

SOUTH DERBYSHIRE DISTRICT COUNCIL

HARASSMENT POLICY

C O N T E N T S

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***This page will also include reference to supporting letters.**

1.0 INTRODUCTION

- 1.1 Both management and the trade unions support the right of all people to be treated with dignity and respect at work. They are committed to promoting equal opportunities and diversity in service delivery and a working environment free of harassment, bullying and victimisation. It is therefore intended that the Policy in this document will support the Council's overall aims and objectives concerning Equal Opportunities and Diversity.
- 1.2 It is important to remember that in all types of harassment, the perception of the recipient is important. A form of behaviour tolerated by one person does not mean that the same behaviour cannot be harassment if directed at someone else. It is therefore the impact on the individual, which is the key in cases of harassment, not the intention of the perpetrator.
- 1.3 In many instances complaints may be resolved informally through intervention by friends, colleagues, trade union representatives, management or Human Resources. This is the preferred approach as it can play a valuable part in resolving matters at an early stage or by providing sufficient support for an employee to feel able to pursue the matter formally if required.
- 1.4 A formal allegation of harassment, bullying or victimisation will be taken seriously and will be thoroughly, promptly and confidentially investigated. Following this, if appropriate, a formal disciplinary hearing will be convened under the relevant Disciplinary Procedure, which may lead to formal disciplinary action being taken against the employee.
- 1.5 The policy statement and procedure in this document have been agreed with the relevant trade unions.

2.0 POLICY

- 2.1 The Council recognises its moral and legal responsibilities to ensure that all its employees are treated with dignity and respect at work. It, therefore, considers harassment, bullying and victimisation to be unacceptable behaviour. Inherent in this, employees should be able to bring a complaint of harassment without fear of ridicule or reprisal.
- 2.2 Harassment can be defined as either:
 - (a) The violation of another's dignity
 - Or
 - (b) Subjecting another to an intimidating, hostile, degrading, humiliating or offensive environment.

(Adapted from the EC Equal Treatment Directive (76/207/EEC))

- 2.3 For the purpose of this policy, the term harassment includes bullying and victimisation. The definition and examples of harassment are in Section 4 of this document.

2.4 Harassment is improper behaviour and a recognised form of discrimination. It causes anxiety and stress and undermines the health and safety of people at work. The Council recognises that it has a responsibility to protect its employees from this type of behaviour and considers it unacceptable to harass another person because of their:

- Gender.
- Race.
- Ethnic or national origin.
- Disability.
- Family status.
- Age.
- Religious belief.
- Class
- Sexuality.

2.5 The Council will address and endeavour to eliminate harassment at work by:

- Promoting a work environment where everyone treats each other with respect.
- Ensuring that all employees are aware of this policy.
- Promoting access to confidential support and counselling services.
- Providing guidance on dealing with harassment.
- Ensuring that allegations of harassment are promptly and fully investigated.
- Use of the appropriate Disciplinary Procedure if necessary.
- Training.
- Working with partners to review and evaluate this Policy.

2.6 The Council has an agreed procedure for dealing with allegations of harassment which is included in this document. This aims to provide a framework to ensure a consistent, fair and transparent approach for dealing with allegations of harassment.

3.0 WHO DOES THE POLICY AND PROCEDURE COVER?

3.1 The Council's Policy on harassment and the procedure for dealing with allegations of harassment apply to all Elected Members and all Council employees.

4.0 EXAMPLES OF HARASSMENT, BULLYING AND VICTIMISATION

Harassment

4.1 Harassment can take place in many forms. It may be verbal and/or physical, written or implied. It may be a single or numerous actions. In all types of harassment, the perception of the recipient is important. A form of behaviour tolerated by one person does not mean that the same behaviour cannot be harassment if directed at someone else. It is therefore the impact on the individual, which is the key in cases of harassment, not the intention of the perpetrator.

Bullying

- 4.2 Bullying overlaps with harassment to some extent. It can be defined as offensive, intimidating, malicious, insulting or humiliating behaviour by one or more individuals. Bullying may involve the abuse of power or authority in an attempt to undermine someone else.

Examples of harassment and bullying.

