

**NORTH LINCOLNSHIRE COUNCIL**

**CORPORATE SERVICES CABINET MEMBER**

**EMPLOYMENT DISPUTE RESOLUTION**

**1. OBJECT AND KEY POINTS IN THIS REPORT**

- 1.1. To seek approval for revisions to the following Human Resources (HR) documents
- Dignity at work policy
  - Grievance procedure

**2 BACKGROUND INFORMATION**

- 2.1 The Employment Protection Act 2002 (Dispute Resolution) Regulations 2004 currently requires all employers to have a dispute resolution procedure and recommends a model grievance procedure.
- 2.2 The dignity at work policy represents good practice for dealing with more complex workplace grievances, specifically allegations of bullying, harassment or unlawful discrimination.
- 2.3 A government review of employment dispute resolution in Great Britain has recommended repealing the statutory dispute resolution procedures. The Employment Bill 2007 whilst not outlining the detail indicates a desire to enact the recommendations of the 'Gibbons review' in part by April 2009.
- 2.4 Whilst both documents are based upon existing statutory procedures the revisions incorporate most of the recommendations made in the 'Gibbons review', including committing to implementing and promoting early dispute resolution, the use of in-house mediation and a simplification of process.
- 2.5 Senior members of the HR service have been trained as mediators to support the council's attempts to resolve work place differences through more informal means.

**3 OPTIONS FOR CONSIDERATION**

- 3.1 To consider and accept the revised Dignity at Work policy and Grievance procedure.
- 3.2 To reject the revised documents.
- 3.3 To make recommendations to amend the proposed documents.

#### **4. ANALYSIS OF OPTIONS**

- 4.1 Both documents have been devised in accordance with anticipated changes to existing legislation and codes of practice. Acceptance of the proposed documents will ensure that the council continues to work to best practice in respect of employment dispute resolution.
- 4.2 Rejecting the proposed documents would result in the council's approach not keeping up to date with best practice. It would also mean reverting to documents that are often time consuming and tend to lead to an emphasis on the formal process at the expense of informal solutions.
- 4.3 Recommending further changes to the documents would require further consultation and delay implementation.

#### **5 RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)**

##### 5.1 Financial

There are no direct financial implications.

##### 5.2 Staffing

The documents are applicable to all employees of the council other than those employed by schools with delegated powers.

##### 5.3 Property

None.

##### 5.4 IT

None.

#### **6 OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 CRIME AND DISORDER, RISK AND OTHER)**

- 6.1 Both documents accord with the existing requirements of the Employment Protection Act 2002 (Dispute Resolution) Regulations 2004. In addition revisions prepare the council for planned changes set out in the Employment Bill 2007.

## **7. OUTCOMES OF CONSULTATION**

- 7.1 The relevant trade unions have been consulted and are fully supportive of the revised documents.

## **8. RECOMMENDATIONS**

- 8.1 That the new documents be approved and adopted.

SERVICE DIRECTOR HUMAN RESOURCES

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**Background Papers used in the preparation of this report:** None

## 1.0 INTRODUCTION

- 1.1 North Lincolnshire Council encourages an open and trusting culture and is committed to achieving an organisation free from bullying, harassment and unlawful discrimination and providing a working environment that offers fair treatment and equal opportunities for all its employees. It recognises that a working environment free from bullying, harassment and discrimination is essential for employees to thrive and for job satisfaction to be possible.
- 1.2 Every employee and councillor has a responsibility to help provide a working environment in which the dignity of colleagues is respected and to treat all colleagues with dignity and respect irrespective of their gender, race, marital status, age, disability, sexual orientation, religion or beliefs. Employees and councillors should be aware of the potential impact their behaviour may have on others.
- 1.3 This policy applies when an employee, or group of employees, believes they are being bullied, harassed or suffering discrimination.
- 1.4 All such complaints will be treated seriously. All investigations will be conducted sensitively and the importance of confidentiality will be stressed at all times.
- 1.5 If a counter claim is brought against a complainant, the initial allegation will normally be investigated first and then the counter claim will be investigated and addressed.
- 1.6 Managers who receive a complaint at any stage of the procedure regarding an employee outside of their own service area should inform a Human Resources (HR) representative before taking any further action.
- 1.7 This policy applies to all employees of the council with the exception of those employed by schools with delegated powers.

