



POLICY AND PROCEDURE ON

UNFAIR DISCRIMINATION

HARASSMENT

AND BULLYING

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POLICY AND PROCEDURE ON UNFAIR DISCRIMINATION, HARASSMENT AND BULLYING

1. Introduction

Luton Borough Council as an employer is committed to equality of opportunity and seeks to offer a working environment in which every individual can seek, obtain and continue employment without unfair discrimination, harassment, bullying, or victimisation. The Council will not tolerate less favourable treatment on the grounds of gender; race; religion; nationality; ethnicity; sexual orientation; gender reassignment; age; or, any other reason, which cannot be shown to be justified as set out in our Equalities Policy and Strategy.

Luton Borough Council expects its employees to be treated with dignity and respect at all times. Unfair discrimination, harassment, bullying and victimisation are unlawful, insulting, demeaning and painful to the recipient and can often cause considerable trauma, and for these reasons Luton Borough Council is opposed to it. Luton Borough Council will not permit, tolerate or condone its occurrence and should it occur its employees have a right to complain, for their complaint(s) to be taken seriously and have action taken which is proportionate to the misdemeanour.

However, wherever possible any lack of sensitivity, offence or upset should be tackled immediately or as near as possible to the "incident." It has to be recognised that inadvertent offence can occur in the work environment. In some instances this can be resolved by quietly explaining to the employee concerned that offence and upset has occurred, why they are upset and requesting that it should not happen again.

Corporate Directors are fully committed to the Council's Policy and have responsibility for its implementation. They will ensure that matters involving allegations of unfair discrimination, harassment, bullying and victimisation are treated seriously and are handled objectively, swiftly, sympathetically and proportionately.

Luton Borough Council is committed to give appropriate priority to the resolution of complaints and the employing department will provide the appropriate resources. Where it is identified that there is a difficulty in providing the appropriate resources, the departmental Corporate Director will be notified in order to ensure that this matter is addressed speedily.

2. Purpose of the Policy

This Policy will inform all employees: -

i) of the kind of behaviour that is unacceptable

and

- ii) that unfair discrimination, harassment, bullying, and victimisation are considered to be and will be treated as serious disciplinary offences (i.e. gross misconduct which where proven may lead to dismissal).

And it will: -

- iii) provide employees who are the complainants of unfair discrimination, harassment, bullying and victimisation with a means of redress, and what that is likely to be;
- iv) set out what actions managers and employees are expected to take;
- v) set out the arrangements to monitor formal complaints, management actions, and any differential impact on the Council's equalities categories as set out in the equality monitoring and record keeping leaflet.

This Policy should be read in conjunction with other Council Policies such as: The Policy on Stress and the Council's Local Disciplinary Policy and Procedure, the Local Grievance Procedure and the Council's Hate Crime Policy.

Members of the Council should respect and support the ethos of this Policy. Any officer wishing to express their concern over the behaviour or attitude of any Member should refer to The Protocol for Member/Officer Relations and The Procedure for Handling Complaints Against Members. Any employees, who choose to complain about the behaviour of elected members under the procedure for handling complaints against members, will also be able to access all the support and assistance detailed within this policy, in addition to being protected from victimisation or less favourable treatment. This support will also apply to any supporting witnesses.

3. Policy aims and objectives

The overall aim of this policy is to create a working climate within Luton Borough Council where unfair discrimination, harassment, bullying, and victimisation cannot occur.

This will be achieved by: -

- a) Creating a climate where unfair discrimination, harassment and bullying behaviour will not be tolerated through creating a culture where:
 - Differences are valued and respected
 - The full talents of the workforce are utilised
 - Acts of discrimination, exclusion, unfair treatment and other negative or demeaning behaviours are prevented
 - There is a commitment to equal opportunities for all
 - Communication is open and constructive
 - Conflict is handled creatively
 - The work environment is operated in a fair and just way
 - Positive behaviour is valued

And where necessary the Council will: -

- b) Introduce and support preventative measures such as education and training
- c) Deal firmly with negative behaviours such as harassment and bullying by utilising this Policy and Procedure
- d) Provide counselling and support for “complainants” “witnesses” and “respondents”
- e) Ensure that complainants and witnesses are protected from victimisation
- f) Take appropriate disciplinary action whenever this is necessary

4. Scope of the Policy

This policy is applicable to all employees irrespective of the position they hold and will not discriminate at any level (with the exception of employees within schools on delegated budgets for whom there are alternative procedures).

Every employee is expected to treat their fellow employees with dignity and respect and permit them to work in an environment, which is safe and free from unfair discrimination, harassment, bullying and/or victimisation.

Council employees who have complaints against agency staff, contractors, consultants and other individuals, who may interact with LBC employees, should raise their concerns immediately with their line manager, who should contact the manager responsible for the engagement of the individual to ensure that the matter is resolved.

Ensuring the implementation of and adherence to this policy is the duty of all Managers, Supervisors and employees.

5. Rights and Responsibilities of Employees

Every employee has a right to freedom from unfair discrimination, harassment or bullying. Any individual who believes himself or herself to have been subject to unfair discrimination, harassment or bullying has the right to ask for it to stop and this includes the right to seek an informal resolution to the problem or to make a formal complaint should the circumstances require it.

Every employee has a responsibility to ensure that he/she does not incite, perpetrate or condone any form of unfair discrimination, harassment, bullying, and/or victimisation within his/her place of work. Any such action, which cannot be resolved on an informal basis, or is more serious, or continues following a request to stop, will be subject to a formal investigation.

Employees should also be aware that such behaviour, in certain circumstances, may also be unlawful and perpetrators may be held personally liable in the event of any legal proceedings.

Employees have the right to consult one of Luton Borough Council's "Support Workers", their Trade Union Representative, the Equal Opportunities Unit, or their departmental Human Resources unit for help and support.

6. Unacceptable Behaviour

It is the responsibility of every manager to ensure that the employees they manage are aware of the full definitions of bullying and harassment given at **APPENDIX 1** and what constitutes appropriate or inappropriate behaviour, to engender a positive work culture.

