



Harassment, Bullying & Victimisation

Approved by: Trust Board

Last reviewed: October 2020

Next review due: October 2021

HARASSMENT, BULLYING & VICTIMISATION POLICY

Scope

This policy is written and approved at board level, but applies to all employees of schools, settings, and services, hereafter the 'organisations', within The Claxton Trust.

This policy and procedure applies to allegations of bullying and harassment made by employees against other employees. Allegations of bullying and harassment made by visitors, consultants, suppliers, and agency workers against employees of the trust will be separately addressed through the school's complaints procedure.

This procedure does not form part of any employee's contract of employment and it may be amended at any time.

It has been created using a model policy created by Herts for Learning and has therefore been produced in consultation with external advisors and the professional associations/trade unions.

1. Introduction

The trust is required to set out a policy and procedure to create a working environment where every employee is treated with dignity and respect and where each person's individuality and sense of self-worth within the school is maintained.

This policy and procedure applies to disputes between employees, or between employees and management - including the headteacher or a governor. Allegations of harassment, bullying and victimisation by visitors, consultants, suppliers and agency workers will be separately addressed through the school's complaints procedure.

The aim of this policy and procedure is to ensure that any complaint of harassment, bullying or victimisation is effectively and speedily dealt with and that appropriate action is taken to ensure as far as possible that it does not occur again. It is important that the rights of both the complainant and the alleged perpetrator are protected throughout the process.

Some forms of harassment, bullying and victimisation amount to unlawful discrimination and are covered by the relevant statutes on discrimination. Other forms of harassment, bullying and victimisation are not explicitly covered by the law but governing bodies have a legal duty to ensure that schools have a procedure to deal with such allegations.

This procedure does not form part of any employee's contract of employment and it may be amended at any time.

2. Purpose & principles

All employees have the right to be treated with dignity and respect. Harassment, bullying and victimisation are not acceptable forms of behaviour and will not be permitted or condoned. Such behaviour can lead to illness, increased absenteeism, poor performance, denial of opportunities and even resignation.

Where a formal complaint is substantiated, it may be treated as a disciplinary matter and could lead to dismissal.

3. What is harassment, bullying and victimisation?

3.1 What is harassment?

Harassment is any unwanted physical, verbal or non-verbal conduct that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. A single incident can amount to harassment. It also includes treating someone less favourably because they have submitted or refused to submit to such behaviour in the past.

Unlawful harassment may involve conduct of a sexual nature (sexual harassment), or it may be related to age, disability, gender reassignment, marital or civil partner status, pregnancy or maternity, race, colour, nationality, ethnic or national origin, religion or belief, sex or sexual orientation. Harassment is unacceptable even if it does not fall within any of these categories.

Harassment may include:

- unwanted physical conduct or 'horseplay', including touching, pinching, pushing or grabbing
- continued suggestions for social activity after it has been made clear that such suggestions are unwelcome
- sending or displaying material that is pornographic or that some people may find offensive (including emails, text messages, video clips and images sent by mobile phones or posted on the internet)
- unwelcome sexual advances or suggestive behaviour (which the harasser may perceive as harmless)
- racist, sexist, homophobic or ageist jokes, or derogatory or stereotypical remarks about particular ethnic or religious groups or gender
- outing or threatening to out someone as gay or lesbian
- offensive emails, text messages or social media content
- mocking, mimicking or belittling a person's disability

A person may be harassed even if they were not the intended 'target'. For example, a person may be harassed by racist jokes about a different ethnic group if the jokes create an offensive environment.

3.2 What is bullying?

Bullying is offensive, intimidating, malicious or insulting behaviour involving the misuse of power that can make a person feel vulnerable, upset, humiliated, undermined or threatened. Power does not always mean being in a position of authority, but can include both personal strength and the power to coerce through fear or intimidation.

Bullying can take the form of physical, verbal and non-verbal conduct. Bullying may include, by way of example:

- physical or psychological threats
- overbearing and intimidating levels of supervision
- inappropriate derogatory remarks about someone's performance

Legitimate, reasonable and constructive criticism of a worker's performance or behaviour, or reasonable instructions given to workers in the course of their employment, will not amount to bullying on their own.

3.3 What is victimisation?

Victimisation is defined in the Equality Act 2010 as subjecting an individual to a detriment because he/she does a protected act, or it is believed he/she has done or may do a protected act.

A 'protected act' is as follows:

- bringing proceedings under the Equality Act 2010

- giving evidence or information in connection with proceedings under the act
- doing any other thing for or in connection with the act
- making an allegation that someone has breached the act.

