

Procedure for dealing with complaints of sexual, racial and other harassment including bullying

Revised 1 December 2009 - To be used for cases wef this date

This Procedure applies to employees under NJC for Local Government Service now generally known as “Green Book” employees (other than those in delegated schools in respect of whom the Governors have statutory employment responsibilities) and to Craft Employees.

The Procedure can be used to respond to complaints from members of the public about employees in the above categories or by any employee about other employees in the above categories. Complaints made by an employee in respect of non-employees are dealt with by other Procedures. (For advice contact AskHR.)

1. Introduction and Commitment Statement

1.1 The County Council has stated in its "Guidelines Relating to the Elimination of Sex and Marriage Discrimination" and "Guidelines Relating to the Elimination of Racial Discrimination" that the "County Council recognise the problem of harassment or bullying in the workplace and emphasise that it is **UNACCEPTABLE**". The County Council's policies similarly emphasise the commitment of the Authority to take action if a person is harassed arising from a disability, age, their sexual orientation, faith or other personal characteristic.

2. Purpose and Linkage with Disciplinary Procedure

2.1 The purpose of this Procedure at employee and management level is to allow for complaints against relevant County Council employees to be properly considered, for conclusions to be reached and, where necessary, to provide for action to be taken to remedy an unsatisfactory situation/improve future working practices. If at any time prior to the investigation or during its process the Director or Head of Service is of the view that harassment or bullying is likely to have taken place, action will be taken in accordance with the appropriate Disciplinary Procedure. When the Disciplinary Procedure has been or is invoked and action is taken this Procedure will cease and appropriate action will be taken solely within the Disciplinary Procedure. Such action may also include a further investigation undertaken within the arrangements set out in the Disciplinary Procedure.

3. Scope of the procedure

3.1 This Procedure is complementary to the Equal Opportunities Complaints Procedure (used for matters of Recruitment and Selection etc) and is in recognition of the special nature of harassment or bullying complaints. It is fully accepted that there is a need for such complaints to be dealt with in as sensitive a manner as possible quickly and in confidence. It supersedes existing Grievance Procedures in relation to complaints of sexual, racial, disability related harassment and other forms of harassment or bullying.

4. Harassment and bullying at work investigation guide

4.1 In order to assist in the investigation of harassment and bullying complaints a "Harassment and Bullying at Work Investigation Guide" is available on the intranet.

5. What is harassment or bullying?

5.1 SEXUAL HARASSMENT is defined as being where a person engages in unwanted conduct that is either on the ground of the recipient's sex or verbal, non-verbal or physical conduct of a sexual nature, and which has the purpose or effect of violating the recipient's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for her/him. (Employment Equality (Sex Discrimination) Regulations, 1st October 2005).

Examples of sexual harassment may include verbal threats or abuse, sexual mockery or innuendo, lewd behaviour and conversation (not necessarily directed at the victim), unacceptable touching, sexual assault, suggestions that sexual favours are a condition of retention of jobs, promotion etc, and the display of sexually offensive material in the workplace including via electronic transmission.

5.2 RACIAL HARASSMENT is conduct of a racial nature which affects the dignity of individuals (as defined by their racial origins). It includes any comments, including 'jokes', of a racial nature (not necessarily directed at the victim) which are deliberate and unwelcome. Threats, abuse, mockery together with any form of assault are more serious manifestations of the same problem. The display of racially offensive material in the workplace or via electronic transmission is equally unacceptable.

The **Stephen Lawrence Inquiry Report** defined a racist incident as "any incident which is perceived to be racist by the victim or any other person" and that this definition should be universally adopted. In investigating a complaint of racial harassment this addition to the broader definition will also be considered to be relevant.

5.3 OTHER FORMS OF HARASSMENT may include verbal or physical abuse, display of offensive materials or other forms of negative treatment of a person at work which is offensive to the recipient and is based on the individual's disability, religion, sexual orientation, age or other personal characteristic.