This policy and procedure seeks to create a positive work culture and therefore emphasises that unacceptable behaviour will not be tolerated.

(It should be noted that the commencement of capability, disciplinary sickness procedures is not evidence of unacceptable behaviour, bullying, harassment and /or unfair discrimination, provided they are applied in a consistent, fair manner and in accordance with the appropriate Council policy).

ACAS give the following examples of unacceptable behaviour: -

- “Spreading malicious rumours or insulting someone (particularly on the grounds of age, race, sex, disability, sexual orientation and religion or belief)
- Copying memos, e-mails that are critical about someone to others who do not need to know
- Ridiculing or demeaning someone – picking on them or setting them up to fail
- Exclusion or victimisation
- Unfair treatment
- Overbearing supervision or other misuse of power or position
- Unwelcome sexual advances – touching, standing too close, display of offensive materials
- Making threats or comments about job security without foundation
- Deliberately undermining a competent worker by overloading and constant criticism
- Preventing individuals progressing by intentionally blocking promotion or training opportunities.

It needs to be recognised that most often bullying and harassment occurs when there is an unequal balance of power between two or more individuals.

7. Intent

Consideration on whether behaviour was unacceptable is determined by the test of reasonable standards of behaviour and whether the behaviour was disadvantageous or unwelcome to the employee(s) subjected to it. Whether such behaviour was

intended or not does not excuse its occurrence but understanding the intent may be helpful in understanding the impact of the behaviour and resolving the situation.

The CIPD has identified three levels of intent: -

- Intentional – behaviour that was directed at the employee with the intention of causing physical or psychological harm
- Instrumental – negative behaviour that was a side effect of behaviour directed at achieving another goal
- Unintentional – lack of sensitivity or awareness of the negative impact of the behaviour

8. Impact

It should be noted that the most important consideration in any type of harassment is the effect of the unwanted behaviour on the recipient.

Employees being bullied or harassed sometimes appear to overreact to something that seems to be relatively trivial but this may be the “last straw” following a number of previous incidents.

9. Perception

The Council has adopted Recommendation 12 of the Stephen Lawrence Inquiry on the definition of a racist incident. The purpose of the definition is to ensure that investigations take a full account of the possibility of a racist dimension to the incident and that statistics of such incidents are collected on a uniform basis. Therefore, consideration has to be given whether it is reasonable in the circumstances for the complainant to conclude that the incident was a racist incident.

10. Role of Equalities Unit

The Council places a high priority on ensuring that every step is taken in furtherance of its commitment to equal opportunities. With this in mind, the procedures set out in this document provide for the Council's Equalities Unit (Chief Executive's department) to be involved as follows:

- i) To be available to provide a support worker role – see also paragraph 11
- ii) To provide a panel member wherever possible if the complaint seeks recourse to the Appeal stage of the Local Grievance procedure – see paragraph 23.
- iii) To provide advice and guidance to departmental Human Resources Units in monitoring the incidence of unfair discrimination, harassment and bullying (see also paragraph 31).

- iv) To review twice yearly the monitoring data and report results and report any recommendations to the Equality Inclusion and Cohesion Strategic Group (EICSG), Corporate Improvement Board (CIB) and the Council's Joint Negotiation and Consultative Committees (LJNCC/CJNCC).

11. Role of Support Workers

Luton Borough Council "Support Workers" will provide a network of informal support and guidance. Such Support Workers will be provided with appropriate training. A Support Worker is a council employee who is trained to listen and support both complainants and respondents. The Principal Human Resources Adviser for Customer & Corporate Services will manage the Support Worker network. The Council will ensure that the scheme is appropriately advertised and supported.

The function of a support worker is:

- To listen to what has happened
- To deal with, or to refer the complainant to someone who could deal with, the emotions arising as a result of the unfair discrimination, harassment and bullying i.e. a qualified counsellor
- To draw the complainants attention to the complaints procedure and discuss both the informal and the formal route
- To support the complainant in any formal or informal resolution of the complaint
- To support the respondent as appropriate.
- To record "confidentially" any complaints of harassment, and to seek advice of the scheme manager if there are concerns for whatever reason about maintaining/ breaking confidentiality. Heads of Service will give consideration to requests from a Support Worker for offices and telephone facilities for dealing with a request for help from employees. Any Head of Service who is unable to accede to such a request will report this to the Corporate Director.
- To attend refresher training as required.
- Support Workers will be protected against any victimisation, which may result from carrying out this role.

It should be remembered that Support Workers are not advocates. Any Support Worker wishing to "represent" an employee must do so in their capacity as a work colleague or if they are appointed by a trade union as a trade union representative.

12. Role of the Challenge Champions

The Challenge Champion Groups can assist by providing a safe and supportive environment if the harassment is specifically related to prejudice against particular groups, and by advising a concerned group member where they can get help and support e.g. by referring them on to a Support Worker or a Trade Union Representative.

13. Role of the Trade Union

Trade union representatives are able to offer assistance to any of their members who believe that they have been harassed, discriminated against, bullied or victimised, and if required to support them in registering a complaint. Trade union representatives are also available to offer assistance to any of their members who have been alleged to have harassed, discriminated against, bullied or victimised, and if required to represent them through the informal, formal investigation and disciplinary hearing.

Trade union representatives will be protected against any victimisation, which may result from carrying out this work.

The Council supports recognised trade unions that seek to raise awareness of these issues in the workplace by publicity campaigns.

