



ROCHDALE
METROPOLITAN BOROUGH
COUNCIL

HR Policies & Procedures

DIGNITY AT WORK POLICY

**Anti-harassment and bullying policy and
procedure**

Policy/Procedure Author:

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POLICY

1. INTRODUCTION

- 1.1 Rochdale MBC is committed to creating workplaces for all employees which safeguards their dignity and safety and to increasing equality and diversity in representing, serving and employing people as detailed in its equality and diversity policy, *No Matter Who*. The Council believes that any form of harassment or bullying seriously undermines its ability to achieve such equality and diversity and in effect is a negation of the Council's declared equal opportunities policy. The Council will do all that is in its power to oppose all forms of harassment and bullying.
- 1.2 The Council will create and manage workplaces which safeguard employee's dignity at work and are free from all forms of harassment and bullying whether based on age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, pregnancy and maternity, or trade union membership. This policy and procedure will apply to all employees except employees in schools for whom a separate procedure is available.
- 1.3 The Council will apply this policy and procedure where the complainant and the alleged harasser are Council employees. In cases which involve members of the public, the Council will apply its "Work Related Violence – A code of Practice for Managers" Similarly it will apply "Domestic Violence Policy" in domestic violence Cases. When an external organisation or individual acts unacceptably in the workplace, the Council will provide all reasonable support to the employee and take all reasonable action. If the complaint involves a partnership organisation the Council will seek its full co-operation and will encourage it to deal with the matter in accordance with best practice and the principles of this policy.
- 1.4 This policy also applies in cases where the complainants have recently left the employment of this Council, providing that they make their complaints within three months of leaving Council. The Council will investigate all complaints relating to harassment and bullying under this procedure. It will not use the Grievance Procedure for such complaints.
- 1.5 Accordingly, managers must promote a harmonious and harassment /bullying free workplaces by:
- bringing this policy to the notice of all employees, customers and clients
 - challenging harassment /bullying and
 - ensuring thorough investigation of all complaints of harassment/bullying under this procedure.
- 1.6 It is the manager's responsibility to:
- inform employees, customers and clients about this policy
 - arrange training and development for employees
 - take all reasonable preventative measures against harassment and bullying of employees by their peers and / or customers/clients.
- 1.7 The Council intends this policy should create the right climate to prevent problems arising and /or escalating.

2. LEGAL REQUIREMENTS

- 2.1 As well as a commitment to the principles of Equal Opportunities, being a local authority RMBC has certain legal responsibilities under the following pieces of legislation.

2.2 The Equality Act 2010

The Equality Act became law in October 2010 and harmonised and replaced previous legislation (such as the Race Relations (Amendment) Act 2000 and the Disability Discrimination Act 1995 (Amendment Regulations 2003)). The new public sector equality duty protects people from discrimination on the basis of certain characteristics which are known as protected characteristics. There are 9 protected characteristics which are: age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity.

The Act extended some protections to characteristics that were not previously covered, and also strengthened particular aspects of equality law including around harassment. Harassment applies to all protected characteristics except for pregnancy and maternity and marriage and civil partnership. The Act enabled employees to be able to complain of behaviour that they find offensive even if it is not directed at them, and the complainant need not possess the relevant characteristic themselves. Employees are also protected from harassment because of perception and association.

The provisions of the Act make the Council potentially liable for harassment of employees by people (third parties) who are not employees of the Council, such as customers or clients. The Council would only be liable however when harassment has occurred on at least two previous occasions, the Council is aware that it has taken place, and it has not taken reasonable steps to prevent it from happening again. This strengthens the Council's resolve in not tolerating any harassment, victimisation or bullying against any employee by any party.

2.3 The Human Rights Act 1998 - Within the Human Rights Act 1998 employers have an obligation to ensure that employees have the right to a fair trial and this is particularly relevant with internal investigations and any subsequent disciplinary hearings. In addition, employers must ensure that everyone has the right to respect for his/her private and family and home life, this includes sexual orientation, harassment and relationships at work.