- 4.3 Harassment/bullying may include:
- Physical contact ranging from touching to assault.
 - Verbal and/or written abuse i.e. offensive language, gossip, slander, offensive letters/memos, derogatory remarks, jokes, teasing.
 - The display of offensive posters and other material.
 - Offensive emails, screensavers etc
 - Intrusion by pestering, spying, following, etc.
 - Asking inappropriate/intimate questions. Initiating inappropriate discussions.
 - Abusive behaviour/gestures
 - Ridiculing or demeaning someone – picking on them or setting them up to fail.
 - Deliberately undermining a competent employee by overloading them with work or constantly criticising them.
 - Preventing employees progressing by intentionally blocking promotion or training opportunities.
 - Making threats or comments about job security without foundation.
 - Belittling a person in front of colleagues.
 - Setting unachievable deadlines or unequal workloads.
 - Excessive/overbearing supervision.
 - Isolation or non-co-operation.
 - Threatening behaviour.

Victimisation

- 4.4 Victimisation is another form of bullying and involves treating a person or persons less favourably than another. For example, an employee who has made a complaint about being harassed could suffer victimisation. Equally, victimisation can occur against someone who is alleged to have harassed another.

Other examples

- 4.5 The examples given are not exhaustive. Any form of harassment, bullying or victimisation will be treated with equal seriousness.

5.0 GENERAL PRINCIPLES

Harassment procedure

- 5.1 The procedure in Section 13 should be used to deal with any form of harassment.
- 5.2 For the purpose of the procedure, the term harassment includes bullying and victimisation.

Induction

- 5.3 The employee Induction Programme will be used to start awareness on the Council's commitment to prevent harassment in the workplace.

Training

- 5.4 Employees will be required to attend the Council's Equality and Diversity training.
- 5.5 Managers will be trained in the procedure and in their responsibilities to promote a working environment free from any form of harassment.

Corporate responsibilities

- 5.6 Corporate responsibilities are explained in Section 2.

Management responsibilities

- 5.7 Managers are responsible for ensuring that the working environment is free from harassment. They should:
- Ensure that the Council's Policy is properly implemented and that it is complied with.
 - Deal with complaints of harassment fairly and as quickly as possible using the agreed procedure.
 - Be responsive and supportive to any employee who alleges harassment. This includes providing clear advice on procedure, advising on support available, maintaining confidentiality and implementing any actions arising from any informal or formal matters raised.
- 5.8 Failure by a manager to respond appropriately to an allegation will compound the harassment. In cases of this nature action, which may be disciplinary action, will be taken against the manager.

Employee's responsibilities

- 5.9 All employees have a responsibility to help create an environment free from harassment by treating their colleagues and customers with dignity and respect. Employees can do much to discourage harassment by making it clear that they find such behaviour unacceptable and by supporting colleagues who experience such treatment and who are considering making a complaint. Employees who witness incidents of harassment are encouraged to report what they have seen and heard and offer supporting evidence in any investigation that may follow.
- 5.10 Allegations of harassment will normally be dealt with firstly by using the informal stage of the procedure.
- 5.11 Disciplinary action, which may include dismissal, will be taken against employees:

Found to have harassed another employee,

Or

- Who have been found to have victimised/retaliated against another employee for making a complaint of harassment against them or for assisting in an investigation or for appearing as a witness in a disciplinary hearing.

Or

- Found to have harassed a customer or member of the public.

Confidentiality

- 5.12 An allegation/complaint of harassment must be treated in a sensitive and confidential manner. Where evidence is provided that confidentiality has not been kept the person(s) responsible will be subject to disciplinary action.

Representation

- 5.13 An employee will have the right to be accompanied by a trade union representative or an employee of the Council in the following circumstances:

- At a meeting to discuss temporary working arrangements (see paragraph 7.1).
- At a meeting to confirm suspension (see paragraph 7.4).
- At an interview attended during an investigation (see paragraph 13.17). The representative will be able to advise/confer with the employee but not to answer questions on their client's behalf.

Assistance

- 5.14 An employee who feels that they are being harassed can seek confidential advice and support from:

- Their line manager (or any manager she/he chooses to approach).
- A member of Human Resources.
- Occupational Health.
- A trade union representative.

- 5.15 Arrangements can be made (through Human Resources) for support by an independent professional counsellor.

- 5.16 An employee who asks for advice is under no obligation to take further action. Assistance will be provided by those in paragraph 5.14 to help the employee decide what to do and to ensure that the employee is not discouraged from bringing forward their allegation of harassment.

6.0 WHEN SHOULD AN ALTERNATIVE MANAGER DEAL WITH ALLEGATIONS OF HARASSMENT

- 6.1 There may be occasions where the manager who would normally be expected to deal with an allegation of harassment is, in fact, the subject of the allegation or may have had some prior involvement. In these cases, another manager of equivalent status or above may consider the case.