14. Responsibilities of Managers/Supervisors

All managers and supervisors are responsible for ensuring that harassment does not occur in their work areas by: -

- a) Ensuring that they fully understand the Council's unfair discrimination, harassment and bullying policy, and any other relevant Council policy. Training will be provided to any manager who feels they require it to ensure this understanding.
- b) Ensuring that their employees are aware and understand the policy and that this policy is part of every employee's induction programme.
- c) Ensuring that their work areas are free from any form of visual harassment or potentially offensive material e.g. photographs, calendars, posters, screensavers etc.
- d) Ensuring that they are alert to physical, visual (including via e-mail) and verbal unfair discrimination, harassment and bullying in their work area and that they deal with it immediately whether or not it is formally brought to their attention.
- e) Ensuring that they are supportive of employees who state that they have been unfairly discriminated against, harassed or bullied and that they deal with this immediately in accordance with this Procedure.
- f) Ensuring that they maintain confidentiality by not mentioning or discussing any case(s) unnecessarily with any person not involved in its investigation and by preventing or stopping any gossip relating to this in the workplace.

- g) Ensuring that they know when to extend the boundaries of confidentiality appropriately and reasonably to protect individuals, should the need arise.
- h) Ensuring, following the unfair discrimination, harassment and bullying complaint and any subsequent investigation, that no further unfair discrimination, harassment, bullying or victimisation takes place.
- i) Not trying to excuse unfair discrimination, harassment or bullying, or ignoring a situation when they know of it. To ignore a situation of harassment and bullying may result in disciplinary action being initiated against the manager.
- j) Acting as an appropriate and positive role model at all times and ensuring that they manage employees consistently, (and in accordance with Council policies), fairly and where necessary firmly.

15. Training

It is recognised that training and development activities will play a critical role in supporting this policy. Training and development needs will be identified at an organisational and individual level. All employees must be aware of their rights and responsibilities under the policy. Relevant training will be provided for managers and supervisors to enable them to carry out their roles under the policy effectively. Training will also be provided for support workers.

Appropriate training will be provided for all Managers required to undertake investigations or hear cases (including grievance appeals) under this policy, and this training will be mandatory, (this will include all managers from 1st to 4th tier level). This additional training will be separate to the normal disciplinary Designated/ Investigation training, as LBC recognises that these cases have emotional and psychological issues that mean these investigations are particularly complex and challenging to undertake.

It is important that all officers either designated to investigate or hear complaints under this procedure attend a refresher-training course every two years. It is the officer's responsibility to ensure that they are booked on to and receive refresher training in accordance with this policy and procedure.

Departments needing assistance in choosing officers to receive the additional training required prior to dealing with complaints under this procedure should seek assistance from the Head of Human Resources.

For information on the training required prior to dealing with complaints under this procedure, employees should contact their Departmental Human Resources Unit.

Managers must ensure that all employees understand what their rights and responsibilities are in relation to unfair discrimination, harassment, bullying and victimisation by including the subject in the induction process. This will be re-

enforced by relevant training, discussions at section meetings, briefing sessions and any other appropriate media.

16. Complaints Procedure

Luton Borough Council will take all complaints of unfair discrimination, harassment, bullying and victimisation very seriously.

Luton Borough Council will regard the submission of a formal complaint under this policy and procedure as a stage 1 grievance in accordance with The Statutory Disputes Procedure (or ACAS guidelines, if the Procedure no longer operates).

All complaints will be handled as quickly and as confidentially as possible. This procedure therefore seeks to ensure that employees obtain a fair and impartial resolution.

Consideration will be given to temporary redeployment or relocation of either the complainant or the respondent whilst a complaint is being investigated or resolved. When this occurs it will be without prejudice and/or detriment.

Employees are encouraged to raise complaints at the earliest opportunity, as this is most likely to achieve an early resolution. Wherever possible, complaints will be informally resolved through counselling, mediation, training and any other appropriate and reasonable solution. The Council will decide when a full formal investigation is required following discussions with the complainant, and this is only likely to occur when all else has failed, if there is a statutory obligation to do so or where it is considered that there is a duty of care.

If a formal investigation reveals that the complaint is valid, prompt attention and disciplinary action designed to stop the unfair discrimination, harassment, bullying and victimisation, and prevent its recurrence will be taken. In such circumstances, if relocation proves necessary, every effort will be made to relocate the respondent not the complainant. LBC recognises that to move, or make other detrimental changes to the complainant may be an act of victimisation and all efforts will be made to avoid this.

17. Duty of the Employer

The Health and Safety at Work etc. Act (1974) states that, "It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees."

It is, therefore, the duty of the employer to consider carefully any information relating to unfair discrimination, harassment, bullying and victimisation, that comes to its attention, from whatever source, and to act on it as the Employer considers appropriate whether the source of the information wishes that to occur or not.

18. Informal Procedures

In many cases of unfair discrimination, harassment or bullying at work, it may be sufficient to ensure that the unwanted attention or action stops. An employee who feels that they are the target of unfair discrimination, bullying or harassment should in the first instance use an informal approach to prevent matters escalating.

Any individual who believes himself or herself to have been unfairly discriminated against, harassed, bullied and/ or victimised should as a first step state that the behaviour is offensive, unacceptable, unwanted and ask the respondent to stop. If any individual finds that they are unable to take such action personally they can: -

- i) Consult one of Luton Borough Council's "Support Workers" who could provide advice and assistance. Support Workers will outline a variety of options, explain the procedures but will not themselves take action unless they are requested to do so by the complainant. Their role is solely that of support to the complainant (not a referee).
- ii) Ask a work colleague, Manager/Supervisor or Trade Union Representative to speak to the respondent or provide other help and assistance. The trade unions have significant expertise in helping with the accurate articulation of bullying complaints at the early stage.
- iii) Take informal action. They should raise the matter informally with the person who is creating the problem, stating which aspect of their behaviour is offensive and unacceptable, the effect it is having on them, and making it clear that they want it to cease. This can be done either verbally and/or by means of a letter, a copy of which should be retained. The employee may seek the support of a work colleague; trade union representative or support worker to accompany them at this discussion.

The aim of this meeting, or action, is to ascertain whether the respondent agrees that the behaviour occurred, irrespective of intention, and to obtain an agreement to cease the behaviour. The confidentiality of all parties must be maintained at all times. If agreement cannot be reached, other options should be considered in conjunction with the departmental Human Resources department.