2.4 The Health and Safety at Work Act 1974 - It is the duty of the employer to ensure, so far as is reasonably practicable, to protect the health, safety and welfare at work of all its employees. Managers have a duty of care for the physical and mental well being of employees whilst at work.

2.5 Trade Union Reform and Employment Rights Act 1993 – Provides certain protections for trade union representatives and members from certain types of action from employers which might arise as a consequence of their positions or their actions, subject to that action being legal.

3. **WHAT IS HARASSMENT AND BULLYING?**

3.1 Harassment is broadly defined as unwanted and unwelcome behaviour, whether of a verbal or physical nature, and may be something to which persons are subjected because of their protected characteristic.

3.2 Harassment and bullying include various offensive acts or omissions which may make a person feel threatened, intimidated, humiliated, ridiculed, victimised or undermined in confidence. The acts may be deliberate or unconscious, an isolated incident or repeated action.

3.3 The Equality Act 2010, defines harassment as *“unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual”*.

To show harassment an individual must demonstrate that there has been unwanted conduct that had had the purpose or effect of:

- Violating the individual's dignity, or
- Creating an intimidating, hostile, degrading, humiliating or offensive environment.

3.4 Harassment includes unacceptable comments, statements or remarks. It may also take the form of differential treatment. Harassment is often a display of power that undermines, isolates or degrades the victims. The following are not exhaustive lists:

Racial harassment

- abusive language
- stereotyping
- derogatory words and racist “jokes”, racial name calling
- display or circulation of racially offensive written (including e-mails) or visual material including graffiti
- physical threats, assault and insulting behaviour or gestures
- open hostility to employees from the minority ethnic groups, including organised hostility, or unfair allocation of work and responsibilities
- Exclusion from normal workplace conversation and activities, i.e. being “frozen out”.

Sexual harassment / harassment on the grounds of gender re-assignment

- sexually based derogatory statements
- offensive behaviour
- unwanted and unwelcome sexual attention, verbal or physical.
- embarrassing gestures, suggestive remarks
- display of pornographic pictures/calendars
- circulation of sexually explicit material via e-mails

Harassment on the grounds of disability

- jokes about or at the expense of someone’s impairment
- offensive or patronising behaviour
- negative observations or comments about a person’s impairment
- effects of impairment on appearance, behaviour or performance.

Harassment on the grounds of sexual orientation

- comments about someone’s perceived sexuality
- anti-lesbian and anti-gay “jokes”
- graffiti
- verbal abuse and innuendo
- threats to make public the fact that a colleague is lesbian, gay, bisexual or transsexual.

Harassment on the grounds of age

- treating someone differently and less favourably because they are perceived to be “too young” or “too old” for certain jobs
- excluding them from social activities
- making derogatory remarks about someone’s age or abilities due to youth or seniority

Harassment on grounds of religion or beliefs

- making derogatory remarks about someone's beliefs or religious observances, e.g. dress, prayers or fasting,
- making jokes about celebrating religious festivals.
- failure to adapt working practices to accommodate the needs of people who practice a faith, e.g. allowing time for prayer, provision of kosher, halal or vegetarian food at training events
- excluding people from events outside working hours because they conflict with religious observance

- 3.5 Bullying is broadly defined as persistent and often unpredictable behaviour, which can be experienced from persons in positions of power either by virtue of the post or because they have the support of a group of people.
- Bullying is not about an occasional angry response, it is about persistent and deliberate undermining and psychological manipulation.
 - Assertiveness can turn into bullying when professional abrasiveness becomes tainted with an element of personal vindictiveness.

The following is a list of behaviour, which could be construed as constituting bullying but should not be considered as an exhaustive list:

- using strength and power to coerce others by fear
- attempting to force others to comply by singling out
- a culture endorsing or ignoring aggressive and intimidating style of management
- diminution of others, giving public “dressing down”
- undermining, gradually wearing down, making unreasonable demands
- having a personal style which is domineering, overbearing, obsessional, reprimanding, disapproving and humiliating
- using abusive language and aggressive body language
- name calling and personal insults
- spreading rumours – often unfounded and malicious
- criticising excessively and rarely listening to others points of view

- 3.6 In the work context the behaviour outlined in the preceding paragraphs may be considered harassment or bullying if it creates an unacceptable work environment, impairs job performance or adversely affects an individual, including impacting on a person's health life and that of their family.

