

LONDON UNDERGROUND LIMITED

HARASSMENT & BULLYING PROCEDURE



**LU Employee Relations
24th May 2018**

1.0 INTRODUCTION AND OBJECTIVES

- 1.1 Every employee has the right to a supportive working environment free from harassment and bullying. We all share responsibility to create safe and supportive working environments and this includes behaving in a responsible, moderate and sensitive manner in all dealings with others.
- 1.2 The overarching aim of LU is to develop work environments that support and encourage all staff to be relaxed and confident in whatever role they perform, by:
- Discouraging and removing harassment & bullying from the workplace; and
 - Raising awareness of language, behaviour and conduct that has the potential to cause offence or upset colleagues.
- 1.3 Where harassment or bullying matters arise, the objective is to:
- Encourage prompt and decisive management action;
 - Minimise the risk of entrenchment and counter claim;
 - Provide an escalation route for individuals impacted by continuing issues.

2.0 SCOPE

- 2.1 This procedure covers all LU employees and is relevant for matters that fall within the definitions of harassment and bullying.
- 2.2 If in any doubt the decision as to whether a matter is harassment or bullying will be determined by an accredited manager after discussion with the complainant. Complaints that do not fall within the agreed definitions will be dealt with under the Individual Grievance Procedure.

3.0 DEFINITIONS

- 3.1 **Harassment** is unwanted conduct affecting the dignity of employees in the workplace. It may be related to age, sex, race, disability, religion, sexuality, nationality and may be persistent or an isolated incident. The conduct may be physical, verbal or non-verbal and has the purpose or effect of violating another person's dignity or creating an offensive, intimidating, hostile, degrading or humiliating environment.
- 3.2 **Bullying** is offensive, intimidating, malicious or insulting behaviour, or an abuse or misuse of power or authority through means intended to undermine, humiliate or denigrate the recipient or which could be reasonably perceived by the recipient to be so intended.
- 3.3 If an employee makes a complaint it will be assumed at the outset this has been made in good faith and that the employee genuinely believes they have been harassed or bullied. In all cases, the perception of the recipient and whether this perception is reasonable will be taken into consideration. It is acknowledged that in some cases, the recipient's perception could be unreasonable.

4.0 HOW CAN HARASSMENT & BULLYING BE RECOGNISED?

- 4.1 Harassment and bullying do not just arise from face to face contact, they may be by written communications, electronic (e)mail, social media, phone, or automated supervision methods.
- 4.2 The source of harassment or bullying may be a single colleague, several colleagues, a manager or a contractor. Examples of what would be regarded as unacceptable behaviour may include:
- spreading malicious rumours, or insulting someone (particularly on the grounds of race, sex, disability, age, ethnicity, sexual orientation and religion or belief)
 - ridiculing or demeaning someone
 - picking on others or setting others up to fail
 - exclusion or victimisation
 - unfair treatment
 - overbearing supervision or misuse of power or position (including threats or comments about job security without foundation)
 - unwelcome sexual advances
 - touching, standing too close, display of offensive materials

5.0 PRINCIPLES

- 5.1 Complaints of harassment and bullying are to be dealt with in confidence and every effort should be made to resolve complaints informally and swiftly.
- 5.2 The individual's view as to how their complaint is to be managed is paramount. Employees may seek support and advice, in confidence, from Management, Harassment & Bullying Advisers or Trade Union representatives.
- 5.3 Serious or persistent harassment or bullying is regarded as gross misconduct and may result in summary dismissal. Documentation for such disciplinary hearings will be prepared by Accredited Managers. Disciplinary and appeal hearings considering cases involving harassment or bullying will be chaired by an independent Accredited Manager.
- 5.4 No complaint will be considered to have been made in bad faith simply because it was judged to be unfounded after investigation. Nevertheless, where a complaint is believed to have been made in bad faith, maliciously or vexatiously, the employee who made the complaint and those who provide evidence in support will be subject to investigation and thereafter possible disciplinary action.
- 5.5 In cases where informal action is appropriate or where the disciplinary outcome is not dismissal, support and/or counselling will be given to those found to have harassed or bullied others, to encourage change of behaviour and attitudes. Support and/or counselling will also be offered to those found to have been harassed or bullied.
- 5.6 Complainants have the right to seek an independent review by an Accredited Manager if initial formal management interventions are ineffective.