Full consideration should be given to achieving an informal resolution wherever possible. Some of the options (which may be initiated on the advice of the Human Resources Unit dependent on the situation) that could be used are as follows: -

- Counselling for the complainant and any other individuals involved in the incident
- Discussing behaviour and requirements in a team meeting (without breaching confidentiality)
- Counselling interviews with the respondent to inform him/her of the effect of his/her behaviour and setting out expectations for the future. It may be appropriate to set targets with appropriate mechanisms to monitor progress and identify training needs.
- Skills training

- Interpersonal skills training (communication skills, assertiveness)
- Mediation
- Arbitration
- Mentoring for the complainant or the respondent

This is not an exhaustive list, and other supportive interventions may be agreed upon, dependent on the specific case. A person involved in a case may be offered such opportunities and will be expected to cooperate fully in such measures.

Informal action should be taken as soon as the unfair discrimination, harassment, bullying and/or victimisation becomes apparent. Any informal action taken by the individual to prevent any further unfair discrimination, harassment, bullying and/or victimisation should be recorded by him or her with a note of the date and what was said by all those involved, in case this is needed in evidence should the harassment continue or re-occur.

19. Informal Action by Managers

As good management practice, Luton Borough Council seeks to resolve employment issues, where possible, on an informal basis. As part of this philosophy the day-to-day supervision of employees is regarded as being outside the scope of formal procedures. An occasion may arise where a manager notices unacceptable behaviour, and if this is a minor breach of conduct the line manager should deal with this promptly and informally without necessarily needing to use formal procedures. These breaches should be dealt with using supervision, coaching and counselling. (The use of the term counselling, in this context, does not refer to any interchange between an employee but rather raising matters of concern over standards of conduct). A line manager will only instigate the formal procedure if matters do not improve, if the matter is more serious, or they receive a formal complaint from an employee.

20. Formal Stage

The formal procedure will apply where the Council, following discussions with the complainant, decides the situation warrants a full investigation. This will usually be when: -

- a. The complainant is unwilling to consider an informal resolution.
- b. The informal procedure has proved ineffective and the complainant wishes to make a formal complaint
- c. Management is initiating formal action. This may occur even when some parties are suggesting further informal action, or where a concern remains even if the complainant wishes to withdraw their complaint or not participate in the formal process.

d. Where the allegations are so serious that gross misconduct is indicated.

(i) **The Formal Investigation Stage**

Managers need to be proactive in monitoring a situation that they are trying to resolve informally. In particular they need to be aware of the potential need to discuss the matter further with a view to seeking a formal investigation if the situation shows no sign of improvement or where it is actually deteriorating, because the organisation has a duty of care both to the complainant and others. Should this situation occur, the Council would expect that the employee concerned cooperate fully with any investigation unless there are extenuating circumstances that would prohibit that happening. The Council recognises that it may be difficult to investigate fully and have a limited chance of success without the full assistance of the complainant.

If the employee considers the incident to be serious or if the behaviour/conduct continues after a request to stop, the employee should then report the matter to their line manager or their departmental Human Resources Unit or the Chief Executive's Equalities Unit, using the Form at Appendix 2. Their "Support Worker", trade union representative or work colleague, can support the employee whilst they do this.

If the employee's line manager is the "respondent", the employee should report the matter to the next manager in the organisation structure i.e. their line manager's, manager. Alternatively, the employee can discuss the situation with a TU representative, or support worker and lodge their formal complaint direct to Human Resources.

Prior to the commencement of any investigation the investigating officers will ascertain: -

- Whether the complainant has tried to resolve the matter informally. If an informal resolution has not been attempted full consideration should be given to achieving this.

Or

- Whether they are requesting a full investigation into the matter because the harassment is too serious to be resolved informally or attempts at informal resolution have failed.

Should the Council determine that a full investigation is required the "complainant", the "respondent" and any witnesses will be interviewed in accordance with this policy and procedure.

Any formal investigation will require the following:

- A Human Resources Adviser (or above) from an independent departmental Human Resources Unit will assist in undertaking any investigation, and the

management representative will be independent from the division employing the complainant and the respondent.

- Where possible, the investigation panel in all discrimination cases will either be representative or will have a trained and competent manager with a good understanding of equality and diversity issues, and will treat the complaint/harassment with the utmost sensitivity.
- Both the complainant and the respondent will be entitled to be represented at any interviews by a trade union representative or other council employee and/or supported by a Council trained Support Worker.
- The only conduct of the complainant, which will be relevant to an Investigation Panel, will relate to the relationship between the complainant and the respondent. Any inquiry into the complainant's relationship with other workers or his/her private life will not be permitted unless it appears to be directly relevant to the complaint.
- Any investigatory interviews, disciplinary hearing and any subsequent appeal hearings will be conducted in a sympathetic and respectful manner aimed at causing the least amount of distress to any party.
- All interviewees within the investigation will be provided with a typed copy of the notes from their interview to check for accuracy and given the opportunity to make amendments. This is to ensure that investigators have accurately heard and recorded the evidence given by interviewees.
- The Investigating Officer(s) will provide the complainant with written confirmation of the complaint filed and will ensure that they are fully aware of all matters/incidences raised by the employee by confirming their understanding in writing to the complainant after the initial interview has occurred. This is to prevent any misunderstandings or omissions. Once a complaint is lodged, the Council will usually complete the investigation. This is to ensure that the Council fulfils its responsibilities as an employer and takes all steps possible to prevent and eradicate unfair discrimination, harassment and bullying wherever it occurs.
- In cases where the allegations are so serious that gross misconduct is indicated, the rules on suspension as outlined in the Local Disciplinary Policy and Procedure will apply immediately.
- The investigating officers will ensure that the respondent is fully aware of the contents of any complaint made against them before being invited to any interview and will be reminded about the possible implications of self-incrimination.
- The investigation will become subject to the requirements of the Local Disciplinary Policy and Procedure when one of the following occurs:

1. The respondent is suspended from work in accordance with paragraph 28 of this policy
2. The respondent is invited to an investigatory interview

and/or

3. There is evidence of other alleged disciplinary breaches

ii) **Outcome Meeting**

The complainant and respondent will be invited to separate meetings and informed verbally of the outcome of the investigation and will be informed broadly of any further measures, which will be taken. The outcome will subsequently be confirmed in writing and, where further action in accordance with the disciplinary procedure is not to be taken, will also provide a full response on all matters raised by the complainant.