7.0 EMPLOYMENT DURING AN INVESTIGATION

Temporary adjustment of working arrangements and/or role

- 7.1 When an allegation of harassment is made, it may be appropriate in the circumstances for the manager to consider making temporary arrangements to separate both parties. Temporary arrangements can include altering reporting lines, changing duties/responsibilities and providing an alternative workspace. The manager should consult with both parties before making a decision. Temporary arrangements will be made on the basis of the duty of care that the Council has towards both parties. They will be regarded as neutral action and will not involve any prejudgement of the case.
- 7.2 Temporary arrangements will be confirmed in writing to both parties.

Suspension

- 7.3 The alleged harasser will be suspended where the allegations involve gross misconduct. The suspension will be regarded as a neutral rather than disciplinary action. The employee will receive full pay during the period of suspension. Full pay is defined as the pay the employee would have received if working.
- 7.4 A suspension must be authorised by a Head of Service or above. The manager, supported by a member of Human Resources, will initially meet with the employee to inform her/him of their suspension. A trade union representative or another employee of the Council can accompany the employee. Reasonable steps will be taken to enable the representative to attend the meeting.
- 7.5 At the meeting, the employee must be informed:
- Of the allegations against her/him.
 - Of the reason(s) for their suspension.
 - That the suspension is a neutral action.
 - That she/he will receive full pay during the period of suspension.
- 7.6 This should be confirmed in writing by no later than two working days of the meeting. The letter should either be hand delivered or sent by recorded delivery.
- 7.7 A suspension must be reviewed by no later than 20 working days, or sooner if appropriate, after it commences. It must then be reviewed every 20 working days or sooner if appropriate. The employee should be kept informed in writing of the outcome of the review.
- 7.8 **A local trade union representative will not be suspended until another local trade union official or a full time official of the relevant trade union has been informed.**
- 7.9 When an employee is returning to work following a suspension, the manager must draw up an action plan to ensure her/his integration back to the workplace.

8.0 ABSENCE FROM WORK

- 8.1 Where the complainant has been absent from work during an investigation and any subsequent disciplinary proceedings, she/he should be assisted in resuming her/his duties. Potential problems should be identified and discussed. Where appropriate work colleagues should be included in this process. Every reasonable effort must be made to ensure the complainant returns to a working environment where she/he feels comfortable and where she/he becomes fully integrated into the workplace as soon as possible.
- 8.2 When the complainant is returning to work, the manager must draw up an action plan to ensure her/his integration back to the workplace.

9.0 EXTERNAL INDEPENDENT SUPPORT

- 9.1 External independent support may on occasion be required to help resolve an allegation of harassment. For example, it might be considered appropriate that an independent person conducts an investigation or provides mediation.
- 9.2 External independent support will only be sought with the agreement of both parties. There should also be agreement on who and what type of support is used.

10.0 COUNTER ALLEGATIONS

- 10.1 Sometimes an employee may make a counter allegation when she/he is informed that an allegation of harassment has been made against her/him. For example, the employee may claim to have been provoked by the complainant. In most circumstances, it will be expected that the counter allegation should be addressed under the procedure currently being followed. However, in some circumstances, a separate investigation may be required. Managers should ask Human Resources for advice.

11.0 MALICIOUS ALLEGATIONS

- 11.1 If it is considered that during an investigation, an employee's allegation of harassment has been malicious and without substance, then a formal disciplinary hearing will be convened under the appropriate Disciplinary Procedure. This may lead to formal disciplinary action being taken against the employee.

12.0 VICTIMISATION

- 12.1 The Head of Service must ensure that no victimisation of the complainant and/or any witnesses take place.
- 12.2 Those alleged to have harassed and those who have been disciplined for harassing another employee must also be protected from victimisation.

13.0 PROCEDURE

- 13.1 For the purpose of the following procedure the term harassment will include bullying and victimisation.

Confirming the status of the allegation

- 13.2 In most cases employees will initially put an allegation of harassment in writing to their manager. If their manager is the subject of the allegation or has had some prior involvement, the employee should write to their next tier of management or Human Resources. Following receipt of the letter, the appropriate manager should meet with the employee (and their representative if appropriate) to clarify if the allegation is informal or formal. A member of Human Resources should support the manager at the meeting.
- 13.3 After the meeting, the manager should write to the employee (copy to any representative) confirming the action to be taken.