## 2.0 DEFINITIONS

- 2.1 The terms “bullying” and “harassment” are used throughout this document. However, any behaviour that is perceived to be unacceptable by the recipient is covered, whether defined explicitly or not.
- 2.2 Bullying is defined as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient.
- 2.3 Harassment is when one person engages in unwanted conduct that violates another person’s dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for that person. This includes sexual harassment, harassment on the grounds of gender and the harassment of transsexual staff.
- 2.4 These behaviours may be intentional or unintentional, overt or covert, explicit or subtle. It is the impact on the recipient that determines whether behaviour constitutes bullying or harassment and not the intention of the bully/harasser.
- 2.5 Discrimination is defined as classifying people into groups and treating them differently as a result. Discrimination can be:
- **Direct** – where for example someone’s gender or race is used as an explicit reason for discriminating against them, or
  - **Indirect** – when there are rules, regulations or procedures operating, which have the effect of disadvantaging one group of people more than another.
- 2.6 Discrimination is unlawful where it is practised against a particular group that has been protected by law, for example if it is in relation to gender, race, disability, sexual orientation, religion, age, marital status or any other grounds that cannot be justified.

- 2.7 The policy acknowledges that the workplace includes not only the physical premises but also extends to off-site areas including social occasions attended by employees where behaviour and conduct at such occasions may have an impact on effective working relationships.

### **3.0 ACCESSING SUPPORT**

- 3.1 Support is available from the Human Resources (HR) service and the council's Welfare Team, who are available for employees to contact in confidence, to discuss their situation.
- 3.2 Support will be offered to all parties. Where the alleged bully/harasser requests support, they will be allocated a different officer to the one supporting the complainant.
- 3.3 It is not the role of the supporting officer/s to make decisions for the individual but to provide them with the advice and guidance necessary to come to a decision about the way forward. The supporting officers will not have a role in the investigation of the complaint.
- 3.4 At all formal stages of the procedure, employees have the right to be represented by a trade union representative, or accompanied by a fellow worker of the council. The council encourages employees to seek support as appropriate.
- 3.5 If the employee considers that they have a disability, every effort will be made to accommodate any reasonable adjustments that may be necessary or requested.

### **4.0 PROCEDURE**

#### **Informal Stage**

- 4.1 Where an employee believes that they are being bullied, harassed or discriminated against there are a number of options available to them as described below. In all

cases, the employee should keep a note of any relevant incident(s) including date, time any witness present, the way in which the behaviour has affected them/their work and any action taken to stop the harassment, bullying or discrimination.

- 4.2 Every effort should be made to resolve complaints of harassment, bullying or discrimination through informal means initially, to encourage positive working relationships. Constructive discussions between the parties should be encouraged at all times.
- 4.3 If an employee feels able to do so they should approach the alleged bully/harasser in order to tell him/her of the behaviour that is causing offence, to explain the impact the behaviour is having and to ask him/her to stop using such behaviour.
- 4.4 Alternatively, if the employee feels unable to follow this course of action, they should discuss any concerns about the unacceptable behaviour with their line manager and ask them to speak to the alleged bully/harasser and ask him/her to stop the behaviour that is causing concern.
- 4.5 If the line manager is the alleged bully/harasser, his or her line manager should be approached.
- 4.6 The manager to whom the complaint is brought will listen sympathetically and, having understood the issues, speak to the alleged bully/harasser with a view to gaining acceptance that their behaviour is unacceptable and should cease. A file note should be taken of all actions at this stage.

### **Mediation**

- 4.7 Where initial discussions are inappropriate or have failed to resolve the matter satisfactorily, the manager to whom the complaint was brought should raise the matter with HR who will organise a mediation session where appropriate and with the agreement of both the complainant and the alleged bully/harasser.

