

Thanet District Council Bullying & Harassment Policy & Procedure

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Key Points:

- Where it is appropriate to do so, complaints of bullying and harassment should be dealt with informally in the first instance. If this fails to resolve the problem or an informal approach is inappropriate in the circumstances, the formal approach will be used.
- In any allegation, it is not the intention of the perpetrator that is key in deciding if harassment or bullying has occurred, but whether the behaviour is unacceptable by *reasonable normal standards*, and is disadvantageous or unwelcome to the person or people subjected to it or witnessing it. This does not mean that allegations of bullying and/or harassment are automatically founded but rather that the decision as to whether there is any merit to the complaint(s) will be determined by the investigating manager based upon these principles.
- In cases where allegations of bullying and/or harassment are founded, it is likely but not automatic that the disciplinary process will be instigated.
- Employees who raise complaints related to bullying and harassment will not suffer any detriment as a result of doing so. However, in cases where the complaint(s) are deemed to be vexatious disciplinary action may be taken.
- Victimisation of employees who raise such complaints or who act as witnesses in these cases will not be tolerated and may result in disciplinary action being taken.
- Employees can choose to be accompanied by a trade union representative or workplace colleague at any formal meeting, including appeals.

- The HR team should be contacted prior to initiating any formal process and, if necessary, for advice around the informal process.
- Confidentiality will be given the utmost importance at all stages of the procedure.
- Before raising a complaint either formally or informally, you should ensure that you are able to substantiate the claims that you are making and provide any supporting evidence, as appropriate.

1. Introduction

Thanet District Council aims to support the creation of a work environment that is free from discrimination, harassment and bullying. This means an environment where everyone is treated with dignity and respect and no one is treated less favourably than any other person or group of persons on the grounds of their gender, age, disability, race, sexual orientation, gender reassignment status, religion and belief, pregnancy and maternity, marriage and civil partnership status or any other characteristic.

The purpose of this policy and procedure is to encourage a working environment in which bullying and harassment are always unacceptable and where individuals have the confidence to complain about bullying and harassment should it arise, in the knowledge that their concerns will be dealt with appropriately and fairly. Complaints will not be ignored but investigated swiftly and confidentially ensuring the rights of all are protected.

2. Scope

- 2.1. This policy and procedure applies to all employees other than the Chief Executive, Section 151 and Monitoring Officer for whom separate arrangements apply. Please see separate [Grievance Policy for Statutory Officers](#).
- 2.2. Cases which relate to a Non-Statutory Chief Officer can be considered by other Non-Statutory Chief Officers, the Section 151 Officer, the Monitoring Officer and/or the Chief Executive, as appropriate and in accordance with sections 9 and 10 of this policy. In the event that there are insufficient panel members to consider an appeal process, the Council will engage an appropriate external party to act as the decision maker on its behalf.
- 2.3. The policy covers bullying and harassment in the workplace and in any work related setting outside the workplace, for example business trips or any work related social events. It also covers contact between colleagues outside of working hours such as through social media or messaging apps.

3. Roles & Responsibilities

Employees will:

- Ensure that their interactions with their colleagues are respectful and that their relationships remain professional at all times;
- Report incidents of bullying and harassment that they have witnessed or experienced to an appropriate manager as soon as they occur;
- Cooperate fully in meetings to discuss allegations of bullying and harassment;
- Seek clarification if they are unsure of the standards of behaviour expected of them;

- Ensure they are aware of the types of behaviour which might constitute bullying and harassment.

Managers will:

- Ensure they and their employees act in accordance with this policy;
- Remain impartial and keep an open mind when considering the points raised by all parties
- Make effective use of the council's informal mechanisms to address concerns raised by employees wherever possible;
- Keep comprehensive records of the above activities and their success / failure to improve standards accordingly;
- Seek guidance from the HR team as soon as they become aware of an incident which may constitute bullying or harassment;
- Make arrangements for their employees to be released from normal duties as appropriate, if involved in this process;
- Make any necessary arrangements for hearings, such as arranging note takers, booking a venue, sending meeting requests and so forth;
- Attend training on the application of this policy.

HR will:

- Monitor employment legislation relating to bullying and harassment at work and support the council to review and amend this policy as appropriate;
- Provide support, guidance and training to the council and its employees in the interpretation and application of this policy;
- Ensure a consistent and fair approach to the application of this policy;
- Support managers to investigate claims where individuals believe that they are being treated unfairly or unreasonably under this policy.