Informal Stage

- 13.4 Wherever possible, an employee who feels that she/he has been the subject of harassment should try to resolve the matter informally. This can often be done by the individual talking to the person concerned. If the employee feels that this would be difficult or embarrassing to do, she/he can ask for assistance (see paragraph 5.14) from an appropriate person. This person may make the initial approach to the alleged harasser on behalf of the employee or, if required, act as a mediator at meetings of the two parties.
- 13.5 The main objective is that the alleged harasser needs to be informed that her/his behaviour is unwelcome, and/or offensive and/or interfering with the employee's work.
- 13.6 The informal stage does not detract from the seriousness or the sensitivity of the situation. It allows the complainant greater flexibility in choosing the most appropriate option for them to follow after having sought advice.
- 13.7 If the informal approach does not result in the alleged harassment ceasing, it is advisable that the employee keeps written details of it. The following information is useful if the employee decides to make a formal allegation.
- Date of incident(s)
 - Location of incident(s)
 - Nature of incident(s) e.g. behaviour, conduct, what was said, what was written
 - The feelings of the complainant during the course of the alleged harassment.
 - An indication of whether these feelings were made known in some way to the alleged harasser and their response.
 - Names of parties
 - Names of witnesses
- 13.8 If the individual considers that the action taken at the informal stage has been ineffective, then she/he can take formal action. However, although support may be offered, the employee has the right not to pursue their complaint formally at any time if they so wish.
- 13.9 In such instances, management will be able to start formal action to deal with the alleged harassment if supporting evidence is available e.g. witnesses. The employee who decided not to pursue their complaint must be advised of

management's intention before any action is taken. Such action will be taken on the basis that the Council has a duty of care to investigate and take appropriate action in such cases.

Formal Stage

13.10 The formal stage will apply when:

- The employee considers that informal approach has not been successful.
- The employee feels that an informal approach is not appropriate i.e. she/he feels that the nature of their allegation is too serious to be considered informally.
- Management feels that a reported case of alleged harassment requires formal investigation.

Employee Action – registering a formal allegation

13.11 To register a formal allegation the employee should:

- Write to their Director/Head of Service whichever is appropriate.
- Include in their letter the nature of their allegation(s) and the name of the alleged harasser.

Management Action – following receipt of the formal allegation

13.12 The Director/Head of Service must:

- Acknowledge the employee's letter within 5 working days of its receipt.
- Consider whether any temporary arrangements are required (see paragraphs 7.1 and 7.2).
- Inform the alleged harasser, in writing of the nature of the allegation(s) against her/him.
- Consider whether suspension of the alleged harasser is appropriate (see paragraphs 7.3 to 7.9).

Investigation

13.13 The Director/Head of Service is responsible for ensuring that the allegation is investigated impartially and in a timely and confidential manner.

13.14 Two employees (a manager who will act as the lead officer and a member of Human Resources) must undertake an investigation. The Director/Head of Service must ensure that:

- The names of the employees conducting the investigation are notified to both parties and that they are given the opportunity to raise any objections.
- Wherever possible the investigators are representative according to the allegation in question e.g. if practicable one should be the appropriate gender where an allegation of sexual harassment has been made.
- Wherever possible, the investigators have not had any previous dealings with the case.
- The investigators are able to comply with the time scale in paragraph 13.15.

- 13.15 The investigation must be carried out without undue delay and if practicable completed within 20 working days of the allegation being acknowledged. This deadline may be extended if agreed by both parties or if there are exceptional circumstances preventing it being met. An extension of the deadline must be confirmed in writing.
- 13.16 Strict confidentiality must be maintained throughout an investigation by all involved, including witnesses. Where evidence exists that confidentiality has not been kept appropriate action against the employee, which may include disciplinary action, will be taken.
- 13.17 The complainant alleged harasser and any witnesses will be interviewed separately. An employee has the right to be accompanied by a trade union representative or another employee of the Council at any interview they attend. In some cases, to achieve a thorough investigation, employees might be interviewed on more than one occasion.
- 13.18 Notes will be taken of the interviews undertaken. An employee will be able to review the notes and will then be expected to sign and date them as a true record of the interview. The employee will be given a copy of the notes. The signed notes will be included in the report on the investigation and in any Statement of Case if required.