- 4.8 Mediation should be used wherever possible to address the issues before the formal stage is instigated. However mediation can be used at any stage of the procedure.
- 4.9 A trained mediator (either an employee, a member of HR staff or an external facilitator) with no prior knowledge of the circumstances both parties wish to address will facilitate structured discussions between the complainant and the alleged bully/harasser to try and bring about a resolution.
- 4.10 If the issue cannot be resolved through the informal approach, or mediation, or if the alleged behaviour is so severe that the complainant is unable to continue working without immediate intervention, the formal stage of the procedure should be used.

#### **Formal Stage**

- 4.11 A formal complaint should be made in writing. A dignity at work form is available for this purpose, if required. The complaint should be submitted to the complainant's own Service Director, who will acknowledge receipt of the complaint, and confirm with the complainant that the informal stage has been exhausted. They will notify the relevant Head of HR that the complaint has been received and agree the appointment of an independent investigating officer. The investigating officer should be appointed as soon as possible but normally no later than the fifth working day following receipt of the complaint.
- 4.12 If the precautionary suspension or temporary relocation of the alleged bully/harasser is considered necessary this must be agreed with the Service Director Human Resources.
- 4.13 The investigating officer will investigate the allegation as quickly as possible. This will commence with an interview with the complainant during which the allegation should be clarified and a statement taken.

- 4.14 Following this the investigating officer will advise the alleged bully/harasser of the nature of the complaint against them. They will be made aware that a formal investigation is to be carried out and reminded that the matter should remain confidential and not be discussed with colleagues. They will also be informed that any victimisation of a complainant or any employee assisting in an investigation will be considered to be serious misconduct and dealt with accordingly. **The identity of the complainant will not normally be disclosed at this stage.**
- 4.15 The investigating officer will then interview and take statements from any witnesses and examine any other relevant evidence. A written statement should be taken from all persons interviewed. All such statements should be typed and then agreed by the person interviewed who will be required to sign and date each page. Each witness interviewed must be advised that should the outcome of the investigation be disciplinary action they may be required to attend a subsequent disciplinary hearing at the request of either party and in the event of a disciplinary hearing statements will be made available to the bully/harasser. Witnesses should also be advised that the matter is confidential and must not be discussed with anyone.
- 4.16 The investigating officer will subsequently write to the alleged bully/harasser to outline the full details of the allegation and ask them to attend a fact finding interview giving at least 5 working days notice. The invitation will outline the purpose of the meeting, the allegations and remind them of the right to be represented by a trade union representative or accompanied by a fellow worker of the council. If this date is inconvenient an alternative date should be agreed within 5 working days wherever possible.
- 4.17 The alleged bully/harasser will be given the opportunity to state their case and nominate witnesses to be interviewed.
- 4.18 It is recognised that the time needed to conduct a thorough investigation will vary. However, the aim should be to complete investigations within 4 working weeks, wherever possible. No investigation should take longer than 12 working weeks unless there are external factors beyond the control of the investigating officer. In

such circumstances, the employees concerned, their representatives and the relevant Head of HR must be kept informed of progress on a monthly basis.

## 5.0 RECOMMENDATION

- 5.1 On conclusion of the investigation, the investigating officer will prepare a written report with recommendations, which will be presented both verbally and in writing to the alleged bully/harasser's Service Director. The Service Director will decide what action to take.
- 5.2 The potential recommendations that can be made may include:
- No further formal action
  - Mediation (subject to agreement)
  - Management counselling and/or training
  - A capability hearing
  - A disciplinary hearing
- 5.3 The Service Director, supported by the investigating officer, will then meet with the complainant to explain the outcome of the investigation. This meeting should be used as an opportunity to inform the complainant of the process of the investigation and for them to pose any questions they may have. A copy of the written report will be provided to the complainant at the meeting.
- 5.4 All parties to the meeting will be reminded that the matter must remain confidential.
- 5.5 Wherever possible the Service Director should establish whether the complainant wishes to exercise their right of appeal prior to offering feedback to the alleged bully/harasser.
- 5.6 The Service Director, supported by the investigating officer, will then meet with the alleged bully/harasser to inform them of the outcome of the investigation. A copy of the written report will be provided to the alleged bully/harasser at the meeting.

