



DERBY CITY COUNCIL

MINORITY ETHNIC COMMUNITIES ADVISORY COMMITTEE 16 JUNE 2005

Report of the Director of Policy

Equalities Complaints Monitoring

RECOMMENDATIONS

- 1.1 To note the report.
- 1.2 To agree that the reporting period will be 1 April to 31 March each year.

SUPPORTING INFORMATION

- 2.1 The report deals with formal complaints from employees against each other. This report covers the complaints received from 1 January 2004 – 31 March 2005.
- 2.2 Appendix 2 summarises the total number of complaints investigated since 2000, including those mentioned in this report.
- 2.3 The Fairness At Work policy, which went live on 1 February 2005, is the framework within which all employee complaints are now investigated. A copy of the Policy is attached for information at Appendix 3.
- 2.4 Complaints from tenants about racial harassment are presented separately to this Committee by Derby Homes.
- 2.5 When we report on the period 1 April 2005 – 31 March 2006, we will also be able to bring you formal complaints received from service users against employees, which are dealt with under the Council's Corporate Complaints Procedure.
- 2.6 We have received four formal equal opportunities complaints during this period. Of the three that have been completed, two were upheld and one was not. We have four outstanding complaints from the last period 1 January – 31 December 2003; three of these were not upheld and one was partly upheld.
- 2.7 Investigation into one complaint has not yet been completed. The outcome of this complaint will be reported at the end of next period.

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Background papers:	None		
List of appendices:	Appendix 1 – Implications		
	Appendix 2 – Complaint statistics		
	Appendix 3 – Fairness at Work Policy		

IMPLICATIONS

Financial

1. None.

Legal

- 2.1 We have a specific duty to record and monitor these incidents by racial group under the Race Relations (Amendment) Act 2000. This act puts a legal obligation on all public authorities to promote racial equality and good race relations between different racial groups.
- 2.2 We have included disabled people in these statistics. This will comply with our specific duty under the new Disability Discrimination Act, which becomes live in December 2006.
- 2.3 All employees are protected by the Sex Discrimination Act 1975 and can make a claim of sex discrimination under the Act to an Employment Tribunal.
- 2.4 Employees are protected at work from harassment and discrimination because of their sexuality or religion or belief under the Employment Equality Regulations 2003.

Personnel

3. An investigator is appointed for each investigation and all investigations are carried out thoroughly. This may involve interviewing many people during the course of the investigation, which is time-consuming.

Equalities impact

4. Thorough investigation of complaints of bullying, harassment, discrimination and unfair treatment is essential as this forms an integral part of the Council's Equality and Diversity Policy.

Corporate objectives, values and priorities

5. Thorough investigation of complaints promotes the value of **being open, transparent and honest in everything we do.**

COMPLAINT STATISTICS

1. Number of employee complaints received:

2000 calendar year	8
2001 calendar year	0
2002 calendar year	6
2003 calendar year	9
1 January 2004 – 31 March 2005	4

2. Analysis of employee complaints January 2004 – 31 March 2005

Racial group of complainant	Harassment/Bullying							Gender M/F	Disability Y/N	Not upheld	Upheld	Partly upheld	Not completed	Withdrawn
	Racial	Sexual	Disability	Age	Sexuality	HIV/AIDS	Other							
Indian							X	M	N		X			
White							X	F	N		X			
White							X	F	Y	X				
White							X	M	N				X	



DERBY CITY COUNCIL

Fairness at Work

Bullying, Discrimination and Harassment

Policy and Complaints Procedure

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FAIRNESS AT WORK BULLYING, DISCRIMINATION AND HARASSMENT POLICY AND COMPLAINTS PROCEDURE

SCOPE AND PURPOSE

- 1.1 The Council has adopted this policy to make it clear that harassment, discrimination, bullying and victimisation by or against its employees is not acceptable. Where such unacceptable behaviour does occur, the complaints procedure will apply.
- 1.2 This policy has been drawn up to meet the statutory minimum requirements of the Employment Act 2002 and the Disputes Resolution Regulations 2004.
- 1.3 This procedure aims to settle complaints consistently and speedily and as near as possible to the point of origin.
- 1.4 The Council has consulted departmental personnel officers and the recognised trade unions on this policy and procedure. It is included in the Personnel Handbook and summarised in the Employee Handbook.
- 1.5 Both employees and managers must follow these procedures when an employee raises a complaint. If the procedure is not started or finished satisfactorily, this may affect the outcome of any subsequent Employment Tribunals.
- 1.6 Any exceptions to this policy may only be made at the discretion of the Assistant Director - Personnel. This will be in exceptional circumstances only.

Definition

- 1.7 Wherever 'harassment' is used in this policy, it means any form of harassment, discrimination, bullying or victimisation. Harassment is defined for the purpose of this policy and procedure as ...

'Unwanted conduct which has the purpose or effect of violating the individual's dignity, or creates an intimidating, hostile, degrading, humiliating or offensive environment for him or her.'

- 1.8 Harassment does not have to be deliberate. An individual may not intend to give offence. It is the **effect** of their behaviour on someone that is significant.
- 1.9 Harassment can be repeated unwanted or unwelcome behaviour, which can cause distress and humiliation to the recipient. However, a single incident, if serious, can be defined as harassment. Incidents of harassment may happen outside the workplace itself and these are included within the remit of this policy.
- 1.10 Further guidance on recognising harassment, examples of harassment and other definitions are contained in Appendix 1.