- 5.7 Details of cases will be recorded in respect of equality, grade, time taken and outcome in order to measure the effectiveness of the procedure and enable continuous improvement.

6.0 ROLES AND RESPONSIBILITIES

6.1 Employees should:

- a) Highlight concerns as early as possible and make all efforts to support early and local resolution of matters.
- b) Co-operate with formal and informal processes and investigations as requested.
- c) Treat colleagues with dignity and respect throughout.

6.2 Employing Managers should:

- a) Intervene promptly and decisively when issues arise, respect indicated timescales as far as is practicable, and be proactive and determined to ensure the issues are appropriately dealt with.
- b) Minimise the risk of escalation and entrenchment through positive and authoritative support for corrective behavioural change (including use of mediation).
- c) Seek advice promptly from accredited managers where appropriate to do so.
- d) Ensure those complaining of or responding to alleged harassment or bullying are aware of the support that is available to them.
- e) As far as is reasonable, respect the preferences and rights of all involved.

6.3 Accredited Managers (AM) should:

- a) Provide expertise and encourage consistency through advice and guidance to individuals and managers to effectively manage and resolve issues
- b) Undertake investigations and chair disciplinary and appeal hearings where the issue has arisen under the harassment & bullying procedure.
- c) Ensure appropriate disciplinary action is taken where serious or persistent instances of harassment or bullying are identified.
- d) Ensure appropriate action is taken in the event a complaint is found to have been made in bad faith, maliciously or for vexatious reasons.
- e) Work to indicated timescales as far as is practicable.
- f) Maintain knowledge, skills and expertise.

7.0 RAISING A COMPLAINT

- 7.1 Whatever is decided upon, the purpose of this procedure is to focus on finding a resolution for the complainant that removes the risk of continuing harassment or bullying.
- 7.2 In some instances, the alleged harassment or bullying may be such that an informal intervention is not appropriate. If in any doubt complainants are encouraged to seek advice from their Employing Manager. In the rare instance that the manager feels

that the harassment or bullying reported is of a serious nature and must be dealt with formally, but the complainant is opposed to this, the manager must override the wishes of the complainant and ensure it is formally reviewed.

8.0 INFORMAL RESOLUTION

- 8.1 Should an employee identify an issue that they believe constitutes less serious harassment or bullying, they are encouraged to raise the matter in the first instance directly with the other party or parties, to resolve the situation between them if at all possible. In so doing, the complainant and respondent may wish to seek advice and support from a harassment & bullying adviser, a TU representative, workplace colleague, or a manager.
- 8.2 Where a course of action to resolve the matter is agreed:
- Management will work with individuals as necessary to ensure that the agreed informal action is taken.
 - The relevant Manager and the Complainant should meet after an agreed interval and review whether the action has been successful or not.
- 8.3 If informal intervention is successful in resolving the matter, the Complainant should complete the relevant monitoring form and send to AMH@tube.tfl.gov.uk

9.0 FORMAL RESOLUTION

- 9.1 A formal complaint is the appropriate step to take in the event the matter remains unresolved following informal intervention, or where the individual or their Employing Manager believes the matter to be so serious that formal intervention is required.
- 9.2 The Complainant may be represented by a workplace colleague or a TU representative at meetings held as part of the formal process. The employee who is the subject of the complaint may be similarly represented if they are suspended from duty ahead of looking into the complaint.
- 9.3 **Step 1** – The complaint must be made in writing and submitted to the Employing Manager or PMA, ideally within 28 days of the issue arising or informal action having failed if at all practicable (there is however no formal time limit for submission of complaints).
- 9.4 **Step 2** – The Employing Manager to ensure a meeting is held with the complainant as soon as is practicable, and in any event within 7 days of the complaint being received, to explore what actions might resolve the matter, and enable discussion as to: (a) whether the issue raised meets the definition of harassment or bullying; (b) the seriousness of the matter and how it is to be dealt with; (c) whether risks arise that need consideration. In so doing the Manager should bear in mind:
- (i) Advice may be sought from an AM (or PMA where trained as AM) as to the seriousness and relevance of the matter raised. Advice to be given within 5 days.