Strict confidentiality will be maintained throughout the investigation stages and all parties including witnesses will be advised of the need for this.

In certain difficult cases it may be necessary to have a debrief for witnesses, whilst being mindful of the principles of confidentiality.

21. Disciplinary Panel

If the investigation panel concludes that there is a case to answer the following options will be considered: -

- a) Depending on the seriousness of the complaint, an informal resolution of the problem to the satisfaction of all parties (i.e. the complainant, the respondent and management). In reaching such a decision the investigating officers will need to be clear why if earlier attempts to reach an informal resolution failed, that they will be successful at this stage.

Or

- b) Disciplinary action which will result in arranging a Disciplinary Hearing under the Council's Local Disciplinary Policy and Procedure.

In exceptional cases Management may decide to continue with a disciplinary hearing even if the original complainant decides that they do not wish to appear as a witness. This would only apply in exceptional circumstances e.g. if the original complainant were no longer an employee of the Council.

If a complainant is unable to attend a disciplinary/appeal hearing for health reasons relating to the incident(s) complained of, this should be supported by medical certification and in such circumstances the Panel should recognise the difficulties presented by the complainant and should consider the evidence presented appropriately.

The complainant will have the right to be supported whilst giving his/her evidence by a trade union representative, their Support Worker, or a Council employee of their choice. The respondent will have the right to be represented by a trade union representative, or Council employee of their choice, and be supported by a Council Support Worker.

The appeal panel will also seek to be representative.

22. Malicious and Frivolous Complaints

The remit of any Investigatory team will include considering whether the complaint could be vexatious, malicious and/or frivolous; and if evidence to this effect comes to light during the course of an investigation, appropriate action (including potentially disciplinary action) will be taken.

However, if evidence of this does not come to light until after the disciplinary proceedings have commenced, such evidence should be raised and considered as part of those proceedings.

23. Appeal Mechanism

If the investigating officers conclude that the complaint will not proceed to a disciplinary hearing panel, and if a complainant is unhappy with the manner and process used in the investigation of their complaint, then the Complainant will have the right to register a grievance in accordance with the Appeal Stage of the Local Grievance Procedure, (stage 3) by completing Form, Notification of Appeal, Appendix 4.

In these circumstances, the Head of Equalities (or her representative) will be one of the panel members on the grievance appeal panel.

The appeal panel will also seek to be representative.

The complainant will write to the Head of Human Resources within five working days of receiving the outcome letter from the investigating team. Where possible the appeal will be convened within 15 working days of the date of receipt of the appeal.

Grievance Appeal Panels will expect to be advised of the process undertaken, details of which people were interviewed, and how the evidence gathered was considered and assessed in relation to the matters complained about. This information should where possible be shown in the format set out in Appendix 6.

The management paperwork wherever possible should include copies of the following: -

- Time line of events

- Details of any informal letter written by the employee, or details of any action taken, which asked the respondent to stop any behaviour, which the employee found to be offensive, unacceptable and unwanted.
- The HRF1 form (Appendix 1) and Evidence Matrix chart set out in Appendix 6
- The complainant's interview notes (all other interview notes are excluded from this process unless the interviewee's prior consent is obtained for disclosure)
- A list of those interviewed
- Details of who was not interviewed and why. These details should contain the names of witnesses mentioned by the complainant and names mentioned by the witnesses.
- Written evidence that was used to help the investigators form a decision, such as time sheets, divisional procedures, training records, etc.
- Outcome letter
- Any other relevant information

Grievance Appeal Panels will expect to be advised by the complainant verbally of the full details of their complaint and to be provided with any written documentation (including signed and dated witness statements) in support of their complaint. One copy of any such documentation should be handed to the Chair of the Appeal Panel no later than 8 working days before the commencement of the appeal hearing.

The Grievance Appeal Panel will expect the investigating officers to advise on:

- The complaint(s) lodged
- The process undertaken
- A chronology of the process
- The names of those interviewed
- The names of any potential witnesses not interviewed by the investigating officers and the reason they were not interviewed
- The evidence supporting or otherwise such complaint(s)
- The conclusion reached on such complaint(s)
- Any other information relevant to the complaint

Any written documentation that the investigating officers will refer to at the appeal hearing should be handed to the Chair of the Appeal Panel no later than 8 working days before the commencement of the appeal hearing.

The appellant will have the right to be represented at the grievance appeal hearing by a trade union representative or work colleague and can be accompanied by a LBC Support Worker.

The purpose of the appeal is not to examine original witness statements or to call (as witnesses) employees interviewed by the investigating officers. Its purpose is to consider whether the complaint was investigated fully and fairly and a logical and reasonable decision reached.

The grievance appeal panel is not authorised to impose disciplinary sanctions and can only reach one of the following overall conclusions: -

- a) Reject the complainant's appeal
- b) Uphold the complainant's appeal and instruct the Head of Human Resources to have the complaint re-investigated by a new investigatory team.
- c) Consider that the matter was not fully investigated and/or that the conclusions reached were illogical and/or flawed and instruct the Head of Human Resources to ensure that the investigation resumes and, when the additional work is completed, paragraph 20, (ii) is complied with again

This right of appeal is in accordance with the Statutory Disputes Procedure (or its equivalent after April 2009).

24. Timescale

All complaints should be investigated as quickly as possible. The aim should be to complete the initial investigation within 3 months of the complaint being received. If the initial investigation cannot be completed within this timescale, the investigating officers should write to the complainant and the alleged perpetrator explaining the reasons.