5.4 BULLYING is conduct which affects the dignity of individuals and can include any form of unreasonable behaviour directed towards any employee or non employee which is general and does not relate directly to their race, sex, disability, age, sexual orientation, religion etc. Bullying itself, as defined by the County Council, is intimidation on a regular and persistent basis which serves to undermine the competence, effectiveness, confidence or integrity of the target. It involves a misuse of power, position or knowledge to criticise, humiliate or destroy a manager, subordinate or colleague (see also Note 20).

5.5 All forms of harassment or bullying can lower morale, undermine job security, interfere with job performance, cause loss of work time due to sick leave and/or creates a threatening, intimidatory or humiliating working environment.

5.6 Procedural action matters which raise issues of sex, race and other forms of harassment will be dealt with within the definitions set out at 5.1, 5.2 and 5.3 respectively. All other type of complaints falling within the ambit of this Procedure will be dealt with as bullying as defined at para 5.4.

5.7 Legal Background

Harassment can also lead to successful claims against the Authority within a range of legislation including that relating to equalities and employment protection.

6 Right to representation

Throughout this procedure (including the informal stage) both the complainant and the person(s) complained against have a right to representation at any stage, either by a fellow worker, a trade union representative or an official employed by a trade union. Both the complainant and the person complained about may also request to be accompanied by a spouse, partner or personal friend who will act only in a supporting capacity and will not be permitted to speak or act on their behalf.

INFORMAL ACTION STAGE

6.1 Wherever possible the employee(s) should make it clear that the behaviour is unwelcome and asks the harasser/or bully to stop.

6.2 If it is too difficult or embarrassing for the individual to do so, the initial approach may be made by a colleague, welfare officer, trade union representative etc, either acting alone, on behalf of the complainant, or accompanying the individual.

6.3 The matter may also be mutually and informally resolved at local management level without an investigation where this is considered to be a practical and appropriate option by the complainant. An appropriate timetable should be discussed at local management level with an informal complainant to seek to resolve the matter without unreasonable delay.

6.4 It is strongly advised that a written record of any informal actions be kept by all parties involved.

6.5 Complainants **are advised to seek to have their complaint considered at this informal stage** as this can often result in a quicker and more constructive outcome than an immediate progression to the formal stage. Any complaint documentation/notes made at this stage may be referred to in any later stages of the Procedure. Use of the informal stage will not affect the right of the complainant to subsequently take formal action.

6.6 Complainants should note that in a small number of instances it may be that the concern raised is of such a potential serious nature that it cannot be dealt with on an informal basis. These instances may include circumstances when the health and safety of other employees and/or clients/members of the public is seen to be at risk.

In such circumstances a formal investigation will be necessary. When this arises the complainant will be advised of this and of the actions proposed to be taken. Such action may include a formal investigation within the Bullying and Harassment Procedure or investigation action within the disciplinary or other appropriate and relevant procedures.

7. Mediation

It is also open to the two parties to seek mediation to resolve any form of dispute detailed in this Procedure. Mediation is defined as: 'a structured process in which a neutral third party, called a mediator, helps disputing parties to work through and resolve problems, and to create a way forward. It offers an alternative process to the other procedures within the County Council and will be facilitated by a suitably trained and/or experienced mediator'. It should be noted that mediation will not be possible without the full agreement of both the parties entering into the process in good faith. Within the mediation process representation as set out in Para 6 will not be possible. For more information about this process contact AskHR (Tel. 01772 535355).

If the complainant considers that an informal approach or mediation is not appropriate or that having taken it, the behaviour complained of persists, formal action should be taken as follows.

8. Formal Action Stage

8.1 A Complaints Form is [available to download](#). Details of the complaint, preferably using this standard form, should be sent to: Corporate HR Team, HR Service, Lancashire County Council, PO Box 78, County Hall, Preston, PR1 8XJ.