Service Directors & the Corporate Management Team will:

- Make suitable arrangements to ensure the appropriate application of this policy;
- Encourage all employees to promote and maintain the standards of behaviour expected by the council;
- Support managers to act fairly and consistently in relation to bullying and harassment matters;
- Encourage managers and employees to attempt to resolve issues informally in the first instance;
- Participate, and/or encourage managers to participate in the formal Procedure when required, ensuring release from normal duties where appropriate;
- Attend training on the application of this policy;

4. Definitions

4.1. The words bullying and harassment are often used interchangeably in the workplace. The impact on the individual can however be the same. Harassment and bullying which amounts to conduct defined as harassment in the Equality Act 2010, could ultimately result in a complaint to an Employment Tribunal.

4.2. **Harassment:**

- 4.2.1. Under the Equality Act 2010, harassment is ‘... unwanted conduct which is related to a relevant protected characteristic which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile or degrading, humiliating or offensive environment for that individual’.
- 4.2.2. The relevant protected characteristics in respect of harassment are age, disability, gender reassignment, race, religion or belief, sex, sexual orientation. (Note: Whilst marriage and civil partnership, pregnancy and maternity are not protected characteristics directly under the harassment provisions of the Equality Act, pregnancy and maternity harassment would amount to harassment related to sex, and harassment related to civil partnership would amount to harassment related to sexual orientation).
- 4.2.3. To make a complaint of harassment, the complainant doesn’t need to possess the relevant characteristic themselves; it can be because of their association with a person who has a protected characteristic, or because they are wrongly perceived to have one, or are treated as if they do.

4.3. **Bullying:**

- 4.3.1. ACAS defines bullying as: ‘...offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient’.

5. When does and doesn’t bullying & harassment occur?

- 5.1. A single incident may amount to bullying or harassment - it does not have to be a series of events.
- 5.2. It is also not necessarily that the behaviour in question was directed at the employee, bullying or harassment can include behaviour which creates an intimidating and offensive environment for those who witness that behaviour.
- 5.3. Bullying and harassment may not necessarily be face to face but may occur through written communications, visual images, email, phone, through social media and by exclusion.
- 5.4. Although not an exhaustive list, the following are examples of behaviour that may constitute bullying or harassment:
 - 5.4.1. Any form of unjustifiable discrimination harassment, threatening or bullying behaviour on the grounds of race, sex/gender, sexual orientation, marital status, disability, age, religion or belief, whether or not the subject of current legislation
 - 5.4.2. Offensive, abusive or intimidating comments, insensitive jokes or pranks, derogatory or stereotypical remarks.
 - 5.4.3. Sexual jokes, comments or gestures.
 - 5.4.4. Displaying or distributing pornographic material, abusive literature or graffiti or other material that some people may find offensive.
 - 5.4.5. Deliberately excluding someone from conversations, work activities or activities outside work.
 - 5.4.6. Unwelcome sexual advances or suggestive behaviour.
 - 5.4.7. Unwanted physical contact including touching, kissing, pinching, grabbing.

- 5.4.8. Ridiculing, humiliating or belittling someone.
- 5.5. Although not an exhaustive list, the following are examples of behaviour that would not constitute bullying or harassment:
 - 5.5.1. Legitimate and reasonable feedback provided by a manager to an employee about their performance or conduct.
 - 5.5.2. Reasonable refusal of employee requests, e.g. for leave or changes to working arrangements

