees who come to them with concerns about unacceptable behaviour;
- stop unacceptable behaviour and deal quickly and effectively with any complaints they receive.

10.3 **Employees** have a duty to understand how their behaviour affects others. They have a role to play in creating a climate where bullying and harassment is unacceptable. They can achieve this by having awareness and sensitivity towards the issues of bullying and harassment and by making sure that their behaviour does not cause offence. Employees are responsible for:

- helping to create a climate at work in which bullying and harassment is unacceptable and adopting a zero tolerance attitude to it;
- treating fellow workers with dignity and respect;
- reporting suspected acts of unacceptable behaviour or practices that go against the bullying and harassment policy;
- making sure that standards of conduct are observed and that their behaviour does not cause offence to colleagues;
- making sure they understand the Bullying and Harassment Policy;
- trying to deal with complaints informally in the first instance;
- supporting employees who suffer such treatment and are considering making a complaint.

Related documents

11.1 This Policy and the policy toolkit should be read in conjunction with the following supporting policies and procedures:-

- Bullying and Harassment at Work Toolkit
- Equalities Policy
- Employee Code of Conduct/Disciplinary Procedure
- Managing Work Performance Policy
- Violence to Employees at Work Policy
- Whistleblowing Policy
- Managing Stress in the Workplace
- ICT Acceptable Use Policy
- [HSE website - bullying and harassment](#)

Equalities and impact assessment

12.1 For details of the completed [*Record of Equality and Rights Impact Assessment \(ERIA\)*](#) form, contact the named author of the policy.

Strategic environmental assessment

13.1 It has been assessed that this policy will have no environmental impact.

Risk assessment

14.1 The revised policy is fully compliant with legislative requirements and good employment practice.

Local Agreement

15.1 This policy is a local collective agreement between the Council and the recognised trade unions. Every effort will be made by both parties to make sure that this policy is reviewed regularly and amended by agreement, if required to meet future needs. In the event of a failure to reach agreement both parties reserve the right to end this local agreement by giving four months notice in writing. In such circumstances the terms of the local agreement will no longer apply to existing and future employees.

Review

16.1 This policy will be added to the Council's list of policies and will be reviewed annually to reflect organisational changes, best practice, operational experience and legislative updates. It has been agreed to review this policy after 6 months and thereafter annually.