Principles

- 1.11 This procedure applies to all Council employees. It does not apply to teachers. The defined standards of behaviour also apply to agency workers, casual workers, work experience placements, councillors, contractors and sub contractors. School Governing Bodies are strongly urged to adopt this policy for non-teaching staff within their delegated powers.
- 1.12 The Council will offer welfare support to all parties involved in the case.
- 1.13 When a disabled employee is involved in this procedure, reasonable adjustments will be made so that they are not disadvantaged in any way.
- 1.14 All parties involved in this procedure must maintain absolute confidentiality at all times.
- 1.15 This procedure does not affect an employee's right to complain to an Employment Commission or to apply to an Employment Tribunal.
- 1.16 The Council is committed to equality of opportunity and in creating and promoting a harmonious working environment where everyone is treated with fairness, respect and dignity.
- 1.17 The Council recognises the significant damaging effects that harassment can have on individuals in their personal, social and work life. It also has a significant impact on the Council's reputation as a good employer and in terms of loss of productivity, low morale, absenteeism, employee turnover, and legal costs.
- 1.18 The Council will not accept any of its employees harassing, discriminating against, or bullying their colleagues or members of the public using our services. The Council expects everyone to comply with these principles and to treat both their colleagues and members of the public with respect and dignity.
- 1.19 All employees at every level have the right to challenge behaviour that is causing concern or offence without fear of reprisal. This is whether the inappropriate behaviour is addressed towards themselves or others. They also have the right to bring it to the attention of a manager or to make a complaint where necessary.
- 1.20 The Council will treat every complaint of harassment seriously and deal with it under the appropriate complaints procedure including, where necessary, the disciplinary procedure.
- 1.21 The Council recognises that many complainants prefer to resolve complaints informally but it will launch a formal investigation, irrespective of an employee's wishes, if it is necessary to do so to meet its legal obligations to provide a safe working environment.

- 1.22 The Council expects all managers to promote a safe working environment, and do everything they can to make sure that no employee is harassed. They must make sure that all of their employees are aware of this policy and what is acceptable and unacceptable behaviour at work. They must stress that any type of harassment is a disciplinary offence. Managers must also deal with any complaint promptly, sensitively and confidentially.
- 1.23 Officers investigating harassment complaints and their managers must give priority to the investigation so that the process is comprehensive, thorough and completed within the timescales laid down in the policy.
- 1.24 Harassment is a disciplinary offence. It can also constitute a criminal offence. A perpetrator can be held personally liable in the event of any legal proceedings and could be fined or sent to prison. An employee can also take legal action against the Council or its individual officers if it fails to take all reasonable steps to prevent harassment and to stop it if it occurs.
- 1.25 Disciplinary action may be taken against an employee who is found to have made malicious or false allegations of harassment.

EXEMPTIONS

- 2.1 Most complaints of harassment will be investigated under the complaints procedure set out in section 7 of this policy. However, certain harassment allegations will be dealt with under other existing procedures. These include . . .
- 2.2 **Harassment complaints involving the Chief Executive and Chief Officers, Assistant Directors or others on JNC terms and conditions**
These will be dealt with under the Appointment and Dismissal of Senior Staff Local Authorities Regulations 2001.
- 2.3 **Harassment complaints involving an employee and a councillor**
These will be referred in the first instance to the Director of Corporate Services, who, as the Council's Monitoring Officer, will deal with the complaint in accordance with the Standards Committee/Standards Board procedures.
- 2.4 **Harassment complaints received from employees about members of the public or service users**
These will be dealt with under the Council's Abuse, Aggression and Violence Code.
- 2.5 **Harassment complaints about Council employees received from members of the public or service users**
These will be dealt with under the Council's Corporate Complaints Procedure and, potentially, the disciplinary procedure.
- 2.6 **Complaints received from job applicants about the recruitment and selection process**
These will be dealt with through the Recruitment Complaint Procedure.

2.7 Complaints about harassment involving school governors

These will be investigated using the Fairness At Work complaints procedure and referred by the Director of Education to the Chair or Vice Chair of Governors to determine action under the appropriate School Governance Regulations.

2.8 Complaints against agents, contractors and sub contractors

These will be dealt with under the relevant organisation's own internal procedures.

2.9 Grievances

Complaints about interpretation of terms and conditions of employment, health and safety, new working practices, and working environment issues will be dealt with under the Council's Grievance Procedure.

TIMESCALES

- 3.1 Employees must submit a complaint as soon as practical and it must be within three months of the latest incident of harassment occurring. This time limit may be extended only at the discretion of the Assistant Director - Personnel, and only in exceptional circumstances.
- 3.2 Each step and action taken under this procedure must be carried out without unreasonable delay. If it is not possible to respond to the employee within the specified timescales, the manager must explain the reasons to the employee and notify them of the new timescales that apply.
- 3.3 An employee considering applying to an Employment Tribunal should seek advice from an Employment Tribunal Office, their trade union or companion about the relevant time limits for making their complaint.

THE RIGHT TO BE ACCOMPANIED

- 4.1 All participants may have one companion with them at all stages of the procedure, including Stage One. This companion may be **either** a trade union representative **or** a solicitor **or** a colleague **or** a friend. This is in addition to any support needed such as interpreters, signers or any other support or reasonable adjustments needed under the Disability Discrimination Act.
- 4.2 Employees should be advised of this right before any action is taken under this procedure.
- 4.3 Before the meeting or hearing, the employee should confirm in writing whom they have chosen as their companion. This will allow the chair of the meeting or hearing to make sure there is no conflict of interest or detrimental impact on service delivery.
- 4.4 Colleagues who are acting as companions can take a reasonable amount paid time off to prepare for and attend a meeting or hearing. This must be agreed in advance with the companion's manager, who will consult with the Departmental Personnel Officer if time off cannot be agreed.