PROCEDURE

4. GENERAL SCOPE AND APPLICATION OF THE PROCEDURE

- 4.1 This policy protects all employees and they will have the benefit of this procedure if they so choose. All employees (including employees from other organisations currently seconded to Rochdale MBC or temporary employees) against whom a complaint of harassment is made will be subject to this procedure (see 1.3 above). This includes employees who, once a complaint has been made, harass the complainant or those assisting the complainant (e.g. witnesses).

This procedure will also cover Council employees involved in multi-agency/partnership working arrangements and a protocol will have to be agreed to reflect the employment responsibilities.

The procedure also applies to elected members of Rochdale MBC.

- 4.2 It is essential that all complaints are taken seriously and investigated fairly and effectively by management. Ignoring complaints on the assumption that the matters complained of are trivial is unacceptable.
- 4.3 It is manager's responsibility to seek to ensure that all employees are treated with respect and dignity. Service Directors are responsible for ensuring every employee is aware of the policy and procedure for dealing with such incidents. Employees are responsible for ensuring their behaviour is appropriate in the workplace.
- 4.4 A complainant will retain the right to seek legal redress through an Employment Tribunal at all stages of the investigation process. Similarly, complainants may withdraw their complaint at any time if they so wish.

- 4.5 The Council has a duty to provide information to all employees about this policy. The officers involved in dealing with any case at all stages in the Dignity at Work Policy will be expected to have undergone training covering a broad understanding of the various forms of harassment and bullying. The HR Service will provide appropriate assistance for officers involved in undertaking investigations in accordance with the procedures set in this policy. This will help ensure the Council's declared intent of dealing consistently and effectively with complaints of harassment and bullying is achieved.
- 4.6 The Council will provide all employees with a copy of the Council's Equal Opportunities Policy as part of the induction process or through ongoing training programmes. It is the responsibility of each Service manager to impart this information through publicity and team briefings and employees will be expected to familiarise themselves with the details and abide by the policy.
- 4.7 Employees in general, and managers operating this Dignity at Work Policy in particular, will be expected and encouraged to participate in any equal opportunities training which may be made available to enable them to understand and accept responsibility not to behave in an offensive way.
- 4.8 Training provision in support of this policy will be monitored and evaluated by the Head of HR with other Service Directors to ensure that it remains relevant and effective.
- 4.9 Wherever possible the complainant, after consulting his/her trade union representative or other adviser, should make the decision as to how the issue should be dealt with and, therefore, managers should take due regard of their wishes. The manager, however, may be bound by a duty of care to investigate the matter in line with the Council's Disciplinary Procedures.

5. PROVISION OF ADVICE TO EMPLOYEES

- 5.1 When considering whether or not to register a formal complaint, employees will have the facility and are encouraged to discuss informally their complaints in confidence with their manager and/or HR Advisors within the HR Service. Alternatively, employees can talk to one of the nominated Support Officers to seek advice, discuss the options available and to explore the implications of proceeding to the formal stage, including information on counselling, mediation and support. A list of contacts will be maintained and advertised separately, accessible on the Council's intranet, through trade unions and stewards, from the HR Service.
- 5.2 Support Officers may be volunteers or Service Directors may nominate representatives to act in the capacity of Support Officers. A number of Support Officers will be provided across all services and appropriate training will be provided to the officers concerned.
- 5.3 Support Officers will be trained and the role of the Support Officer is that of first contact for employees who may feel that they need to discuss informally a possible complaint of harassment or bullying. The Support Officer will help the employee explore the implications of proceeding to the formal stage of a complaint and explore the other options available. Support Officers will not impose a solution but assist the employee to decide on the solution that is right for them.
- 5.4 Both the complainant and the alleged harasser will have access to the Council's support services as well as the facility to contact a Support Officer.
- 5.5 In addition, employees may wish to seek advice and support from their trade union representative or a fellow colleague. The role of trade unions in providing support is also recognised and training will also be provided to the officers concerned.