Outcome of investigation

- 13.19 The investigators will provide a written report to the Director/Head of Service. This will set out the investigators' findings and recommend a course of action.
- 13.20 The Director/Head of Service advised by a member of Human Resources will consider the report and decide whether:
- A disciplinary hearing should be convened.
 - To deal with the matter informally because it is not serious enough to warrant formal disciplinary action. This could include an apology, an informal disciplinary warning i.e. a file note or letter advising the employee that a repeat of the behaviour in question will be treated in line with procedure and may lead to formal disciplinary action), reassurance of no repeated harassment and guidance, training or counselling as appropriate.
 - The allegation is not substantiated and to therefore take no further action.
- 13.21 The Director/Head of Service shall write to the complainant and alleged harasser to inform them of her/his decision within 5 working days of the report's receipt. Included with the letter will be a copy of the investigating officers' report.
- 13.22 The Director/Head of Service advised by a member of Human Resources will consider how all those affected by and involved in giving evidence are informed of the outcome of the investigation.
- 13.23 If following consideration of the report, the Director/Head of Service decides that the allegation of harassment has been malicious and without substance, then action against the complainant will be taken under the appropriate Disciplinary Procedure.

Complainant's right of appeal.

13.24 The following procedure (paragraphs 13.25 to 13.37 inclusive) **will only** apply if the complainant feels:

- That their allegation has not been taken seriously.
- That the investigation was not carried out correctly.

It **will not** apply where disciplinary proceedings are commenced against the complainant on the basis that she/he has submitted a malicious complaint that has no substance. In this case the complainant will be able to present her/his case at a properly constituted disciplinary hearing and any subsequent appeal hearing.

Appeal to a Director

- 13.25 If the employee wishes to appeal, she/he should inform the Head of Human Resources. This must be done by no later than 10 working days of receiving the manager's letter confirming her/his decision. The employee's letter must clearly state her/his ground(s) for appeal. The Head of Human Resources will acknowledge the employee's letter by no later than 3 working days of its receipt.
- 13.26 A Director will be nominated to hear the employee's Appeal. This person will have had no previous involvement in the allegations.

Head of Human Resources

- 13.27 The Head of Human Resources (or her/his representative) is responsible for:
- Making the arrangements for the Appeal Hearing within 20 working days of receiving the employee's letter.
 - Ensuring that the employee and senior manager are given at least 5 working days notice of the Appeal Hearing.
 - Arranging the attendance of a member of Human Resources at the Appeal Hearing to act as Advisor/Clerk to the Director. If possible, this person will not have had any previous involvement in the allegation.
 - Obtaining and exchanging Statement of Cases. The exchange must take place by no later than 5 working days before the Hearing. It is acceptable for the manager to provide his/her Statement of Case in advance of receiving the employee's Statement of Case.

Manager

- 13.28 The manager who commissioned the investigation of the allegation is responsible, at this stage, for presenting the management's case. She/he, therefore, has the responsibility for:
- Producing a Statement of Case for the Appeal Hearing. This will then be given to the Appeal Panel and employee when all documents are exchanged. **It is the line manager's responsibility to ensure that all the information needed to present her/his case is provided by the required date.** Please note that additional information **cannot** be introduced at the Hearing without the agreement of the other party.

- Raising any objections or points of clarification with the Chair of the Hearing prior to the Hearing occurring. The consideration of issues at this stage will ensure that the Hearing will be conducted without undue delay.
- Informing, if applicable, the Head of Human Resources of anyone who she/he intends to call as a witness.
- Ensuring, if necessary, that they have support from Human Resources at the Appeal Hearing.
- Arranging, if applicable, the attendance of any witness(es) at the Appeal Hearing.
- Complying with any decision, resulting from the Appeal Hearing.

Employee

13.29 The employee is responsible for:

- Producing a Statement of Case for presentation at the Appeal Hearing. This will then be given to the Appeal Panel and the management representative when all documents are exchanged. **It is the employee's responsibility to ensure that all the information needed to present her/his case is provided by the required date.** Please note that additional information cannot be introduced at the Hearing without the agreement of the other party.
- Raising any objections or points of clarification with the Chair of the Hearing prior to the Hearing occurring. The consideration of issues at this stage will ensure that the Hearing will be conducted without undue delay.
- Informing, if applicable, the Head of Human Resources of anyone who she/he intends to call as a witness.
- Ensuring that their representative attends the Appeal Hearing.
- Arranging, if applicable, the attendance of any witness(es) at the Appeal Hearing.