4.5 Where possible, the chair of the meeting or hearing should consult with the employee's chosen companion about the date and time of the meeting or hearing.

4.6 If the employee wishes, the companion can

- put the employee's case
- question witnesses
- sum up the employee's case
- respond on employee's behalf.

The companion cannot

- address the hearing or meeting, if the employee does not wish it
- prevent managers from explaining their case.

4.7 Colleagues do not have to accept a request to act as a companion to an employee, and should not be pressurised to do so.

• DEFERRING A MEETING OR HEARING

5.1 Before any meeting or hearing, any party may request a postponement or rearrangement. The Council will consider the validity of the reasons for the request, when deciding whether or not to rearrange any meeting or hearing.

5.2 Any postponement must not exceed 14 calendar days, except in the case of a deferral on medical grounds. Legitimate reasons for postponing or rearranging meetings or hearings are:

- to obtain trade union or other representation or a companion
- to give individuals additional time in which to gather information
- to make sure key witnesses are available
- to avoid pre-booked holidays
- to avoid obligatory absences such as jury service
- bereavement
- on medical grounds. This must be supported by a certificate which shows whether or not the employee is fit enough to attend. The Council will reimburse the cost of the medical certificate. If the absence exceeds 14 calendar days, the Council may seek advice from the Occupational Health Service on whether the employee is fit to attend.

5.3 Legally, the Council is obliged to rearrange the meeting or hearing only once. If it falls through a second time for unforeseeable reasons, neither party will be under any further obligation under the statutory procedures. However, this does not mean that the process stops. The Council will decide the most appropriate way to proceed and will inform the employee and their companion accordingly.

EMPLOYEE SUPPORT

6. All parties involved in the complaint process, including witnesses, can access confidential welfare support and/or counselling at any stage of this procedure. To access this support, employees should contact the Council's Welfare Officers. This is different, however, to the right to be accompanied as explained in paragraph 4 of this procedure.

• STAGES IN RESOLVING THE COMPLAINT

7.1 Stage One Raise informally

- 7.1.1 Where an employee believes they are being harassed they should, if they feel able to, raise the problem with the alleged harasser in person or in writing. Alternatively, a colleague or friend may be willing to support them in making the first approach.
- 7.1.2 An employee can get advice from a Departmental Personnel Officer, Welfare Officer or their trade union representative. Any of these people will be able to advise on what options exist to resolve the situation.
- 7.1.3 Before making a complaint, the employee should also discuss the alleged harassment in confidence with their manager, unless that manager is the alleged harasser. In that case, the employee should speak to the next manager in line or, if necessary, a different manager.
- 7.1.4 If the employee feels that a complaint is the only appropriate way to deal with the matter, this can be made verbally or in writing and it should initially be made to the appropriate manager, as described above.
- 7.1.5 The manager should deal with the complaint informally in the first instance unless the circumstances and seriousness of the complaint make informal action inappropriate. They should always get advice from their Departmental Personnel Officer.
- 7.1.6 The manager should meet with the complainant and establish what the employee wishes to happen. They should get sufficient factual information to decide the most appropriate way forward for resolving the complaint. This will include explaining the informal and formal procedures for dealing with harassment complaints and considering the use of the informal process.
- 7.1.7 Where the manager is responsible for both the complainant and the alleged harasser or any witnesses, it may be appropriate to speak to everyone involved to help establish the facts. If doing so, the manager should first provide the alleged harasser with the details of the complaint made, advise that it is an informal complaint and give them the opportunity to respond to the allegations. The manager should make sure that the alleged harasser is aware of this policy and that the alleged behaviour is contrary to it.

- 7.1.8 If the alleged harasser or any witnesses work in another section, directorate or department, the complainant's manager should contact the manager of the alleged harasser to enable them to resolve the problem. All contact with the alleged harasser and/or witnesses should be agreed with the appropriate managers. Alternatively, managers may seek advice from their Departmental Personnel Officer.
- 7.1.9 If the manager concludes that the complaint cannot be upheld, they should advise both parties of this. If satisfied that harassment has occurred, they should take action to stop the harassment and prevent it continuing. Where appropriate, this may include a recommendation that the disciplinary procedure be applied.
- 7.1.10 If the alleged harasser accepts that their behaviour has been unacceptable, there may be no need for further action. If the alleged harasser is unwilling or unable to accept that their behaviour has been unacceptable, the manager may ask both parties to agree to mediation.
- 7.1.11 The manager should then monitor the situation closely and make sure that neither the complainant nor any witnesses are victimised or subjected to any further harassment. The manager should advise both parties of the monitoring and that, if inappropriate behaviour continues, disciplinary action may be considered.

Mediation

- 7.1.12 Mediation may be used to resolve the situation or help repair damage to working relationships that has occurred, in a way that is acceptable to both sides. Mediation can be arranged if either the complainant or alleged harasser asks for it but both sides must always consent to it. It can be part of an informal resolution, or during or after a formal investigation. An action plan is developed which establishes acceptable standards of behaviour and which will contribute to a safer and more harmonious working relationship in future. Requests for mediation should be made to the Departmental Personnel Officer.
- 7.1.13 Where a complainant or alleged harasser refuses mediation, their wishes must be respected and handled sensitively. However, in formal investigations, the investigator may take into account the validity of the reasons given for refusing mediation, when reaching their conclusions.