- 5.7 The alleged bully/harasser will be warned that any victimisation of the complainant or any employee assisting in an investigation will be considered to be serious gross misconduct and dealt with accordingly. Again all parties at the meeting will be reminded that the matter must remain confidential.
- 5.8 Following these meetings, the complainant and the alleged bully/harasser will be notified of the outcome in writing by the Service Director with due regard to confidentiality.
- 5.9 If a disciplinary or capability hearing is recommended and agreed, the complaint of bullying/harassment will be considered at a formal hearing held in accordance with the appropriate procedure.
- 5.10 In serious cases, the outcome of a hearing may be dismissal. Alternatively, redeployment may be considered where this is appropriate and possible. It will normally be the bully/harasser who is redeployed to an alternative work place, in which case protection of salary will not apply.
- 5.11 In exceptional circumstances involving serious bullying/harassment the complainant may be redeployed but this will only take place if mutually agreed. In such cases protection of the complainant's salary in accordance with the redeployment scheme will apply.
- 5.12 Between three and six weeks after the hearing, the relevant Head of HR will contact the complainant to check that the bullying/harassment has stopped and/or that there has been no victimisation or retaliation. This contact and the outcome will be recorded.

## **6.0 MALICIOUS ALLEGATIONS**

- 6.1 If a claim is evidenced to be malicious in nature, action will be taken against the complainant in accordance with the disciplinary procedure.

## **7.0 APPEALS**

7.1 The complainant may appeal against the outcome of the investigation but not against the outcome of any subsequent disciplinary or capability hearing. Any such appeal must be notified to the Service Director Legal and Democratic Services who will arrange for it to be considered by the Appeals Committee. The appeal may be due to:

- a misinterpretation of facts,
- new evidence becoming available
- the investigating officer not taking all of the facts into consideration,
- the procedure not being followed
- the action taken in response to the recommendations being inappropriate.

7.2 The bully/harasser may appeal against the outcome of any subsequent disciplinary or capability hearing but not against the outcome of the investigation. Any such appeal must be notified to the Service Director Legal and Democratic Services as set out in the relevant policy/procedure, stating clearly the grounds for appeal.

7.3 All appeals must be made in writing within 10 working days of the written notification of the decision.

## **8.0 ADDITIONAL**

8.1 If additional time is needed at any stage to enable a full and detailed investigation of the issues raised all parties should be kept informed of progress.

8.2 Should the structure of a service prevent a complaint of bullying/harassment from being investigated by a manager at any stage, an officer from another service of at least equivalent grade will consider the matter.

- 8.3 Where appropriate the Service Director HR may delegate the consideration of a complaint to an HR representative or external investigator to ensure objectivity, providing they have had no previous involvement in the matter.

## 1.0 INTRODUCTION

- 1.1 The council recognises that employees may wish to seek redress for complaints relating to their employment (grievances). Free communication between employees and their managers is encouraged at all times to ensure that problems and questions arising during the course of employment are raised and resolved as quickly as possible and to the satisfaction of all concerned.
- 1.2 Unless the relevant Head of Human Resources (HR) agrees that there are exceptional circumstances, such as long-term absence, the grievance must be raised within three months of the incident or action giving rise to it.
- 1.3 Some matters relating to employment do not fall within the scope of this procedure and are dealt with under separate arrangements. These are:
- Allegations of bullying, harassment or discrimination (Dignity at work policy)
  - Disciplinary outcomes (Disciplinary Appeals procedure)
  - Allegations of fraud, corruption or financial malpractice (Whistleblowers policy)
  - Applications for grading, regrading and appeals (Grading policy)
  - Matters connected with the level of allowances (Joint consultative machinery)
  - Other payroll matters affecting Income Tax, National Insurance, superannuation, etc. (Via direct contact with the section/department concerned)
- 1.4 This procedure relates only to individual employees. Where grievances are of a collective nature or where an individual complaint becomes a collective issue affecting other employees, the matter will be dealt with under the Collective Disputes procedure.
- 1.5 This procedure applies to all employees of the council and former employees (subject to prescribed time limits) other than those employed by schools with delegated powers.

- 1.6 Any action taken against an employee because they have raised a grievance may amount to unlawful victimisation.