Director

13.30 The Director will chair the Appeal. She/he has the following responsibilities:

- Considering any matters raised by either party prior to the Hearing.
- Ensuring that the Appeal Hearing is conducted in accordance with Annexe A. New information (i.e. information that is not included in the submitted Statement of Case) cannot be introduced and heard at the Hearing. If either side attempt to introduce new information, the Chair will not allow its consideration unless both parties agree to its introduction. This may also involve an adjournment for both parties to consider their position.
- Informing the employee at the Hearing, if this is practicable, of her/his decision, the reasons for this decision and any remedy deemed to be appropriate.
- Confirming the decision and any remedy deemed appropriate in writing to the employee and the manager. This should be done by no later than 5 working days after the Appeal Hearing.

13.31 The employee has the right to appeal against the decision made at this stage. A Panel of three Members from the Licensing and Appeals Committee will hear the Appeal.

Member Appeal Hearing

13.32 If the employee wishes to appeal, she/he should inform the Head of Human Resources (copy to the Head of Legal and Democratic Services) This must be done by no later than 10 working days of receiving the Director's letter confirming her/his decision. The employee's letter must clearly state her/his ground(s) for appeal. This must be based on:

- That their allegation has not been taken seriously.
- That the investigation was not carried out correctly.

The Head of Legal Services will acknowledge the employee's letter by no later than 3 working days of its receipt.

Head of Legal and Democratic Services

13.33 The Head of Legal and Democratic Services (or her/his representative) is responsible for:

- Making the arrangements for the Appeal Hearing within 20 working days of receiving the employee's letter. The Hearing will take place as soon as practical subject to member availability.
- Ensuring that the employee and senior manager are given at least 5 working days notice of the Appeal Hearing.
- Arranging the attendance of a member of Legal Services at the Appeal Hearing to act as Advisor/Clerk to the Appeals Panel. If possible, this person will not have had any previous involvement in the allegation.
- Obtaining and exchanging Statement of Cases. The exchange must take place by no later than 5 working days before the Hearing. It is acceptable for the Director to provide her/his Statement of Case in advance of receiving the employee's Statement of Case.
- Liaising with the Panel to ensure that issues raised by either party are considered prior to the hearing to prevent undue delay.

Director

13.34 The Director who considered the employee's appeal is responsible, at this stage, for presenting the management's case to the Appeal Panel. She/he, therefore, has the responsibility for:

- Producing a Statement of Case for the Appeal Hearing. This will then be given to the Appeal Panel and employee when all documents are exchanged. **It is the Director's responsibility to ensure that all the information needed to present her/his case is provided by the required date.** Please note that additional information cannot be introduced at the Hearing without the agreement of the other party.
- Raising any objections or points of clarification with the Chair of the Hearing (through the Head of Legal and Democratic Services) prior to the Hearing occurring. The consideration of issues at this stage will ensure that the Hearing will be conducted without undue delay.
- Informing, if applicable, the Head of Legal and Democratic Services of anyone who she/he intends to call as a witness.

- Ensuring, if necessary, that they have support from Human Resources at the Appeal Hearing.
- Arranging, if applicable, the attendance of any witness(es) at the Appeal Hearing.
- Complying with any remedy, resulting from the Appeal Hearing.

Employee

13.35 The employee is responsible for:

- Producing a Statement of Case for presentation at the Appeal Hearing. This will then be given to the Appeal Panel and management representative when all documents are exchanged. **It is the employee's responsibility to ensure that all the information needed to present her/his case is provided by the required date.** Please note that additional information **cannot** be introduced at the Hearing without the agreement of the other party.
- Raising any objections or points of clarification with the Chair of the Hearing (through the Head of Legal and Democratic Services) prior to the Hearing occurring. The consideration of issues at this stage will ensure that the hearing will be conducted without undue delay.
- Informing, if applicable, the Head of Legal and Democratic Services of anyone who she/he intends to call as a witness.
- Ensuring that their representative attends the Appeal Hearing.
- Arranging, if applicable, the attendance of any witness(es) at the Appeal Hearing
- Complying with any decision resulting from the Appeal Hearing.

Appeal Panel

13.36 The Appeal Panel through the elected Chair has the following responsibilities:

- Dealing with matters raised by either party prior to the Hearing.
- Ensuring that the Appeal Hearing is conducted in line with Annexe B. New information (i.e. information that is not included in the submitted Statement of Case) **cannot** be introduced and heard at the Hearing. If either side attempt to introduce new information, the Chair will not allow its consideration unless both parties agree to its introduction. This may also involve an adjournment for both parties to consider their position.
- Informing the employee at the Hearing, if this is practicable, of the decision of the Panel, the reasons for this decision and any remedy deemed to be appropriate by the Panel.
- Confirming the decision and any remedy deemed appropriate in writing to the employee and the manager. This should be done by no later than 5 working days after the Appeal Hearing.