Stage Two - Formal Complaint Raise in writing

- 7.2.1 If the complainant feels that informal attempts to resolve the complaint, including mediation, are inappropriate, have been exhausted or have not worked, or if further harassment occurs, then they may make a formal complaint, using the Fairness at Work complaint form at Appendix 2. The form is available from Departmental Personnel Officers, and, once completed, should be sent to the Corporate Personnel Adviser - Operations, Policy Directorate.

- 7.2.2 Legally, if employees subsequently wish to use the complaint as the basis of an employment tribunal application, they must comply with this stage. They must allow 28 calendar days for the Council to respond to their written complaint before an application to an Employment Tribunal will be allowed.
- 7.2.3 The manager may also request that a complaint be treated formally. There may be cases where they refer a case for formal investigation because of the seriousness of the allegations, or where there is potential misconduct to any degree, from minor to gross misconduct. In those cases, the complainant will almost certainly be required as a witness in any disciplinary proceedings.
- 7.2.4 Sometimes, a manager may be obliged to take formal action against an alleged harasser to provide a safe working environment, even if the complainant wishes to resolve the situation informally.

Assessing the complaint

- 7.2.5 The Corporate Personnel Adviser - Operations, Policy Directorate, or their nominee will, within two working days of receiving a complaint form:
- record receipt of the form
 - send an acknowledgement letter advising that the complaint has been received and that a nominated investigator will contact them within 14 calendar days
 - the Corporate Personnel Adviser - Operations in conjunction with the relevant departmental Chief Officer or nominee, will nominate an investigator to assess the complaint. If an investigator is assigned from a department, they should have no direct responsibility for either party and ideally be from a different service area.
- 7.2.6 The investigator will arrange a meeting with the complainant so that they can explain their complaint and say how they think it should be resolved. The investigator and complainant will also discuss any support required. The investigator will then recommend to the Corporate Personnel Adviser how the complaint should be dealt with. The Corporate Personnel Adviser in conjunction with the alleged harasser's departmental Chief Officer will make the final decision as to the most appropriate action to resolve the complaint.

Formal Investigation

- 7.2.7 If the Corporate Personnel Adviser and the departmental Chief Officer decide a formal investigation is to take place, they will advise the complainant and the alleged harasser of this in writing. If the alleged harasser is in a different department or directorate, that departmental Chief Officer will also be informed. This notification will include a copy of the completed complaint form and must take place within 28 calendar days of the complaint being recorded, as stated in paragraph 7.2.2 of this procedure. The investigation is deemed to have begun on the day these letters are sent.
- 7.2.8 The investigator may decide to meet the alleged harasser in person to advise of the allegations, rather than simply sending a letter. This will be a matter of discretion and the investigator may wish to consult with the alleged harasser's departmental Chief Officer or line manager in making this decision. If

arrangements are made to meet the alleged harasser, the investigator will advise them that they are entitled to be accompanied.

- 7.2.9 The investigator and the departmental Chief Officer should also consider whether there is any need to temporarily move the alleged harasser, the complainant, or both from their normal place of work in order to maintain a safe working environment. Where the two parties work in different directorates or departments, both departmental Chief Officers should be involved in any discussions of this nature. Any action taken must be confirmed and explained in writing by the departmental Chief Officer(s) to all relevant parties at the outset of the investigation.
- 7.2.10 In some circumstances, the departmental Chief Officer(s) may decide it is appropriate to suspend the alleged harasser on full contractual pay. This does not involve any pre-judgement of the outcome of the investigation. Such action should only be taken after advice from the Departmental Personnel Officer, and carried out in accordance with the provisions relating to suspension in the Council's Disciplinary Procedure. Where it is possible, other suitable alternatives that will achieve the same result should be used.
- 7.2.11 The investigator should plan the investigation, and write to the complainant and the alleged harasser and inform them of the anticipated timescales applying to the investigation. The investigation should be completed within 12 weeks of the initial letters being sent. If this is not possible, the complainant and the alleged harasser should be advised of any extension to this timescale and the reasons for it.
- 7.2.12 During the course of the investigation, the complainant and the alleged harasser will be interviewed at least once. Either party may put forward to the investigator the names of witnesses who can confirm or corroborate evidence, or provide further relevant information that may be useful in the investigation. The investigator will, however, make the final decision as to who is interviewed. This may include employees, service users and external people.
- 7.2.13 All parties will be expected to co-operate with investigations, including attending investigation meetings and disciplinary proceedings, if required.
- 7.2.14 Everyone involved in the investigation must observe strict confidentiality at all times. The investigator will take into account any evidence of canvassing or collusion when reaching their conclusions.
- 7.2.15 All parties should be given reasonable notice of any investigatory meetings that they are asked to attend. 'Reasonable' is defined as long enough to allow the worker to prepare, but not so long that memories fade. This should also be agreed with the relevant line manager wherever possible.
- 7.2.16 Investigation meetings should be conducted in appropriate locations, taking account of the particular sensitivities of the case.
- 7.2.17 Interviewees will receive a written record of the notes taken by management to sign and date as an accurate record of the investigation meeting. Wherever possible, this should be sent to the interviewee within seven calendar days.
- 7.2.18 The interviewee may amend, or supplement the written record by agreement with the investigator, and once agreed, this will form their statement. If

amended, the written record will not be retyped and the interviewee's handwritten amendments will be included. Interviewees will be encouraged to return their response to the written record as soon as possible. If an interviewee does not return a signed record of the notes, it will still be included in the investigator's report as a record of the interview, with a note clearly stating that the interviewee has not signed it.