25. Redeployment

It will probably be desirable and/or necessary to separate a complainant and respondent as part of any resolution or to allow an investigation of a complaint to take place. Unless the complainant specifically requests otherwise, (in cases where allegations are substantiated) every effort will be made to remove the respondent first. Where it is felt that the circumstances are such that it would be preferable for the complainant to be moved, the complainant's wishes in the matter should be sought first.

Redeployment may also be considered in cases where unfair discrimination, harassment or bullying is not proven.

26. Counselling

Counselling will be offered to employees who feel they have been unfairly discriminated against, harassed, victimised or bullied. An employee who is the subject of a complaint of unfair discrimination, harassment, victimisation or bullying will also be offered counselling.

Due to the particular nature of these complaints, it is recognised that a respondent or an employee who has been unfairly discriminated against, harassed or bullied, may wish to discuss the matter or receive counselling from a member of a group from a similar ethnic, gender, sexual orientation or disability background as him or herself. Whilst every effort will be made to facilitate this, this may not be possible in every case.

Employees can choose to use the counselling service at any time in accordance with the Council's Counselling Policy.

27. Duty of the Employer to its Customers and Employees.

There are rare occasions when customers complain that council employees have bullied, harassed or discriminated against them. When these situations occur, the council's corporate Hate Crime Policy and Procedure should be used to investigate and monitor the outcomes of the investigation.

The Hate Crime Policy is intended for everyone (complainant or witness) who wishes to report incidents, which occurred on council premises or during the delivery of council services, as well as any incident within the community which a member of the public wishes to report.

28. Suspension of the Respondent

Unfair discrimination, harassment and bullying are considered as gross misconduct in the Council Local Disciplinary Policy and Procedures. Suspension will be as provided for in the Local Disciplinary Policy and Procedure.

29. Confidentiality

The confidential nature of any complaint and/or investigation will be strictly preserved and any employee involved in the investigation/disciplinary will be subject to disciplinary action if this confidentiality is breached.

Employees should note that support workers might have to breach an employee's confidentiality if they consider that the matter is either sufficiently serious or poses an unacceptable risk. In the first instance, the support worker would seek advice from the manager of the Support Worker scheme as to whether confidentiality can be maintained or whether the matter needs to be reported to the departmental Human Resources Manager for further action.

30. Medical Confidentiality

Members of the medical profession are bound by Codes of Professional Conduct to maintain confidentiality except in the following circumstances: -

- Where they consider the individual to be a Health and Safety risk to themselves
- Where the individual is considered to be a Health and Safety risk to others
- Or
- As ordered by a Court of Law.

Therefore, an Occupational Health Adviser cannot legally divulge details of a medical nature without explicit consent. If there are exceptional circumstances which require disclosure, the Occupational Health Adviser will discuss this with the individual concerned first, e.g. where allegations are made that a third party has contravened Council Policy or policies.

31. Follow-up and Monitoring

The Chief Executive's Equalities Unit will collate information from all departments pertaining to all reports of harassment and bullying and prepare confidential and anonymous reports for relevant Council Committees. This is a requirement of the Equality Duties.

In addition, the Council is required to provide annual reports to the Audit Commission on its performance against two specific performance indicators on racist incidents as follows: -

- The number of racial incidents recorded by the Authority per 100,000 of population (BVPI-174) and
- The percentage of racial incidents that resulted in further action (BVPI -175)

32. Policy Review

The contents of this Policy will be kept under review.

33. Further Information and Guidance

In the event that further guidance and/or advice are necessary surrounding the contents of this Policy/Procedure statement, this advice can be gained from the departmental Human Resources Unit.

APPENDIX 1 – Definitions & Examples

Definitions and Examples

It is the responsibility of every manager to ensure that the employees they manage are aware of the following full definitions given and what constitutes appropriate or inappropriate behaviour, to engender a positive work culture.

The following examples are not exhaustive.

i) Harassment

ACAS defines harassment “in general terms” as “unwanted conduct, affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. The key is that the actions or comments are viewed as demeaning and unacceptable to the recipient.”

A wide range of behaviour can be identified as harassment and can involve any visual, physical or verbal conduct:

- If it is unsolicited and unwelcome
- When submission to such conduct is implicitly or explicitly a term or condition of an individual’s appointment or continued employment;
- When submission to such conduct is implicitly or explicitly a term or condition for decisions which would affect promotion, salary or any other job condition;
- When such behaviour creates an intimidating, hostile, or offensive work environment for one or more employees

ii) Victimisation

Victimisation occurs when a person treats another less favourably than other persons would be treated because that person has

- Brought proceedings under a relevant Act or accessed any appropriate Council Policy
- Given evidence or information in connection with such proceedings
- Done anything else under the Act/Policy :or
- Alleged that a person has contravened the above

Victimisation also occurs where the discriminator treats a person less favourably because he/she believes or suspects that the individual has done or intends to do any of the above things.

iii) Unfair Discrimination

The essence of unfair discrimination is to treat some people differently because of prejudice and stereotypical views. It is the failure to distinguish between people as individuals and to react “to a whole group on the basis of generally assumed

characteristics of that group, without troubling to treat each individual on his or her merits according to the criteria which are truly relevant to the situation in hand” (Brown and Whitmore 1993).

This unfair discrimination can be on the basis of gender, race, ethnic origin, disability, sexual orientation, religion, belief, transsexualism, gender reassignment, age, HIV status, size or stature, lifestyle, trade union membership/office or any combination thereof.

The potential for unfair discrimination is wide ranging and can include: -

- Recruitment procedures
- Training and development
- Promotion
- Employment issues
- Working environment
- Allocation of work
- Pay and benefits
- Access to facilities
- Receipt of unwanted/offensive communication including E Mails
- Circulation of offensive/unwanted material, (including Internet material, whether downloaded in the office or at home - this would also include inappropriate access to white supremacy web sites.)

iv) **Sexual Harassment**

Sexual harassment is “any unwanted verbal or physical advance, of a sexual nature, a sexually explicit derogatory statement or sexually discriminatory remark made by someone in a workplace context which is offensive to the employee involved, which causes the employee to feel threatened, humiliated, patronised or harassed or which interferes with the employee’s job performance, undermines job security or creates a threatening or intimidating working environment”.