8.2 Complaint Registration. The complaint will, following initial consideration to ascertain that it falls within the definitions of the procedure, normally be registered (see Notes 20 and 22) and a copy will be sent to the Head of the Service in which the person complained about is employed.

8.3 Information provided to the Respondent. Following registration of the complaint the respondent to the complaint will be informed in writing about the nature and content of the complaint (and will normally be sent a full copy of the original complaint) and informed how the Procedure will operate. (See Note 1). The respondent will also be instructed not to contact the complainant(s) or discuss the complaint with their witnesses. The Executive Director/Service Head will also consider fully the appropriateness of suspension (with pay) of the respondent (within the arrangements set out in the Disciplinary Procedure) or separation of the parties by other means. (See Note 2 in relation to the separation of the parties where suspension is not implemented).

8.4 Investigation. A Senior Officer of the employing service will organise an investigation of the complaint. (See Notes 1-12 attached and the "Harassment and Bullying at Work Investigation Guide").

8.5 Following registration of the complaint a written report of the investigation findings will be prepared without unreasonable delay (see Note N.9), which will be

sent to the Corporate HR Team for consultation and advice purposes (see Notes 13-15 attached). It should be noted that in circumstances where absence from work is involved, the case involves a number of complainants or the case requires an extensive investigation a delay may be unavoidable, however in all circumstances the completion of the investigation in as short a time as possible is a priority.

8.6 Following this consultation, the Service concerned, having endorsed the conclusions/recommendations in the report and determined an appropriate course of action will arrange for these conclusions and proposed actions to be sent to the complainant and respondent. It may not always be possible however to send a copy of the full report to both parties, e.g. in circumstances where data protection exclusions are applicable.

8.7 **Action(s) Subsequent to an Investigation.** The report will be accompanied (or immediately followed) by a letter from the employing service informing the complainant of the further stages of action planned. These may include:

- A decision that disciplinary action will be taken where the Executive Director or Head of Service is satisfied on the basis of the investigation that harassment or bullying is likely to have taken place.
- Where such disciplinary action is proposed to be taken, action within the Complaints Procedure will cease. Where however the Executive Director/Head of Service is proposing to initiate disciplinary action at a level other than at a level of gross misconduct and before any such action is taken, this intention will be discussed at a meeting to involve relevant Service officers and the complainant. The purpose of this meeting will be to discuss the implications of this decision with the complainant and allow the complainant to make his/her views clear and for such views to be considered prior to the initiation of the proposed action by the Director.
- An offer of other actions, including meetings which are proposed to be taken within the Service to seek to satisfy the complainant which does not involve use of the disciplinary process. (see Para 6.13) and (see notes 17 - 18 attached).

8.8 **Appeals Panel.** If the Director/Head of Service considers that harassment or bullying has not taken place and if the complainant continues to be aggrieved and wishes to pursue an Appeal, the complaint will be taken to an Appeals Panel comprising a representative of the County Secretary and Solicitor (who will chair the Appeal Hearing), a representative of the HR Service and a Senior Operational Manager. No person having a direct personal involvement or interest shall be a member of the Panel. See guidance on the [Appeals Procedure](#).

8.9 **Further discussions.** Additionally in such circumstances i.e. where the Executive Director/Head of Service considers that harassment or bullying has not taken place this conclusion will be documented and discussed with the respondent to ensure that the reasons for that conclusion are fully understood. It is not always necessary in such circumstances to copy the investigation report to the respondent. Where it is the view of the Executive Director/Head of Service that the full report is not required to be sent a summary including the conclusions of the Report is to be sent as an alternative. Consideration should also be given to ways in which the future working relationship between the parties (where relevant) can be safeguarded.

The line managers of the individuals concerned (where relevant) also have a responsibility in such circumstances to take action directed towards a restoration of proper working relationships including the provision of training and support as necessary.