7.2.19 The investigator must advise all parties at the outset that statements may be used and disclosed:

- as part of any subsequent process including appeal hearings
- at employment tribunals or other external legal proceedings
- through a request under the Data Protection Act 1998.

7.2.20 The investigator will reach a decision based upon whether or not they have a genuine belief in the alleged harasser's guilt, after having conducted a thorough investigation. Employment law is based on the principle of believing that an act did or did not occur on the 'balance of probabilities'.

7.2.21 On completing the investigation, the investigator will produce a report of their findings with supporting evidence for the complainant's departmental Chief Officer. This will include recommendations. A copy will be sent to the Corporate Personnel Adviser - Operations.

7.2.22 The options available following the conclusion of an investigation may include:

- no case to answer
- training
- increased supervision
- suspension
- counseling
- teambuilding
- mediation
- disciplinary hearing.

This list is not exhaustive, and the investigator will recommend the most appropriate course of action in each case.

7.2.23 The investigator may recommend disciplinary action against the complainant if the complaint is found to have been malicious.

7.2.24 Once the report is submitted to the departmental Chief Officer, the investigation is complete. The investigator will write to the employee to advise them that their report has been completed and is now with their Chief Officer for consideration.

7.2.25 Having considered the report, the departmental Chief Officer will arrange for a copy to be sent to the complainant and alleged harasser within 14 calendar days. The Chief Officer should also provide a covering letter outlining what happens next, and details of the appeals procedure.

7.2.26 If the outcome of the investigation is to proceed under the Council's Disciplinary Procedure, the departmental Chief Officer, or nominated representative of the department where the alleged harasser works, should delay arranging a disciplinary hearing by at least 14 calendar days. This is to

allow for the complainant to lodge an appeal. No disciplinary hearing should take place until the outcome of the appeal is determined.

- 7.2.27 If the complainant does not lodge an appeal within 14 calendar days of receiving the report, it will then be the responsibility of the relevant departmental Chief Officer to make sure that any recommendations made are enacted, and to resolve issues affecting the work area.
- 7.2.28 If any disciplinary action is taken, the officer chairing the disciplinary hearing should, within seven calendar days of the hearing, send the Corporate Personnel Adviser - Operations a copy of the letter to the alleged harasser confirming the outcome.

Stage Three

Appeal to the Chief Executive

- 7.3.1 If the complainant feels aggrieved with the outcome of Stage Two, they should appeal to the Chief Executive. They should do this by writing to the Chief Executive within 14 calendar days of receiving the report. The complainant must clearly state in their letter of appeal why they are dissatisfied with the outcome of Stage Two, and include any relevant documents they wish to refer to in their appeal.
- 7.3.2 On receiving the complainant's letter of appeal, the Chief Executive will immediately inform the departmental Chief Officers, the Departmental Personnel Officers of both parties, the Corporate Personnel Adviser - Operations and the alleged harasser.
- 7.3.3 The Chief Executive will arrange an appeal hearing. Where possible, this hearing should be held within 21 calendar days of receiving the letter of appeal.
- 7.3.4 The complainant and the Council's representative will both be required to submit their written statement of case at least seven calendar days before the appeal hearing.

Appeal hearing

- 7.3.5 All appeal hearings must be run in accordance with the procedure described in Appendix 3.
- 7.3.6 The Assistant Director - Personnel or a nominated personnel officer must attend the appeal hearing in an advisory capacity.
- 7.3.7 The employee must take all reasonable steps to attend the appeal hearing.
- 7.3.8 No officer acting as an adviser at a Fairness at Work appeals hearing will advise at a subsequent disciplinary hearing considering the same case.

Outcome of Appeal

- 7.3.9 The Chief Executive will determine the most appropriate course of action. This may be:
- to support the recommendations of the Stage Two report

- to ask the original investigator to re-investigate specified elements of the investigation, and submit a supplementary report to the Chief Executive with recommendations
- in exceptional circumstances, to appoint a new investigator.

7.3.10 The Chief Executive will advise both parties of the outcome of the appeal. This should be confirmed in writing within seven calendar days. If a decision cannot reasonably be made at the hearing, the response should be notified to the employee in writing within seven calendar days.

7.3.11 Any partial or full re-investigation should be completed within 28 calendar days of the appeal hearing, subject to the availability of witnesses or any others involved in the process. The Chief Executive, or his nominee, will review the subsequent report and recommendations and reach a decision on what action should be taken.

7.3.12 The Chief Executive will advise both parties in writing of the outcome of any re-investigation, and include a copy of any supplementary reports.

7.3.13 Copies of the supplementary report will also be sent for information to both parties' departmental Chief Officers or nominated representatives, the Departmental Personnel Officers, the Corporate Personnel Adviser - Operations and the original investigator.

7.3.14 If the outcome of the re-investigation differs from that of the original investigation, the relevant departmental Chief Officer(s) will be responsible for acting on the new recommendations.

7.3.15 If the outcome of the appeal or any re-investigation supports the original Stage Two recommendations, the appropriate departmental Chief Officers should act on the original recommendations.

7.3.16 The Chief Executive's decision is final and there is no further appeal mechanism within this procedure. This is the final stage of the Council's internal Fairness at Work Complaints Procedure.

7.3.17 This appeal stage reflects the statutory grievance procedure. If an employee pursues an Employment Tribunal claim the tribunal may reduce any award of compensation if the employee does not pursue their complaint to this stage.

AFTER AN INVESTIGATION

8.1 At the end of the process, those involved may find it difficult to settle back to work, particularly if this means regular contact with others involved in the complaint.