Sexual harassment can be suffered and perpetrated by members of either sex and in some instances both parties may be of the same sex.

Examples of such conduct are as follows:

- Abusive language and sexist/ homophobic jokes.
- Physical conduct such as unnecessary touching, patting or pinching or brushing against another employee’s body, horseplay, attempted or actual kissing, hand-holding or cuddling, assault including sexual assault and rape and coercing sexual intercourse;
- Verbal conduct such as unwelcome sexual advances, propositions or pressure for sexual activity, continued suggestions for social activity outside the workplace, offensive flirtations, suggestive remarks, innuendoes or lewd comments, intrusive questions about private life after it has been made clear that such suggestions are unwelcome;

- Non-verbal conduct such as derogatory or degrading abuse or insults which are gender related and/or relating to sexual orientation and offensive comments about appearance or dress;
- Unfair allocation of work and responsibilities
- Visual conduct such as displaying or circulating offensive literature, material or items (e.g. photographs, calendars and posters);
- Unfair treatment on gender reassignment grounds.

v) **Racial Harassment**

Racial harassment includes any unwanted verbal or physical abuse and/or behaviour (which is racially motivated) which is offensive to the employee involved, which causes the employee to feel threatened, humiliated, patronised or harassed or which interferes with the employee's job performance, undermines job security or creates a threatening or intimidating working environment".

Racial harassment can be suffered and perpetrated by members of any race or ethnic group. A racial group is defined "by reference to colour, race, nationality" (including citizenship) or "ethnic or national origins".

- Abusive language and racist "jokes";
- Racial name-calling;
- Display or circulation of racially offensive written or visual material, including graffiti;
- Offensive stereotypes relating to colour, culture, race and/or languages.
- Physical threats, assault and insulting behaviour or gestures;
- Open hostility to black workers, and/or workers from other racial/ethnic minority groups. This includes organised hostility in the workplace;
- Unfair allocation of work and responsibilities;
- Exclusion from normal workplace conversation or social events, i.e. being "frozen out" or segregated.

Racial harassment can be suffered and perpetrated by members of any race or ethnic group. A racial group is defined "by reference to colour, race, nationality" (including citizenship) or "ethnic or national origins".

vi) **Disability Harassment**

Disability harassment includes any unwanted verbal or physical abuse and/or behaviour (which is disability related), which is offensive to the employee involved, which causes the employee to feel threatened, humiliated, patronised or harassed or which interferes with the employee's job performance, undermines job security or which causes a threatening or intimidating working environment.

People with disabilities can also perpetrate disability harassment.

Examples of harassing behaviour include: -

- Abusive language and disability related "jokes";

- Disability related name calling;
- Display or circulation of written or visual material including graffiti that is offensive to disabled people;
- Inappropriate use or circulation of medical/personal information;
- Conduct which is patronising or deals with an individual's disability in an inappropriate context;
- Unfair allocation of work and responsibilities;
- Exclusion from normal workplace conversation or social events, i.e. being frozen out or segregated;
- Offensive stereotypes relating to disabled people;
- Physical threats, assaults and insulting behaviour to individuals;
- Open hostility to disabled workers - this includes organised hostility in the workplace.
- Withdrawing or changing an agreed reasonable adjustment

vii) **Lesbian, Gay, Bisexual and Transgendered Harassment**

Lesbian, gay, bisexual and Transgender harassment includes any unwanted verbal or physical abuse/advance of a sexual nature, sexually explicit derogatory statements or reference made to Sexual orientation and/or behaviour which is offensive to the employee involved, which causes the employee to feel threatened, humiliated, patronised or harassed or which interferes with the employee's job performance, undermines job security or causes a threatening or intimidating work environment.

Lesbian, Gay, Bisexual and Transgender harassment can also be suffered and perpetrated by people of the same sexual orientation, or those that personally identify with that group label.

Examples of such conduct are as follows: -

- Homophobic abusive language and offensive jokes.
- Offensive name-calling.
- Display or circulation of written or visual material (including graffiti), that is offensive to lesbian, gay, bisexual and transgender employees.
- Offensive stereotypes relating to lesbian, gay, bisexual and transgendered people
- Physical threats/assault and insulting behaviour and gestures.
- Open hostility to lesbian, gay, bisexual and transgendered employees. This includes organised hostility in the workplace.
- Unfair allocation of work and responsibilities.
- Exclusion from normal workplace conversation or social events i.e. being frozen out or segregated.
- Non-verbal conduct such as derogatory or degrading abuse or insults, which are related to sexual orientation and offensive comments about appearance or dress.
- Physical conduct such as unnecessary touching, patting, pinching or brushing against another employee's body, horseplay, attempted or actual kissing, hand-holding or cuddling, assault including sexual assault and rape, and coercing sexual intercourse.

- Verbal conduct such as unwelcome sexual advances, propositions or pressure for sexual activity, offensive flirtations, suggestive remarks, innuendoes or lewd comments, intrusive comments about private life after it has been made clear that such suggestions are unwelcome.
- Unfair treatment on Gender reassignment grounds.

viii) **Personal Harassment**

Personal harassment could include any behaviour, which makes direct or indirect reference to religion, faith, belief, culture or lifestyle, which causes discomfort or offence, any repeated comments, or jokes, which refer to personal traits, such as appearance, size or age, any invasion of privacy or practical jokes causing physical or psychological distress, messages to or about a person (including electronic mail) that are offensive, insulting or could cause discomfort.