- 5.6 It should be noted, however, that any such individuals who become involved as the Support Officer can not act in the capacity of Investigating Officer.

6. INFORMAL STAGE – MEDIATION

- 6.1 Best practice guides and research show that, ideally, complaints should be dealt with internally and informally. This is better for all concerned as solutions can be reached speedily, with minimum embarrassment and risk to breaching confidentiality. It is wise to act quickly to avoid disruption and expensive litigation.
- 6.2 Mediation is one method of resolving such complaints during the informal stage. The Council will seek to provide a mediation service where appropriate. This will only be carried out by trained mediators.
- 6.3 Mediation should, however, only be attempted with the uncoerced agreement of the complainant.
- 6.4 The role of a mediator is to act as a neutral and to try to bring a dispute to an end. The mediator is not there to represent either of the parties but to guide both to a satisfactory outcome. The mediator has no authority to decide the outcome as this is up to both parties and the aim is to reach a settlement that both parties find acceptable and to produce a written agreement.
- 6.5 The Manager of the alleged harasser, to whom the complaint is made or their nominated officer will, if the complainant so wishes, make arrangements to seek mediation between the parties at all stages of the procedure, including when the formal investigation has been concluded. The HR Service will maintain a list of accredited internal/external mediators and advise on how these services can be accessed. Any provision of mediation outside the Council's own services will be subject to approval by the Head of HR.
- 6.6 This informal process will be supported by management particularly in the preliminary stages, e.g. in some instances the complainant may accept a public or private apology, following a recognition of the fact by the harasser that the harassment/bullying has taken place and a promise not to repeat similar behaviour.
- 6.7 Following successful mediation the manager of the alleged harasser or their nominated officer will write to the parties concerned, confirming the terms of the mediation agreement as provided by the Mediator.
- 6.8 Executive Directors, Service Directors, the manager of either party, trade union representatives or fellow colleagues must not be involved directly in the mediation process in order not to prejudice their position in the event of subsequent full investigation and disciplinary action being taken.

7. MAKING A FORMAL COMPLAINT

- 7.1 Complainants must make their formal complaint, in writing, to their Service Director or, if the complaint concerns the Service Director, to the Chief Executive. If the complaint is against an individual in another service, the Service Director must forward the complaint to the alleged harasser's Service Director. A copy of the written complaint must be sent to the Head of HR in all cases so that all complaints are recorded. A copy of the complaint will be provided to the alleged harasser(s) by the Investigating Officers, unless the complaint is covered by the Public Disclosure Policy, and the alleged harasser(s) should be advised of the availability of support services. The complaints must be treated with utmost confidentiality throughout the procedure. If the complaint is against a Councillor it should be sent to the Chief Executive.

- 7.2 The complaint must be made as soon as possible following the alleged incident. There is an onus on the complainant to inform manager so that action can be taken. Complainants need to be aware that account will be taken of any delay in terms of presenting the complaint and of the reasons given for delay.
- 7.3 The Head of HR will keep a central register of complaints of harassment; will monitor progress, noting the outcomes and actions taken. Statistical data, not identifying individuals, will be published annually in accordance with statutory requirements.
- 7.4 At all stages in the procedure, the complainants and the alleged harassers have the right to be accompanied by a work colleague or their trade union representative. Both parties can expect support from their line managers.
- 7.5 Where the complainant or the alleged harasser raises an issue that has been raised as part of another dispute resolution procedure or Grievance Procedure, it may not be eligible for consideration under this procedure. Complainants should also be aware that whilst the Council will take very seriously any complaint made under this procedure, it will also take action in respect of any complaint considered to have been brought with malicious or mischievous intent.