8.2 The Council will try to provide support, and managers should review the outcome of the process with those involved. This may include reviewing working arrangements if this is likely to help. Options that may be considered include temporary or permanent alternative placements or duties, arranging training for team members as appropriate and mediation.

8.3 At the end of the process, management and either party may agree that an alternative placement is necessary in the interests of resolving continuing

problems with working relationships. In those circumstances, the Assistant Director - Personnel and relevant departmental Chief Officer(s) will jointly consider the appropriateness of redeployment within the department.

Review

8.4 Six months after the investigation is completed, the Corporate Personnel Adviser - Operations will contact the complainant, the alleged harasser, and the manager(s) concerned. Each party will be asked:

- whether they felt the investigation and report effectively addressed the complaint
- whether the recommendations made have been implemented fully
- what effects the recommendations have had.

RELATIONSHIP WITH DISCIPLINARY, IMPROVING EMPLOYEE PERFORMANCE AND GRIEVANCE PROCEDURES

9.1 It is possible that an employee may raise a complaint under Fairness at Work as a result of proceedings under the Disciplinary, Improving Employee Performance or Grievance Procedures. The Council's response to this will be determined by two considerations:

- the relevance of the complaint to the Disciplinary, Improving Employee Performance or Grievance process
- the stage of the Disciplinary, Improving Employee Performance or Grievance procedure at which the complaint is lodged.

9.2 Lodging a complaint under the Fairness at Work Policy means that the Disciplinary, Improving Employee Performance or Grievance proceedings may be deferred but this is not automatic.

9.3 If the complaint is not related to the Disciplinary, Improving Employee Performance or Grievance matter or process, it may be dealt with separately.

9.4 If the complaint relates directly to Disciplinary, Improving Employee Performance or Grievance matter or process, the Council may deal with it as part of the Disciplinary, Improving Employee Performance or Grievance procedure, provided the employee has not lodged an appeal under that Procedure. If the employee subsequently brings a claim to an Employment Tribunal, they will be treated as having complied with the statutory minimum grievance procedure and will not be prevented from bringing their claim before an Employment Tribunal.

9.5 Different legal requirements apply if an employee raises a formal complaint **during or after** the appeal stage of the Disciplinary, Improving Employee Performance or Grievance Procedure. In these circumstances, the Council must follow stage two and stage three of the Fairness at Work Procedure in full, in order to comply with the statutory minimum grievance procedure.

COMPLAINTS AFTER EMPLOYMENT HAS ENDED

- 10.1 If an employee who has left the Council makes a complaint, normally the three-stage procedure described in Section 7 applies.
- 10.2 However, if both parties agree in writing, a shorter two-stage procedure may be used if either of these circumstances apply:
- the Council was not aware of the complaint before the employment ended
 - or
 - the Council was aware of the complaint, but the complaint procedure had not been started, or had not been completed, by the time the employment ended.

Step One – the ex-employee must write to the Council stating the nature of the alleged complaint

Step Two - the Council must then set out a written response and send to the ex-employee, which should be received within 28 calendar days.

- 10.3 Where no agreement to using this two-step process is reached, the Council's three-stage procedure will apply, as explained in Section 7.

DISCRIMINATION QUESTIONNAIRES

- 11.1 Legally, employees may use discrimination questionnaires to obtain information from the Council about potential discrimination claims.
- 11.2 The information provided by the Council in response to these questionnaires will be admissible in evidence in Employment Tribunals
- 11.3 If an employee issues a questionnaire of this kind to the Council, the Regulations do not recognise this as formally raising the complaint in writing.

RETENTION OF DOCUMENTS

- 12.1 When the complaint procedure has ended, whatever the outcome, including incomplete investigations, the investigator and/or chairs of meetings and hearings at each stage must make sure that all copies of documentation relating to the complaint are sent to the Departmental Personnel Officer.
- 12.2 All documentation relating to the complaint must be retained in accordance with the Data Protection Act 1998.
- 12.3 One copy of all documentation relating to each case must be stored for six years from the date of completion of the case, in accordance with the Council's Retention Schedule and the Limitations Act. This is in case of any legal proceedings and is irrespective of the outcome, including incomplete investigations.

MONITORING

13. For the Council to comply with equalities legislation and achieve the Equalities Standard for Local Authorities, managers must complete the case summary monitoring form at Appendix 4. This form should be completed for all Fairness at Work complaints, and copies returned to the Departmental Personnel Officer and the Corporate Personnel Adviser - Operations. It will be retained on the case file and be used anonymously for equality monitoring purposes. The Council will check for disparities amongst certain groups and, where they do occur, we will take action to address the problem. A report on the results of monitoring Fairness at Work complaints will be brought to Corporate Joint Committee and the Black and Disabled Employee Support Networks.

FURTHER GUIDANCE AND DEFINITIONS

1 Introduction

In the Fairness at Work policy, we use the term ‘harassment’ to describe any form of discrimination, bullying, victimisation or harassment. This appendix defines what we mean by these various terms, as well as examples of the different forms of behaviour that may be considered as harassment.

The Council’s Equality and Diversity Policy states the range of reasons for which people may be harassed. The Council considers all these to be unacceptable:

- age
- class
- disability
- employment status
- ethnic or national origins, race or colour
- living with HIV/AIDS
- marital status
- religious or political beliefs
- responsibilities for children or dependants
- gender and gender identity
- sexuality
- trade union activities
- unrelated criminal convictions
- any other unjustified grounds.