13.37 **The decision of the Appeal Panel is final and the complainant will have no further right of appeal.**

14.0 DISCIPLINARY PROCEEDINGS

- 14.1 If, following a proper investigation, it is decided that an allegation of harassment should be dealt with using the appropriate Disciplinary Procedure then a disciplinary hearing will be convened. The following points should be considered:
- The practical arrangements for any hearing or appeal should ensure that the complainant, alleged harasser and any witnesses do not feel vulnerable.
 - The Chair of a hearing or appeal hearing must ensure that all questions are relevant to the case being heard.
 - All parties involved in the disciplinary proceedings must keep all evidence strictly confidential. Where any evidence is provided that confidentiality has not been kept the person(s) responsible will be subject to disciplinary action.
 - The complainant should be informed in writing of any decision regarding their allegations and any other recommended remedies, as soon as possible after the hearing or appeal. The complainant will not have a right of appeal against any formal disciplinary action taken against another employee. Details of any disciplinary penalty imposed at a hearing should not, therefore, be provided to the complainant.
- 14.2 Where the allegation is upheld at a disciplinary hearing, the harasser has the right of appeal as laid down in the appropriate Disciplinary Procedure.

15.0 ALLEGATIONS OF HARASSMENT BY ELECTED MEMBERS

- 15.1 The relationship between Elected Members and employees of the Council is explained in the Members Code of Conduct and the Protocol on Member and Employee Relationships.
- 15.2 The Members Code of Conduct says that a Member must:
- Promote equality by not discriminating unlawfully against a person.
 - Treat others with respect.
 - Not do anything which compromises or which is likely to compromise the impartiality of those who work on behalf of the Authority.
- 15.3 The Protocol includes the following principle:
- “There shall be mutual courtesy and respect between Members and employees with regard to their respective roles.”
- 15.4 Allegations of harassment by Members, which amount to a breach of the Code of Conduct for Members (please refer to paragraph 15.2), can be referred to the Standards Board for England by the complainant. It is advisable that the employee seeks advice from her/his Director, Head of Service or the Monitoring Officer (Head of Legal and Democratic Services).

- 15.5 A complaint about a breach of Protocol (please refer to paragraph 15.3) by a Member should be referred to the employee's Director or Head of Service who should consult with the Monitoring Officer before any action is taken.

16.0 HARASSMENT OF EMPLOYEES BY SERVICE USERS OR OTHER MEMBERS OF THE PUBLIC

- 16.1 The Council recognises that its employees can be the subjects of harassment by users of the Council's services.

- 16.2 The Council does not regard it as part of any employee's job to accept such behaviour and does not expect them to tolerate it. The Council will provide support for any employee who is the victim of harassment by a member of the public in the course of her or his employment. The Council will investigate any allegation of harassment made by an employee against a service user and take appropriate action.

- 16.3 The Council's response to harassment of its employees by service users may be restricted by the lack of applicable sanctions or by statutory duties to provide services. With these restrictions, however, managers of employees who have been subjected to harassment in the course of their employment by service users or other members of the public must observe the following guidelines.

- (a) Any employee who has been subjected to harassment must be dealt with sympathetically and supportively and must be offered suitable counselling.
- (b) Managers should deal explicitly with harassers with a view to withdrawing service if behaviour is not moderated. If the case involves provision of a statutory service, then other measures including the substitution of staff may be considered (see 16.3 (c) below).
- (c) Managers should not automatically respond by removing the employee from the area of work or work place where the harassment has occurred. To do so would likely undermine the employee and give the harasser the impression that her/his behaviour has been acceptable. Only where the employee requests a transfer or has asked not to deal with the service user again, and the Council is providing a statutory service to the individual, should substitution of the employee be considered. Not every case can be covered by this advice and managers and employers must use their discretion as appropriate.
- (d) The Disciplinary Procedure will not be used against an employee who reasonably refuses to deal with an individual service user because of ongoing harassment that has previously been discussed between the employee and their line manager.

17.0 RECORDS

Allegations of harassment by one employee against another employee

- 17.1 Human Resources will keep records of the above complaints in a secure confidential manner and in accordance with the Data Protection Act 1998.