Notes to the procedure

NB. The notes to this procedure must be considered at each stage of its implementation

Prior to the Investigation

N.1 Information to the Respondent: The respondent will be made aware of the nature and scope of the complaint against him/her in writing.

N.2 Suspension: If a decision is taken not to suspend at the outset of the investigation then during the course of the investigation the Executive Director/Head of Service should consider and implement any necessary changes in operational and management arrangements and ensure that these are put into place to separate the parties, (including when considered necessary any witnesses) after discussion with the parties. Such separation should normally include both line management and physical location separation.

The Investigation

N.3 Gender balance: In cases of alleged sexual harassment, including complaints involving same sex harassment, the investigation will be carried out jointly by a female and male officer, at an appropriate level of seniority.

N.4 Race balance: In cases of alleged racial harassment, it is advisable to follow a similar principle i.e. an appropriately trained officer of a suitable racial group should be part of the investigation team wherever this is practicable. AskHR can also be contacted for assistance or advice in such circumstances.

N.5 Investigator training and experience: Training courses are organised to assist investigating officers and it is expected that at least one officer should have received appropriate training and/or be fully experienced in investigating complaints. Arrangements can also be made for the officer(s) to be briefed and supported by appropriate staff from the employing service.

N.6 Line management issues: Investigating team officers should be officers who are not associated with the immediate line management structure of the workforce, establishment or section in which the complainant or respondent works.

Investigators who are also the complainant's or the respondent's line manager, may find difficulty in continuing to provide the complainant or the respondent with managerial support whilst maintaining a detached impartiality when investigating the complaint and would therefore normally be excluded from an investigative role.

N.7 Investigators external to the employing service: The Executive Director may consider appointing an investigating officer from another Lancashire County Council Service where there is not an appropriate officer available in the employing service or in circumstances in which they wish to do so for other reasons.

N.8 Availability of investigators: Services must make every effort to seek to ensure that investigating officers are available to conduct the investigation within the timescales laid down within the Procedure.

N.9 Unavoidable delays: In cases of difficulty caused by leave, sickness or other exceptional circumstances where delays are unavoidable the officer responsible for responding to the complaint should ensure that the complainant(s) and the individual(s) complained about are fully informed as to the reasons for the delay and should also ensure that any concerns arising from this are considered.

Support and Confidentiality

N.10 Confidentiality: Because of the sensitive nature of harassment or bullying complaints, care must be taken to ensure that the conduct of the investigation does not cause unnecessary stress to those involved i.e. the complainant, the alleged harasser, bully, witnesses etc. Strict confidentiality must always be maintained by all those involved.

N.11 Support: For the duration of the complaint and any subsequent disciplinary action it is important that an appropriate line manager (not an investigating officer) ensures that the complainant and the respondent are kept informed about the progress of the complaint including situations where either party is absent on sick leave or where the respondent is under suspension. Victims of harassment or bullying and the respondent as well as witnesses, work colleagues etc, may experience feelings of stress and alienation and it is important that they have access to support as necessary in addition to any support given by the Trade Union.

N.12 Representation: It is emphasised that both the complainant and the respondent have a right to representation at any stage (excluding mediation) by a fellow worker, a trade union representative, an official employed by a trade union or in the case of a non-employee, a friend.

Consultation

N.13 The consultation at this stage is to ensure that all points raised by the complainant have been addressed, that any legal or policy implications arising from the complaint have been considered and to allow a general discussion about the conclusions of the investigation and its implications to take place.

The Report

N.14 Report conclusions: The investigation report should set out a response to the complaint and should also summarise the investigating team's view for the Executive Director's or Head of Service's consideration as to whether the allegations are substantiated or not, in a sufficiently clear form for he/she to decide whether to initiate disciplinary action.

N.15 Role of investigating officers: Officers who have conducted the investigation should not normally directly recommend or take further responsibility for any subsequent disciplinary action unless agreed by the Executive Director or Head of the Service concerned. Any further action on their part should normally be confined to giving evidence as required based on their report.