2 How can you recognise when harassment happens?

Employees should be aware of the many types of harassment – it can take the form of physical, verbal, non-verbal or other visual behaviour. Sometimes, harassment is easy to recognise; at other times it can be far more subtle. It ranges from the extremes of violence and bullying to less obvious actions such as ignoring someone at work. Employees can be harassed by:

- people using our services or members of the public
- colleagues
- someone who works for them
- managers and supervisors
- councillors.

3 What are examples of harassment?

This list is not exhaustive but gives an idea of the range of behaviour that can be considered as harassment.

Physical:

- unnecessary and unwanted physical contact of any kind including brushing against another person, pinching, grabbing, cornering or trapping
- physical abuse or attacks including pranks that could cause physical injury
- assault including rape or attempted rape.

Verbal:

- name calling, threats or personal insults
- derogatory comments, jokes or innuendoes
- sexually explicit or provocative language
- questioning an individual about sexual relationships/preferences
- shouting at a colleague in private or in public
- visible anger or loss of temper
- frequent comments about aspects of physical appearance or using forms of address that are demeaning
- unnecessary or inappropriate threats of disciplinary action.

Non-verbal:

- written, email and text messaging abuse
- displaying or circulating offensive literature, posters, drawings, photographs, graffiti and emblems of a racist or sexual nature
- whistles or cat calls
- staring or leering or suggestive gestures or looks such as winks, licking lips, outlining shape of breasts
- playing offensive music or sectarian songs.

Other types of behaviour:

- criminal damage
- refusing to work with or deliberately isolating colleagues in other ways such as leaving out of social activities or ignoring them
- pressuring for dates or making other unwanted sexual advances
- intrusion by pestering, spying or stalking
- persistent unjustified criticism
- humiliating in public
- constantly watching or querying actions and decisions
- excluding an individual from meetings and discussions
- taking away responsibility
- over-ruling decisions or changing them without explaining why
- imposing unreasonable extra work targets and deadlines.

4 What is sexual harassment?

In the European Commission's Code of Practice, sexual harassment is broadly described as:

- 'unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work'. ..and it will be unacceptable if.... 'such conduct is unwanted, unreasonable and offensive to the individual'
- Sexual harassment involves:
 - a man harassing a woman
 - a woman harassing a man
 - a woman harassing a woman
 - a man harassing a man.

4

5 What is racial harassment?

The Commission for Racial Equality defines it as:

"verbal or physical aggression towards individuals or groups because of their colour, race, nationality, or ethnic or national origins. It may include attacks on property as well as the person".

The 1999 Stephen Lawrence Inquiry defines a racist incident as...

'any incident which is perceived to be racist by the victim or any other person'.

Racial harassment occurs when the victim believes that the harasser is acting on racial grounds.

Women minority ethnic employees, black disabled people or lesbians and gay men may face more than one type of harassment.

6 What is disability harassment?

Disabled people regularly face being made fun of, jokes about disability, the use of words and phrases associated with disability that are offensive to them, hostility, embarrassment, pity and humiliation.

Any behaviour which is offensive and based on someone's impairment, whatever the reason, amounts to discrimination under the Disability Discrimination Act.

For example, an employee circulates an e-mail joke about people with autism. A colleague with this impairment receives the e-mail and finds the joke offensive. This is likely to amount to harassment.

Not providing reasonable adjustments for disabled people at work is also discriminatory. For example, not following the Council's guidelines on disabled people working at Derby City Council.

Wrong assumptions about disabled people can prevent equality at work and must be avoided, otherwise assumptions can turn into harassment and discrimination. For example, excluding disabled colleagues from particular activities because **you** think they won't be able to take part.

7 What is sexuality harassment?

Lesbians, gay men and bisexuals suffer discrimination and harassment simply because of their sexuality. They often face being made fun of, hostility, verbal aggression and even physical assault.

Many lesbians, gay men and bisexuals hide their sexuality and pretend they are heterosexual for fear of discrimination and harassment. Maintaining confidentiality may be very important for some lesbians, gay men and bisexuals. If someone deliberately 'outs' them, this could be considered as harassment.

Equally, if someone puts pressure on a lesbian, gay man or bisexual to hide their sexuality when it is important for them to be open about it, this also could be viewed as harassment.

The law on sexuality applies equally to the harassment of heterosexual people as they do to lesbians, gay men and bisexuals in the workplace. It's also against the law to harass someone because:

- it's assumed that they are of a particular sexuality, whether or not this is the case – for example, excluding someone from an after work activity because of their actual sexuality or perceived sexuality
- of their association with someone of a particular sexuality – for example because they have a lesbian relative or bisexual friend.

8 What is religion or beliefs harassment?

The law protects people of all religions and minority faiths against harassment in the workplace. This includes harassment against Atheists or Humanists for their beliefs.

The harassment may be because of someone's actual or perceived religion or beliefs. For example, if team meetings are always held last thing on a Friday afternoon, this may discriminate against Jewish employees in winter. They may need to leave work before dusk in order to observe the Sabbath. However, it is important not to assume a person's faith associated needs from their religious affiliation. Not all Muslims pray five times a day, all Christians do not go to church on Sundays, and not all Jews avoid non-kosher food or wish to observe the Sabbath. For example, a Jewish team member has not been selected to go to a

Friday conference that finishes late in the evening, when the Sabbath will have commenced. It could be considered discriminatory not to select them on the assumption that they wish to observe the Sabbath and therefore will not want to attend the conference.

9 What is age harassment?

Age discrimination, like other forms of harassment, happens because of prejudice. Everyone can be affected by age discrimination at some time in their life. Usually, older people face this type of harassment, but younger people can suffer too.

The Council will not accept any type of discrimination or harassment and will not tolerate it because of someone's age.