- 17.2 The Head of Human Resources will periodically collate the above information, whilst respecting confidentiality, to monitor and review the overall operation of the Harassment Procedure.

Allegations of harassment by employees against service users

- 17.3 Each Head of Service will keep appropriate records, in accordance with the Data Protection Act 1998, to enable monitoring of complaints by employees against service users.

18.0 REVIEW OF POLICY AND PROCEDURE

- 18.1 The policy and procedure may be reviewed at any time in consultation with the appropriate trade unions.
- 18.2 As a minimum it will be reviewed every two years.
- 18.3 Human Resources have authorisation to make minor amendments to the policy and procedure arising out of an organisational restructure (e.g. change in post titles).

SOUTH DERBYSHIRE DISTRICT COUNCIL

HARASSMENT PROCEDURE

CONDUCT OF APPEAL HEARING BY A DIRECTOR

1. The Director will Chair the Appeal Hearing. A member of Human Resources will act as her/his Advisor/Clerk.
2. The Advisor/Clerk will outline procedures to all parties present.
3. The appellant (or representative) shall put the case in the presence of the management representative and may call witnesses.
4. The management representative may ask questions of the appellant and/or representative and witnesses who may be called on evidence given.
5. The Chair or Advisor may ask questions of the appellant and/or representative and any witnesses who may be called on evidence given.
6. The management representative shall put the case in the presence of the appellant and his/her representative and may call witnesses.
7. The appellant (or representative) may ask questions of the management representative and witnesses who may be called on evidence given.
8. The Chair or Advisor may ask questions of the management representative and witnesses on evidence given.
9. The management representative should have the opportunity to sum up their case if they so wish.
10. The appellant (or representative) should have the opportunity to sum up their case if they so wish.
11. The Chair with the Advisor/Clerk should deliberate in private, recalling the management representative and the appellant only to clear points of uncertainty in evidence already given. If recall is necessary, both parties are to return, notwithstanding only one may be asked to give clarification on the point of uncertainty.
12. The Chair should announce the decision to the parties personally, on the same day if possible, then in writing by no later than 5 working days after the Appeal Hearing.

Notes:

1. Both parties must be present at all times when the Chair hears evidence.
2. Any witnesses called must withdraw after they have presented their evidence.
3. **New information (i.e. information that is not included in the submitted Statement of Case) cannot be introduced and heard at the appeal hearing.** If either side attempt to introduce new information, the Chair will not allow its consideration unless both parties agree to its introduction. This may also involve an adjournment for both parties to consider their position.

SOUTH DERBYSHIRE DISTRICT COUNCIL

HARASSMENT PROCEDURE

CONDUCT OF APPEAL HEARING BY PANEL FROM THE LICENSING AND APPEALS COMMITTEE

1. A member of the Appeal Panel will be chosen to Chair the Appeal Hearing.
2. The Advisor/Clerk to the Appeal Panel (Head of Legal and Democratic Services or her/his representative) will outline procedures to all parties present.
3. The appellant (or representative) shall put the case in the presence of the management representative and may call witnesses.
4. The management representative may ask questions of the appellant and/or representative and witnesses who may be called on evidence given.
5. The Appeal Panel may ask questions of the appellant and/or representative and any witnesses who may be called on evidence given.
6. The management representative shall put the case in the presence of the appellant and his/her representative and may call witnesses.
7. The appellant (or representative) may ask questions of the management representative and witnesses who may be called on the evidence given.
8. The Appeal Panel may ask questions of the management representative and witnesses on evidence given.
9. The management representative should have the opportunity to sum up their case if they so wish.
10. The appellant (or representative) should have the opportunity to sum up their case if they so wish.
11. The Appeal Panel, with the Head of Legal and Democratic Services (or representative) acting as Advisor/Clerk, should deliberate in private, recalling the management representative and the appellant only to clear points of uncertainty in evidence already given. If recall is necessary, both parties are to return, notwithstanding only one may be asked to give clarification on the point of uncertainty.
12. The Appeal Panel should announce the decision to the parties personally, on the same day if possible, then in writing by no later than 5 working days after the Appeal Hearing.

Notes:

1. Both parties must be present at all times when the Appeal Panel hears evidence.
2. Any witnesses called must withdraw after they have presented their evidence.

3. **New information (i.e. information that is not included in the submitted Statement of Case) cannot be introduced and heard at the appeal hearing.** If either side attempt to introduce new information, the Appeal Panel will not allow its consideration unless both parties agree to its introduction. This may also involve an adjournment for both parties to consider their position.