8. INTERIM MEASURES

- 8.1 As soon as having the knowledge and both during and after the investigation, managers will take all steps reasonably practicable to stop a recurrence of the alleged harassment/bullying. This may include suspension or moving the alleged harasser or complainant to another location, without prejudice to the final outcome of the investigation.
- 8.2 However, the complainant should only be moved with their agreement and at their own request. Managers must seek the advice of an officer from the HR Service at all stages. This move should be seen as a neutral act and not a sanction and it should be made clear that it will not prejudice the outcome and is only being put in place in order to safeguard individuals and to facilitate the investigation.

9. MANAGEMENT INVESTIGATION

Investigating Officers

- 9.1 In the absence of successful mediation it is the responsibility of the Service Director of the employee against whom the complaint has been made, in consultation with the officers within the HR Service, to arrange for the complaint to be investigated.
- 9.2 The responsible Investigating Officer must be an appropriate senior manager who has not been involved in any preliminary discussions with the complainant. As appropriate to the complaint, every effort should be made to select an investigating officer reflective of the nature of the complaint. E.g. A female or ethnic minority officer or a disabled officer. The responsible Investigating Officer will be advised and supported throughout the investigation process by an officer from the HR Service. It will normally be the case that the complaint will be investigated by the Investigating Officer and the officer from the HR Service however, on occasions it may be appropriate to nominate a third officer to assist in more complex cases.
- 9.3 To this end the Service Director will nominate the responsible Investigating Officer. An appropriate responsible officer would be a manager who has been trained and has an understanding of the issues. The officer identified should not have any line-management responsibility for either the complainant or the alleged harasser.

Timescale

- 9.4 The Service Director must acknowledge receipt of the complaint as soon as possible and within 5 working days.
- 9.5 Every effort should be made to complete the investigation within 40 working days from the receipt of the complaint. In case of a delay, the responsible Investigating Officer must write to the complainant and the person against whom the complaint has been made, specifying the reasons for the delay and indicating the date by which it is anticipated to complete the investigation report.

Investigation

- 9.6 The responsible Investigating Officer must inform the employee against whom the complaint has been made that this is a formal investigation which could lead to disciplinary action under the Council's Disciplinary Procedures. Any disciplinary action will be carried out entirely in accordance with the Council's Disciplinary Procedure for the employee in question, including normal rights to representation and appeal. It may not be necessary for a further investigation to be carried out under the Council's Disciplinary Procedures.
- 9.7 Employees against whom complaints have been made have the right to have a copy of the complaint against them and to be supported. Such employees shall have the opportunity of stating their case in person and be advised of their right to be accompanied during any formal interview by fellow colleague or trade union representative. (See section 5.1 for support for the complainants)
- 9.8 The investigation must include formal investigatory interviews with the complainant, the employee against whom the complaint has been made, and any relevant witnesses to the alleged events.
- 9.9 Where the alleged harasser makes a counter-allegation, this will be incorporated into the investigation; the Investigating Officers will take this into account when reaching a conclusion.
- 9.10 Following investigation, if it is evident that a complaint has been made maliciously and, in this event, the complainant could be subject to disciplinary action. It must be stressed that this is extremely rare and should not deter employees from making genuine complaints, as these will be dealt with sympathetically.
- 9.11 Investigatory interview notes should be signed by all participants, the consideration of which must be undertaken within a specified timescale to be determined. If the notes are not returned within this timescale they will be considered as agreed versions. It is important that any witnesses interviewed are advised that if the case proceeds to a formal disciplinary hearing, their statement will be shared with the complainant and alleged harasser.

Investigation Report

- 9.12 The responsible Investigating Officer will prepare the investigation report containing a factual narrative, setting out in chronological sequence the events and actions that gave rise to the complaint. It is recommended that the Service Director/Investigating Officer provide a minute taker to be present at the interviews to provide an agreed record. The report must also contain conclusions and any course of action that is recommended. It is the Investigating Officer's responsibility to decide whether or not to recommend formal disciplinary action under the Council's existing Disciplinary Procedures it will not be necessary to carry out a separate investigation. In instances where gross misconduct might be recommended the appropriate level of officer should deal with the Disciplinary Hearing.