4. Protection and support for those involved

4.1 Employee support

At all stages of the formal procedure, the alleged perpetrator and the complainant have the right to be accompanied by a work colleague, or their accredited trade union or professional association representative.

Confidential employee counselling/assistance is available to those schools that purchase the employee assistance programme. For more information, please contact the school or HR Services. Teachers and support staff can additionally obtain support from the Education Support Partnership <https://www.educationsupportpartnership.org.uk>

4.2 Confidentiality

It is important that individuals (including witnesses) feel confident that they are able to come forward with information without fear of recrimination. Conversations and records of an investigation must therefore be treated confidentially and sensitively by everyone involved. Any breach of confidentiality will be treated seriously and may lead to disciplinary action. It must be noted however, that if an allegation of harassment and bullying is founded, the evidence gathered through a formal investigation may well be used at any subsequent formal disciplinary meetings.

4.3 Retaliation

Employees who make complaints or who participate in good faith in any investigation must not suffer any form of retaliation as a result. Anyone found to have retaliated against someone in this way may be subject to disciplinary action.

4.4 False or malicious complaints

The governing body takes all complaints of harassment, bullying and victimisation seriously, and will not condone the behaviour of anyone who is found to have maliciously raised a complaint that they know to be false. Malicious complaints may be dealt with under the school's disciplinary procedure, one potential outcome of which may be dismissal.

5. Procedures for making and dealing with a complaint

There are three stages through which a complaint may be taken forward:

- the informal stage
- the formal stage
- the appeal stage

6. The informal stage

Employees who believe they are being harassed, bullied or victimised should consider whether they feel able to raise the problem informally with the person responsible. The employee should explain clearly to the other person that their behaviour is not welcome or makes them uncomfortable. If the employee finds this too difficult or embarrassing, they should speak to their line manager or headteacher who can provide confidential advice and assistance in resolving the issue informally.

If the employee is not certain whether an incident or series of incidents amounts to harassment, bullying or victimisation, they should initially contact their line manager or headteacher informally for confidential advice.

If informal steps are not appropriate, or have been unsuccessful, the employee should follow the formal procedure set out below.

7. Representative of a professional association or trade union

In the interests of good employer/employee relationships, representatives have a role in advising and offering early support to their member at all stages with a view to seeking an agreed resolution as early as possible.

8. The formal stage

This is likely to be appropriate where a previous attempt at informal resolution has proved unsuccessful, or where the complainant or the school considers that formal investigation into the matter is necessary.

A complainant will not be discouraged from using the formal process where that is their preferred option.

8.1 The formal stage in operation

The objective of the formal procedure is to determine, through formal investigation, whether there is a way to resolve the situation or whether the case needs to be taken forward through the school's disciplinary procedure.

Once a formal complaint of harassment, bullying or victimisation has been made, the school has a responsibility to investigate the matter and take appropriate action.

The formal procedure – general principles

- there will be prompt, thorough, impartial investigation with due regard to the rights of both the complainant and the alleged perpetrator
- both parties have the right to be represented and accompanied
- the alleged perpetrator will be provided with clear details of the complaint, and will be given the opportunity and time to respond at all stages
- the timescales as set out in the school's disciplinary procedure will apply
- it is for the chair to determine whether the parties to the proceedings should attend hearings separately or be present at the same time

8.2 Role of investigator in formal procedure

The headteacher or chair of governors will nominate an investigating officer to carry out the formal investigation into the complaint. This will normally be a senior manager who is not the line-manager of either party, or otherwise involved in the complaint, an external investigator may be appointed where appropriate. The investigating officer will arrange investigation meetings with the complainant, alleged perpetrator and any relevant witnesses in order to establish the facts of the case. The witnesses should be informed that the information they provide may be presented at any subsequent disciplinary hearing. Investigations will be dealt with promptly, objectively and confidentially. At any meeting conducted as part of the investigation both parties have the right to be accompanied.

The investigation will be to establish the facts and whether, on the balance of probabilities, the allegations have foundation. The investigator will submit a written report to the headteacher (unless the headteacher

has been involved in the informal stage). Unless the headteacher has been previously involved, the headteacher will, based on the report, determine whether there is a case to answer, if so the formal disciplinary procedure will be invoked.