## **2.0 ACCESSING SUPPORT**

- 2.1 Support is available from the HR service and the council's Welfare Team, who are available for employees to contact in confidence, to discuss their situation.
- 2.2 At all stages of the procedure, employees have the right to be represented by a trade union representative, or accompanied by a fellow worker of the council. The council encourages employees to seek support as appropriate.
- 2.3 If the employee considers that they have a disability, every effort will be made to accommodate any reasonable adjustments that may be necessary or requested.

## **3.0 PROCEDURE**

- 3.1 Every effort should be made to resolve grievances through an informal process, including the use of mediation where appropriate.

### **Informal stage**

- 3.2 Where an employee has a grievance arising from employment, they should initially raise the matter with their immediate supervisor. The immediate supervisor and employee should discuss the issue and both parties should keep a record of the details of the grievance, including date, circumstance, advice given and the decision taken.
- 3.3 Should the employee be dissatisfied with the decision or if the grievance relates to their immediate supervisor, the employee, represented if they wish by a trade union representative or accompanied by a fellow worker of the council, may request a meeting to discuss the matter with the next level of management.

- 3.4 The manager will obtain the supervisor's record of the grievance, record any additional information and then reconsider the matter. If not resolved at the meeting the manager will carry out further investigation as is necessary.
- 3.5 A decision will be confirmed in writing to the employee and copied to the union representative or fellow worker of the council, normally within 10 working days of the date of the meeting.

**Mediation**

- 3.6 Where initial discussions have failed to resolve the grievance satisfactorily the manager who last considered the grievance should raise the matter with HR. If appropriate and provided both parties agree HR will organise mediation.
- 3.7 Mediation should be used wherever possible to address the issues before the formal stage is instigated. However mediation can be used at any stage of the procedure.
- 3.8 A trained mediator (an employee, a member of HR staff or an external facilitator) with no prior knowledge of the circumstances both parties wish to address will facilitate structured discussions between the parties to try and bring about a resolution.

**Formal stage**

- 3.9 Should the employee still remain dissatisfied, or when a former employee is complying with dispute resolution regulations, they must put the grievance in writing to the relevant Service Director.
- 3.10 The complainant should state in writing why they are unhappy with initial informal attempts to resolve the grievance and their preferred outcome. A grievance form is available for this purpose if required.

- 3.11 The Service Director will write to the complainant to request his/her attendance at a meeting to discuss the matter. The complainant will be given at least five working days prior notice in writing of the time and place of the meeting and reminded of the right to be represented/accompanied in accordance with paragraph 2.2. A HR representative will assist in the process and/or support the Service Director at the meeting if required.
- 3.12 The Service Director will give further consideration to the problem and a decision will be given in writing to the employee, with copies issued to the other parties to the meeting, normally within 10 working days of the meeting.
- 3.13 If the matter is not resolved at this stage, the employee will be allowed a right of appeal. Appeals must initially be notified to the Service Director HR within 10 working days of the written notification of the decision. Again, the complainant should state in writing why they are unhappy with initial attempts to resolve the complaint and their preferred outcome.
- 3.14 In the first instance the Service Director HR will invite both parties to a grievance conciliation panel (comprising an independent Service Director, a full time trade union officer and a HR representative). The panel will hear the representations from the complainant, their representative and from the complainant's Service Director before deliberating. The recommendation will be confirmed to both parties in writing,
- 3.15 Every effort will be made to seek the agreement of both parties at the conciliation meeting. Failing this both parties will be allowed five working days to confirm a response.
- 3.16 If agreement cannot be reached the appeal to the council's Appeals Committee will proceed.

#### 4.0 ADDITIONAL

- 4.1 If additional time is needed at any stage to enable a full and detailed investigation of the issues raised the employee should be informed in writing and be given an estimated date by which a decision will be reached.
- 4.2 Should the structure of a service prevent a grievance from being investigated by a manager at any stage, an officer from another service of at least equivalent grade will consider the matter.
- 4.3 Where appropriate the Service Director HR may delegate the consideration of a grievance to an HR representative or external investigator to ensure objectivity, providing they have had no previous involvement in the matter.