

Unfair discrimination, harassment and bullying procedure

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1. Our policy

1.1 The 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.

As set out in our equalities policy and strategy, we will not tolerate less favourable treatment on the grounds of:

- gender
- race
- religion
- disability
- nationality
- ethnicity
- sexual orientation
- gender reassignment
- age
- any other reason, which cannot be shown to be justified

2. The purpose of this procedure

2.1 This procedure is designed to help all employees achieve and maintain satisfactory standards of behaviour. Its aim is to ensure consistent and fair treatment for everyone.

The procedure will inform all employees of the kind of behaviour that is unacceptable and that unfair discrimination, harassment, bullying, and victimisation are considered to be, and will be, treated as serious disciplinary offences (this means gross misconduct which where proven may lead to dismissal).

2.2 The guidance provides employees who are the complainants of unfair discrimination, harassment, bullying and victimisation with a means of redress, and what that is likely to be.

2.3 This procedure should be read in conjunction with other council procedures such as:

- [stress prevention procedure](#)
- [disciplinary procedure](#)
- [grievance resolution procedure](#)
- our [hate crime policy](#)

Further guidance for managers is available in the [unfair discrimination, harassment and bullying toolkit](#).

2.4 The procedure applies to all employees other than those in schools operating under the scheme of financial delegation.

2.5 Council employees who have complaints against agency staff, contractors consultants and other individuals who may interact with council 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.

3. The principles of this procedure

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

This will be achieved by creating:

- a climate where unfair discrimination, harassment and bullying behaviour will not be tolerated
- a culture where acts of discrimination, exclusion, unfair treatment and other negative or demeaning behaviours are prevented

3.2 Where necessary we'll introduce and support preventative measures such as education and training. Negative behaviours such as harassment and bullying will be dealt with firmly by utilising this procedure. Counselling and support for 'complainants' 'witnesses' and 'respondents' will be provided and witnesses will be protected from victimisation.

3.3 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 in the unfair discrimination, harassment and bullying toolkit and what constitutes appropriate or inappropriate behaviour, to create a positive work culture.

3.4 The unfair discrimination, harassment and bullying toolkit provides guidance on dealing with informal matters. However, where a potential disciplinary issue comes to light which is more serious, or where informal action has not worked, the manager should firstly carry out a fact finding exercise without delay before acting in accordance with this procedure.

3.5 The whole process must be given a high priority by managers. All complaints will be handled as quickly and confidentially as possible. If it is established that the complaint must be dealt with formally then the formal investigation stage should be completed within 12 weeks. If there is good reason why this timescale cannot be met this will be communicated to the relevant parties.

3.6 If a formal investigation reveals that the complaint is valid, prompt attention and / or disciplinary action designed to stop the unfair discrimination, harassment, bullying and / or victimisation, and prevent its recurrence will be taken.

3.7 Managers and employees can seek advice from Human Resources at any stage of the procedure including advice at informal stage.

4. Informal procedures

4.1 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.

4.2 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.

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. See [unfair discrimination, harassment and bullying toolkit](#) for further guidance.

5. The formal investigation stage

5.1 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

5.2 Managers need to be proactive in monitoring a situation that they're trying to resolve informally. They need to be aware of the need to discuss the matter further, with a view to instigating a formal investigation, if the situation shows no sign of improvement or where it is actually deteriorating.

5.3 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 HR. Their 'support worker', trade union representative or work colleague can support the employee whilst they do this.

5.4 If the employee's line manager is the 'respondent', the employee should report the matter to the next manager in the organisation structure - so their line manager's manager. Alternatively, the employee can discuss the situation with a trade union representative, or support worker and lodge their formal complaint directly to HR.

5.5 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.

5.6 The only conduct of the complainant which will be relevant to the investigating officer/s 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.

5.7 Following the initial interview the investigating officers 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. This is to prevent any misunderstandings or omissions.

Once a complaint is lodged, the council will usually complete the investigation (unless the fact finding exercise resolves the complaint). This is to ensure that we fulfil our responsibilities as an employer and take all steps possible to prevent and eradicate unfair discrimination, harassment and bullying wherever it occurs.

5.8 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.

5.9 Advice will be available from Human Resources to support the management representative carrying out the investigation. The management representative will be independent from the work area employing the complainant and the respondent.

5.10 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. All interviewees within the investigation will be provided with a copy of the notes from their interview.

5.11 Where possible, the investigating officer/s in all discrimination cases will either be representative or will be a trained and competent manager with a good understanding of equality and diversity issues, and will treat the complaint/harassment with the utmost sensitivity.

- 5.12 The investigation will become subject to the requirements of our [disciplinary procedure](#) when:
 - allegations are so serious that gross misconduct is indicated
 - the respondent is suspended from work
 - the respondent is invited to an investigatory interview
 - there is evidence of other alleged disciplinary breaches

6. Outcome meeting

6.1 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 be confirmed in writing and will provide a full response on all matters raised by the complainant.

6.2 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 debrief witnesses, whilst being mindful of the principles of confidentiality.

7. Further action

7.1 If the investigating officer/s 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 (this means 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 our [disciplinary procedure](#)

7.2 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. In such circumstances the panel should recognise the difficulties presented by the complainant and should consider the evidence presented appropriately.

8. Appeals

8.1 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 an appeal.

Where employees are subject to an alternative procedure their right to a hearing and appeal may provide the forum to bring issues relating to management actions.

8.2 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.

8.3 The investigating officer/s will advise the officer hearing the appeal, who will be from an independent work area and which will seek to be representative where appropriate, fully on the complaint(s) lodged.

8.4 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.

8.5 The officer hearing the appeal 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

9. Training

9.1 Training and development activities will play a critical role in supporting this procedure. Relevant training will be provided for managers and supervisors to enable them to carry out their roles under the procedure effectively. Training will also be provided for support workers.

9.2 Appropriate training, including refresher training, will be provided for all managers required to undertake investigations or hear cases (including grievance appeals) under this policy. This training will be mandatory. This additional training will be separate to the normal disciplinary designated/investigation training.

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

10. Special considerations

10.1 Malicious and frivolous complaints

The remit of any investigatory team will include considering whether the complaint could be vexatious, malicious and/or frivolous. 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.

10.2 Redeployment

It may 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.

10.3 Counselling

Counselling will be available 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.

10.4 Suspension of the respondent

Unfair discrimination, harassment and bullying are considered as gross misconduct in our disciplinary procedure. Suspension will be as provided for in our [disciplinary procedure](#).

10.5 Confidentiality

10.5.1 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.

10.5.2 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 a HR Manager as to whether confidentiality can be maintained or whether the matter needs to be reported to HR for further action.

10.5.3 Members of the medical profession are bound by codes of professional conduct to maintain confidentiality except:

- 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
- as ordered by a court of law

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, for example where allegations are made that a third party has contravened council procedures.