5. Making a formal complaint

A formal complaint may be made to:

- the complainant's line-manager
- the line-manager of the alleged harasser/bully
- the headteacher
- the chair of governors if the complaint is about the headteacher

9.1 Recording the incident/s

As soon as a formal complaint is made, the complainant will be asked to provide a written statement of what took place. The pro-forma in Appendix 1 may be used as the basis for this written statement. The written statement should be made as soon as possible after the incident of alleged harassment, bullying or victimisation has taken place and should be signed and dated. Historical issues, i.e. more than three months old will not usually be investigated unless related to the current issue or there are exceptional circumstances.

9.2 Right to be accompanied

An employee (complainant and alleged harasser) has the right to be accompanied and supported, at any formal stage of the procedure, by a work colleague or an accredited professional association/trade union representative.

The employee should give advance notice if he/she is to be accompanied, and by whom. If the Professional Association/Trade Union or work colleague is unavailable at the time of the hearing, the employee should contact the individual organising the hearing to rearrange (once) to a time that is mutually convenient. Any postponement should not normally extend beyond five working days.

9.3 Separation and suspension of employees

Consideration will be given to suspending the alleged perpetrator on full pay or making other temporary changes to working arrangements pending the outcome of the investigation if circumstances require. This may involve giving serious consideration to representations made by the complainant for changes to their own working arrangements during the investigation.

9.4 Possible outcomes

Upon receipt of the investigation report, the headteacher will then decide on appropriate action, based on the circumstances of the case as presented in the report. This may include the following non-exhaustive findings:

- misunderstanding. A meeting must be arranged where both parties should aim to resolve the matter by discussion. If both parties are unable to resolve their issues it may be necessary for the headteacher to intervene and tell both parties that their behaviour must stop. No formal action will be taken. Mediation should be considered
- the instigation of the disciplinary process is required against the perpetrator. The headteacher will arrange a disciplinary hearing
- the instigation of the disciplinary process is not required either because the allegations have no foundation or it is appropriate to deal with the issue by way of management advice
- disciplinary action is required against the complainant due to a malicious complaint. The headteacher will arrange a disciplinary hearing

- whilst acknowledging misjudgements/mistakes, the matter is best addressed through informal /training

9.5 Concluding the formal procedure

The headteacher must meet with both parties without unreasonable delay after receipt of the investigation report to discuss the report and the findings and this will be confirmed in writing to both parties as soon as reasonably practicable and usually within five working days.

6. The appeal stage

Appeals by the complainant

The complainant may appeal in writing to the chair of the local governing body **within seven calendar days** of receiving the written decision. The chair must arrange for three members of the local governing body not previously involved, to hear the appeal. Whilst new evidence on the same complaint may be permitted, any new complaint(s) cannot be added to the proceedings. At the discretion of the school, the appeal may be a complete rehearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed.

New evidence will only be considered if relevant and there is good reason why this had not been included as part of the original hearing.

The hearing will take place **without unreasonable delay** following receipt by the chair of the written notice of appeal. All relevant documents, including the names of any witnesses, must be exchanged and submitted to the panel at least three working days in advance of the meeting.

The members of the panel, in seeking to resolve the complaint, may adjourn the meeting or defer their decision until they are satisfied they have had the opportunity to take account of all relevant factors. The decision of the panel and the reasons for that decision will be communicated to all parties and confirmed in writing as soon as reasonably practicable usually within five working days. The decision reached at this hearing is final.

Appendix 1 – Record of complaint of harassment, bullying or victimisation

Please read the harassment, bullying and victimisation policy. This provides you with information about how to make a complaint of alleged harassment, bullying or victimisation and explains the support that is available to help you in this process.

If you are making a **formal** complaint you are advised to use this form to register your complaint. You may wish to attach additional information to substantiate your complaint. The information on this form will be used to inform the alleged perpetrator of your complaint. You are reminded that malicious complaints may result in disciplinary action being taken against you.

Your name and place of work:

Name and workplace of the person(s) alleged of harassment/bullying

Date(s), time(s) and place(s) of the incident/s of alleged harassment/bullying

Please indicate how you perceive the behaviour/incident/issue? *(Please circle)*

Bullying

Harassment

Victimisation

Explain what happened

(Please give full details and specific examples of behaviour and state the facts as you perceive them and continue on a separate sheet if required)

How did this make you feel?

Name and place of work of any person(s) who witnessed the incident(s)

Any action taken by you, so far, and any outcomes of this

What outcomes are you seeking?

(Please detail actions you would like taken to resolve the situation, e.g. an apology)

Have you considered whether mediation may be of assistance in tackling and resolving this issue?

Name and contact number for your professional association/trade union representative, or colleague who you will ask to accompany you to any investigation meeting/hearing

Your signature

Date