It is not possible to give examples of all kinds of behaviour but the following two areas are particularly but not exclusively highlighted

ix) **Age Harassment**

- Age related comments, jokes, sarcasm or teasing
- Name calling
- Inappropriate allocation of tasks related to age
- Display or circulation of written or visual materials that negatively portrays individuals because of their age
- Stereotyping of individuals based on age, experience or lack of experience

x) **Religion or Belief Harassment**

- Religion or belief related comments, jokes, sarcasm or teasing
- Name calling
- Inappropriate allocation of tasks related to religion or belief
- Display or circulation of written or visual materials that demean or negatively portray an individual's religion or beliefs
- Stereotyping of individuals based on their religion or belief

xi) **Bullying**

"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." (ACAS)

"Bullying is a form of organisational violence and as such is a potential source of work related stress." (Health and Safety Executive)

Behaviour resulting in persistent criticism, condemnation, humiliation and feeling undermined can lead to an employee feeling fearful, lacking in confidence and losing belief in themselves and their abilities. Such behaviour is often sudden, unpredictable, irrational, aggressive, abusive, persistent, furtive and unfair.

Examples of bullying behaviour include: -

- Constant criticism and trivial fault finding;
- Being hostile to others
- Exclusion, isolation, being singled out and treated differently;
- Scapegoated, marginalised and belittled;
- Shouted at, threatened, intimidated, persecuted, humiliated publicly;
- Being set unrealistic goals and deadlines;
- Putting unreasonable demands on employees
- Engaging in excessive monitoring of work compared to others
- Taking credit for work stolen (from those bullied);
- Leave being unreasonably refused;
- Training being unreasonably refused;
- Overloaded with work, responsibility removed and authority removed.
- Withholding information that affects other people's jobs
- Humiliating or ridiculing others about their work
- Ordering others to work below their level of competence for no reason
- Spreading rumours or gossip
- Making insulting or offensive comments about others
- Pointing your finger, invading personal space, shoving, blocking or barring the way
- Suggesting that others should resign
- Playing practical jokes on people not liked
- Making false allegations
- Removing the rights of others
- Using malicious and insulting language

xii) **E-mail and Internet Harassment**

Managers and Employees should refer to both of the Council's policies relating to acceptable E-Mail and Internet use.

At all times E-mails should conform to the principles of these Policies and the Council's Equal Opportunities Policy.

Circulation and/or distribution of offensive material downloaded from the Internet are prohibited in the workplace, and at no time should "suspect" web sites be accessed at work.

APPENDIX 2 – Initial Reporting Form

FORM HRF1

**LUTON BOROUGH COUNCIL
HARASSMENT, VICTIMISATION, BULLYING AND/OR UNFAIR DISCRIMINATION**

INITIAL REPORTING FORM - STRICTLY CONFIDENTIAL.

This form is to be completed by an employee who wishes to submit a complaint of harassment, victimisation or bullying. It should be completed and returned to the Departmental Human Resources Section within 7 days of issue.

Name of employee:

Post:

Department:

Tel No. Or Ext.:

Details of incident: (please describe the incident/s giving as much information as possible, including details of any witnesses)

(Please continue on a separate sheet if necessary)

Have you considered an informal resolution to this problem Yes/No
If "yes" please give further details

**Does the Employee Consider this to constitute a racial incident?
(BVPI 174 & 175) Yes / No**

I allow this information to be used for monitoring purposes based on the Personal Data Verification Form completed annually.

Yes/No (please delete as appropriate)

Signature: _____ **Date:** _____

APPENDIX 3 – Manager’s Report Form

**LUTON BOROUGH COUNCIL
HARASSMENT, VICTIMISATION, BULLYING AND/OR UNFAIR DISCRIMINATION**

MANAGERS REPORT FORM - STRICTLY CONFIDENTIAL.

This form is to be used by the Investigating Officer to record findings of their investigation and subsequent decision

Name of Complainant:

Findings:

Did you find that this complaint constituted a racial incident? Yes / No

What action do you propose?

Signatures of Investigating Officers:

_____ **Date** _____

_____ **Date** _____

Signature of Employee:

_____ **Date** _____

APPENDIX 4 – Notification of appeal

NOTIFICATION OF APPEAL – Harassment & Bullying Procedure

To be completed by employee wishing to appeal:

Name:

Department:

Contact number:

What are the grounds of your appeal?

Please include what action has already been taken to address your complaint and why you remain aggrieved at this time. Add sheets as necessary.

What remedy are you seeking?

Signature:..... Date:.....

APPENDIX 5 – Guidelines for investigations

Guidelines for Investigations – Formal Process

The formal process is applicable when:

- The informal process has failed to reach a satisfactory conclusion
- The incident/conduct complained of is very serious
- The organisation deems it necessary

It is not applicable when:

- The employees prefer to work together to resolve the problem

Investigating Officers

Appropriate care needs to be taken when choosing investigating officers to ensure that:

- They are independent of the complaint. The management-investigating officer should be independent of the Division and the Human Resources Adviser should be independent of the department.
- They should be competent and appropriately trained both in the Council's Disciplinary Policy & procedure and the harassment and bullying training.
- They should have appropriate interpersonal skills, which would enable them to conduct the investigation carefully, sensitively, fairly, openly and impartially.

Investigating Officers need to ensure that they:

- Maintain an open and impartial position
- Ensure that everyone is aware of their rights and responsibilities (including the complainant, respondent and witnesses)
- Offer the assistance of a support worker to the complainant and the respondent
- Focus on the relevant facts and not hearsay, emotional impressions or personal opinions on the characters of individuals
- Ensure that as far as possible the interview notes are accurate and represent the views of the witness. (The witness should be given the opportunity to check the interview notes as soon as possible after the interview).
- Examine the evidence logically and impartially and come to a decision on the outcome
- Meet with the complainant and the respondent and advise them of the outcome in accordance with paragraph 20 (ii) of the policy and procedure.
- Make appropriate arrangements to ensure that the agreed outcome progresses e.g. informal resolution is completed or a disciplinary hearing is arranged etc.

APPENDIX 6 – Evidence Matrix

Unfair Discrimination, Harassment and Bullying

Evidence Matrix

Issues complained about	Evidence found	Conclusion

Unfair Discrimination, Harassment and Bullying