10. OUTCOME OF THE INVESTIGATION

10.1 The report will be forwarded to the Service Director for consideration, the investigation report may have the following outcomes:

(i) Complaint not upheld

If this is the outcome, the Investigating Officer will submit the report to the relevant Service Director and, subject to their approval, will notify in writing the complainant and the employee, who has been investigated, the outcome of the investigation. A summary of the report to be sent to the complainant and alleged harasser. If any recommendations are made in the report, the Service Director will implement these recommendations.

(ii) Complaint Upheld

A Disciplinary Action Taken

If the Investigating Officer recommends disciplinary action, the complainant and the alleged harasser will be notified in writing of the outcome. The Investigating Officer should use the findings from the harassment investigation to prepare a report in the standard Disciplinary Report format. A copy of this disciplinary report will be sent to the alleged harasser in line with the Disciplinary Procedure. In this case the complainant will receive a notification about the outcome of the investigation.

Any disciplinary action taken will be carried out entirely in accordance with the relevant Council's Disciplinary Procedure, which includes normal rights to representation and appeal. It may not be necessary for a further investigation to be carried out under the Council's Disciplinary Procedures.

Consideration will need to be given as to whether or not the case may be regarded as gross misconduct and, therefore, require that an employee is suspended under the disciplinary procedure.

B. No Disciplinary Action Taken

In some instances, complaints may be upheld but no formal disciplinary action recommended. In these cases, informal action, e.g. training may be recommended. The complainant will be notified of the outcome and action taken.

10.2 In cases where recommendations and actions have been made, the relevant HR Business Partner will also receive a copy of the report and will advise the Service Director on the implementation of the recommendations.

10.3 Any recommendations should be progressed by the appropriate manager and Service Director and should be recorded. It is expected that any actions arising will be produced within 30 working days of the confirmation of outcome. It is the responsibility of the manager/Service Director to monitor the implementation, which must also be notified to the HR Service.

Complaints about the handling of the investigation

10.4 The complainant will have the right of appeal regarding the action taken to address their complaint. This should be in writing to the Head of HR, within 10 working days from receipt of the investigation outcome and should outline their grounds for dissatisfaction. Such complaints will be considered by the Head of HR and a Service Director who has not previously been involved in this case.

They will review the case and consider the issues raised. Their decision will be communicated to the complainant within one month and will be final.

10.5 In the event of dissatisfaction being reported to the Head of HR, any disciplinary hearing recommended by the Investigating Officer will not be held pending the Head of HR's determination on the handling and outcome of the complaint.

10.6 The alleged harasser will have a right of appeal only if the case is referred to the Council's Disciplinary Procedures.

11. MONITORING

11.1 Managers who deal with complaints of harassment should ensure that the HR Service is notified of the complaints, investigations and the outcomes.

11.2 The HR Service will maintain a record of complaints of harassment noting the actions taken. An evaluation of this information will enable the Head of HR to have an overview of incidents, particularly any specific areas of occurrence or any specific action which may have implications for other areas of the Authority, including training.

11.3 The HR Service will be responsible for monitoring and administering the policy and procedure which will be reviewed regularly in light of any legislative or case law changes.

12. EQUALITY AND DIVERSITY CONSIDERATIONS

12.1 Service Directors and employees are responsible for ensuring that they operate the policy and procedure in line with the Council's Equality and Diversity policy to provide equality of opportunity for all employees.

12.2 The Council is committed to ensuring that no-one is discriminated against, disadvantaged or given preference, through membership of any particular group, particularly based on age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity. This procedure will be applied equally to all employees irrespective of their background or membership of a particular group.

12.3 The application of this policy and procedure will be subject to an equality impact assessment to ensure that it does not discriminate either positively or negatively in relation to the above groups either directly or indirectly. The Council will regularly review this policy's impact on any equality and diversity issues, and will identify any inequalities by monitoring and will take appropriate action where necessary.