Standard of Proof

N.16 In considering the findings of the investigating team the Executive Director or Head of Service should bear in mind the principle that a conclusion should be reached on the **BALANCE OF PROBABILITY** as to whether harassment took place in relation to the appropriate definition of harassment or bullying. It should be noted that this is a lesser standard of proof than is required in criminal cases where corroborative evidence is required to reach a conclusion beyond a reasonable doubt.

Further Meetings

N.17 The purpose of any subsequent meetings will be for explanation, clarification and/or conciliation and to ensure that the Executive Director or Head of Service is aware of the complainant's views in respect of any future contact with the person complained about.

N.18 Time limits for investigation response: If the complainant is not satisfied at this stage a letter detailing points of disagreement/concerns should be sent to the officer who sent out the report within 15 working days. Where such a reply is not received and subject to consideration of any further explanation as to the delay being made, it will normally be assumed that the complainant is satisfied and does not wish further Procedural action to be taken.

Action to Follow a Disciplinary Outcome to a Complaint

N.19 If a finding of harassment or bullying is reached following a Disciplinary case and separation is necessary it will normally be assumed that there will be a need to relocate the person against whom the finding has been made rather than relocating the complainant. The complainant's views should also be taken into account in this process.

General

N.20 Management Interventions: The "Bullying" definition set out at 5.4 (page 2) does not relate to management interventions which are not intended to criticise, humiliate or destroy subordinates but which are rather properly designed to address an employee's performance or behaviour at work and to bring this into line with agreed policies, procedures, County Council statements of principles or standards of conduct etc. In these circumstances the County Secretary and Solicitor will exercise a right not to register (see Note 22) a complaint following an initial review of these matters, undertaken as part of the registration process and he/she concludes that such circumstances apply.

N.21 Joint Investigations: The Procedure may, by agreement of the complainants concerned, be used jointly where more than one individual has a similar complaint in respect of the same respondent for settling a common complaint.

N.22 Non-Registration: The County Secretary and Solicitor will normally not register a complaint:

(i) where details of the case are submitted more than three months after the time when the complainant might reasonably have come to a view that he/she has been harassed or bullied. (In considering such action proper account will be taken of any exceptional circumstances eg ill-health, which reasonably may have prevented a complaint being made within the three-month period. In no instance, however will a complaint be registered where it is considered that such time has elapsed so as to prevent a proper investigation)

(ii) where the matters complained of fall clearly outside the scope of the Procedure or its definitions;

(iii) where insufficient information is provided to enable a proper investigation to be conducted (in these circumstances registration may subsequently be forthcoming in the event of sufficient additional information being provided).

N.23 Non-employee support: A non-employee making a complaint will not normally have the assistance of a Trade Union Officer or other person with knowledge of County Council procedures. It is, therefore the duty of the officer dealing with the complainant, whether orally or in writing, to ensure that the complainant is aware of the existence of a formal Procedure and the options for taking the matter further if not satisfied.

N.24 Other Procedural Arrangements: It is recognised that in some situations where a complaint has been made questions may arise relating to the employment circumstances of the complainant eg. in respect of attendance policy. In such circumstances any detrimental actions should not be implemented until the complaint has been settled other than in exceptional circumstances following consultations with the County Secretary and Solicitor.

N.25 Right of amendment or alteration: The County Council reserves the right to modify, alter or amend the Procedure after consultation with the appropriate recognised Trade Union(s).

N.26 Legal Context: These arrangements will not detract from a complainant's right to take action under relevant legislation.

or to seek advice from the Equality and Human Rights Commission

or to seek advice on possible criminal proceedings including, if so desired a direct reference of the matter to the Police.

It should be noted that referral to an Employment Tribunal carries with it, by agreement of the parties involved, the possibility of conciliation via the Advisory Conciliation and Arbitration Services (ACAS).