- (ii) In more serious cases, the immediate working arrangements must be reviewed to separate, where necessary, the parties involved. This could involve the respondent being stood down or suspended pending completion of the review (in accordance with the Discipline at Work Procedure). The necessity for such action to continue should be regularly reviewed throughout the subsequent process.
- (iii) If the matter directly implicates or involves the Employing Manager, or the Manager and/or Complainant believe that it is potentially so serious that it would be better considered by an AM, then the Employing Manager must ensure the matter is referred without delay to an independent AM (via the PMA) for review on their behalf.

9.5 **Step 3** – The Manager (or AM) reviews the complaint, and conducts any follow-up enquiries necessary.

9.6 **Step 4** – The Employing Manager (or AM if 9.4 (iii) applies) to provide to the complainant, ideally within 28 days of the initial meeting (or referral to AM) their decision and recommended action seeking to address the matter and prevent further issues arising.

9.7 **IF** the outcome is that there **is** evidence of harassment or bullying, then one of the following would normally apply:

- a referral to the disciplinary procedure for Gross Misconduct (for serious or persistent harassment or bullying) or Misconduct (for less serious instances); and/or
- other formal (or informal) action to resolve/address the underlying concern (for example, training, support, mediation, behavioural change).

9.8 **IF** the outcome is that there is **not** evidence of harassment or bullying, the Manager (or Accredited Manager) will meet with the Complainant (and their Trade Union representative or workplace colleague if appropriate), and separately with the Respondent, to explain their conclusion. This will then be confirmed in writing to both parties. This does not preclude other action (for example, mediation) that may be appropriate to address ongoing relationship issues.

9.9 The Manager (or AM) will then complete the relevant monitoring form and send to AMH@tube.tfl.gov.uk

10.0 Appeal

10.1 The complainant has the right to appeal.

- The appeal must be made in writing to the PMA within 7 calendar days of the decision being received in writing, stating why they disagree with the decision or action taken.
- The appeal will be reviewed by an independent AM not previously involved in the case.
- The AM will meet with the Complainant within 7 days, and then carry out any further enquiries deemed necessary.
- The AM will inform the Complainant of the outcome of the appeal within 28 days of the appeal meeting, ideally face to face, and confirm this in writing.

Where the appeal overturns an earlier management decision, any further action now required will be progressed by a manager not previously involved.

- The AM to complete the relevant monitoring form and send to AMH@tube.tfl.gov.uk

11.0 VEXATIOUS / MALICIOUS COMPLAINTS

- 11.1 Vexatious complaints are persistent complaints of harassment or bullying where the perception held is not justified and the AM view is that a reasonable employee would see that to continue with the complaint is unreasonable.
- 11.2 Malicious complaints are one-off complaints of harassment or bullying where the perception held is not justified and the AM view is that the employee has deliberately set out to damage the reputation of the other party.
- 11.3 In the event an AM decides there is evidence that indicates a complaint may have been made in bad faith, maliciously or for vexatious reasons, the AM must:
- Decide whether this requires formal or informal action and feed this back to the original complainant and their employing manager;
 - If informal action, provide suitable advice including recommendations for action as necessary;
 - If sufficiently serious to warrant formal action, initiate a fact find in accordance with the disciplinary procedure, and as part of this provide opportunity for the original respondent to explain the impact on them of the original complaint;
 - Oversee the preparation of disciplinary brief and papers;
 - Ensure that records of the original harassment complaint are updated to include the eventual outcome.

12.0 Privacy and data protection

- 12.1 TfL will comply with privacy and data protection legislation relating to the processing of your personal data.
- 12.2 TfL will process your data primarily to enable us to perform our contract with you (including to perform this policy), and to enable TfL to comply with our legal obligations.
- 12.3 **Disclosure of records**
- 12.4 Any reports and interview notes will be disclosed as outlined within the policy above. To protect the legal rights of all individuals involved in the investigation and fulfil TfL's duty of care as an employer, and comply with data protection and privacy legislation, TfL may need to remove information that may lead to the identification of employees and/or members of the public.
- 12.5 **Retention periods**
- 12.6 Any letters, reports and interview notes will be retained for seven years from the date the matter was formally closed. When deciding upon any appropriate sanction, only warnings that are live will be disclosed or considered.
- 12.7 For further details, please refer to the [TfL website](#).