10 What is bullying?

Bullying in the workplace is often misunderstood but can be described as behaviour that is humiliating, intimidating, insulting or offensive, usually involving the abuse of power over another person and aimed at any point of weakness.

“Bullying is the misuse of power or position to persistently criticise and condemn; to openly humiliate and professionally undermine an individual's professional ability until this person becomes so fearful that their confidence crumbles and they lose belief in themselves.”

There are many different forms of workplace bullying.

Bullying may happen in front of other employees who may be too afraid to support the victim in case they become the next target. In most cases, the bullying happens when there are no witnesses. In this situation, the victim is afraid to make a complaint, as they may be afraid of not being believed or the situation getting worse.

There will be situations where a manager may need to encourage an employee to achieve an agreed objective, which may include constructive criticism. A manager needs to be assertive, but must always stay on the correct side of the dividing line between legitimate behaviour and bullying.

11 What about harassment for other reasons?

Harassment can be directed towards people because they are living with HIV/AIDS, because of political beliefs, or because of transsexuality or gender reassignment – which is covered by the Sex Discrimination Gender Reassignment Regulations 1995, because they are an ex-offender or for some other reason.

It can also happen to an individual who happens to be different or disliked by a work colleague. Anyone who looks different or who is from a minority group, or who lacks power, is at risk of being harassed. Harassment also happens between people of the same ethnic origin, gender or sexuality.

12 What is discrimination?

There are two main kinds of discrimination . . .

- **Direct Discrimination**

This is when someone treats another person less favourably, because of race, colour, national or ethnic origin, marital status, sex or disability, sexual orientation, religion or belief, than they treat or would treat others.

- **Indirect Discrimination**

This is when someone imposes a condition, provision, criteria or practice that is not justified and which is more difficult for significant numbers of one group to comply with.

13 What is victimisation?

For the purpose of this policy, victimisation is where someone is treated less favourably by another individual because they have asserted their rights in making a complaint, or they are acting as a witness in connection with a complaint under the Fairness at Work Procedure.

FAIRNESS AT WORK APPEALS HEARING PROCEDURE

- 1 The complainant or their representative will state why they are dissatisfied with the outcome of Stage Two.
- 2 The Council's representative may question the complainant on their grounds for dissatisfaction.
- 3 The Chief Executive may question the complainant on their grounds for dissatisfaction.
- 4 The Council's representative will then be asked to respond to the complainant's grounds of dissatisfaction.
- 5 The complainant may then question the Council's representative.
- 6 The Chief Executive may then question the Council's representative.
- 7 The Council's representative will then sum up the Council's case
- 8 The employee or their representative will then sum up their case.
- 7 Both sides will retire and wait for a decision.
- 8 The Chief Executive will consider the case in private only recalling either side to clarify any information. If recall is necessary, both sides must return even if only one is concerned with the point in doubt.
- 9 The Assistant Director - Personnel, or a nominated representative will advise the Chief Executive in private.
- 10 All the information to be considered by the Chief Executive is to be submitted in the presence of both parties.
- 11 The Chief Executive will inform both parties of the decision on the most appropriate course of action. This may be:
 - to support the recommendations of the Stage Two report
 - to ask the original investigator to re-investigate specified elements of the investigation, and submit a supplementary report to the Chief Executive with recommendations
 - in exceptional circumstances, to appoint a new investigator.
- 12 The decision should be confirmed in writing within seven calendar days.

FAIRNESS AT WORK COMPLAINT - CASE SUMMARY MONITORING FORM

All information provided will be treated in confidence, in accordance with the Data Protection Act 1998 and used for employee management purposes. It will be shared between personnel sections for monitoring and auditing of management processes and will be stored securely on the file relating to the complaint.

Department _____

Personnel Officer completing form _____

Contact Telephone Number _____

NATURE OF COMPLAINT

Sex ☐ Sexuality ☐

Disability ☐ Religion and belief ☐

Race ☐ Age ☐

If other please specify _____

COMPLAINANT'S DETAILS

Full name _____ Disabled person Yes ☐

Gender F ☐ No ☐

M ☐

Asian or Asian British

Bangladeshi ☐

Indian ☐

Pakistani ☐

Any other Asian background ☐

Black or Black British

Caribbean ☐

African ☐

Other Black background ☐

White

British ☐

Irish ☐

Other ☐

Dual Heritage

White and British Caribbean ☐

White and Black African ☐

White and Asian ☐

Other Dual Heritage background ☐

Chinese or other group

Chinese ☐

Other ethnic group, please specify _____

TIMESCALES

Date complaint received by CPA
Date investigation concluded
Date of disciplinary hearing
Date of appeal hearing
Date review due

SUMMARISED DETAILS OF COMPLAINT

RECOMMENDATIONS

Proceed to disciplinary hearing	Yes	<input type="checkbox"/>		
	No	<input type="checkbox"/>		
If Yes, outcome	No action	<input type="checkbox"/>	Verbal warning	<input type="checkbox"/>
	Written warning	<input type="checkbox"/>	Final written warning	<input type="checkbox"/>
	Dismissal	<input type="checkbox"/>	Other	<input type="checkbox"/>
Outcome appealed	Yes	<input type="checkbox"/>		
	No	<input type="checkbox"/>		
If Yes, outcome	Sanction upheld	<input type="checkbox"/>		
	Dismissed	<input type="checkbox"/>		
	Substituted	<input type="checkbox"/>		

ADDITIONAL COMMENTS

Send completed form to Corporate Personnel Adviser - Operations, Corporate Personnel. A copy must be kept on the case file retained by the Departmental Personnel Officer.