6. Policy & Procedure Principles

- 6.1. The Council expects that allegations concerning bullying and harassment will be raised as soon as practically possible after the incident(s) and without unreasonable delay.
- 6.2. Bullying or harassment of employees by visitors to the council will not be tolerated. Where there is an allegation against a third party e.g. a customer, supplier or visitor, the complaint should be made to the employee's line manager who will then discuss with the employee how best to deal with the situation. The council will act to provide full support to the employee in this situation.
- 6.3. Whilst the council will aim to respect confidentiality of any employee's concerns or complaints there are occasions where, as part of its duty of care, or legal responsibilities, the council reserves the right to investigate and take forward matters without their consent.
- 6.4. In any allegation, it is not the intention of the perpetrator that is key in deciding if harassment or bullying has occurred, but whether the behaviour is unacceptable by *reasonable normal standards (i.e. it is behaviour that is unlikely to have been exhibited by most other people in the same circumstances and/or is likely to breach the Council's Code of Conduct)*, and is disadvantageous or unwelcome to the person or people subjected to it or witnessing it. What one employee may find acceptable, another may not and therefore all employees should ensure that they treat their colleagues with respect. This does not mean that allegations of bullying and/or harassment are automatically founded but rather that the decision as to whether there is any merit to the complaint(s) will be determined by the investigating manager based upon these principles.
- 6.5. In considering *reasonable normal standards*, the provisions included in the Equality Act 2010 will be taken into account.
- 6.6. Employees may choose to be accompanied by a trade union representative or a workplace colleague throughout the formal stages of the procedure.
- 6.7. This procedure sets timescales to ensure that any complaint is dealt with in a timely manner. However, these may be extended in consultation with the HR team to ensure a fair process.
- 6.8. Audio/visual recordings of the proceedings are not acceptable at any stage of the procedure and are not admissible within this process, unless agreed as a reasonable adjustment for an employee with a disability.
- 6.9. In cases where serious allegations are made which may prevent employees from working constructively together whilst they are being dealt with, consideration will be given to making reasonable adjustments to working practices/arrangements for the benefit of all parties.

7. Informal Resolution

- 7.1. An employee who feels that they are being subjected to bullying, harassment, discriminating or unfair treatment, may attempt to resolve the matter informally in the first instance. This might include explaining clearly to the person(s) engaged in the unwanted activities that their behaviour is unwelcome, unacceptable, or is causing offence, or makes them uncomfortable and request that the behaviour stops.
- 7.2. It is recognised that sometimes an individual may not be aware how their behaviour or conduct is impacting on another individual. Making that individual aware may be sufficient to stop the bullying or harassment.
- 7.3. An employee can choose to raise the matter informally and directly with the offending employee. If the employee finds this too difficult or embarrassing, they may wish to be accompanied by a friend/colleague, or who may make representations to the offending employee on their behalf.
- 7.4. Alternatively, the employee may seek advice and/or support from HR, a manager or a trade union representative on other possible approaches.
- 7.5. The employee may also wish to seek counselling or advice from the Employee Assistance Programme (EAP) or seek mediation support via the HR Team

8. Vexatious Complaints

- 8.1. The council recognises the right of employees to raise complaints relating to their employment. However, the council also recognises that, occasionally, this process is open to misuse or abuse through the raising of complaints that are petty, repetitive and/or vexatious.
- 8.2. In this situation, the manager in receipt of the complaint should seek advice from the HR team and determine whether the grievance is petty or clearly unfounded. It may be that it is immediately obvious from the content of the complaint or it may be that an initial conversation with the employee and/or other parties is required before this can be determined with any certainty.
- 8.3. A complaint could be considered to be petty or vexatious if it appears to have been raised in bad faith. This might be for a number of reasons, including that it has no reasonable prospect of success, it is a repeat of issues which have been raised and dealt with previously and/or it is not an issue that is reasonable to complain about. To some extent this judgement may be informed by whether the individual employee has a history of submitting petty or unfounded complaints but ultimately it will be based upon the content of the complaint itself and the outcome of any initial discussions.
- 8.4. Individual complaints can be deeply held and serious consideration will be given to the merits of each individual case. A decision to classify a complaint as petty or unfounded will result in it not being taken any further so will not be taken lightly.
- 8.5. If it is believed that an employee is deliberately wasting council time and resources in this way, the decision on how to proceed will be taken by a manager at an

appropriate level¹ who has no conflict of interest in the matter and in consultation with the HR Manager. If it is deemed that it constitutes a vexatious complaint, it may result in no further action taken on the complaint or, in the worst case, disciplinary action being taken against the employee who raised the complaint.

- 8.6. The decision will be confirmed to the employee in writing and it will be clearly explained to the employee why this decision has been taken. The Council will then deem the matter to be closed.
- 8.7. Likewise, if an investigation as part of the formal process shows that a complaint is unfounded and has been raised vexatiously, this may lead to disciplinary action against the person who raised the complaint.

9. Malicious Complaints

- 9.1. A malicious complaint is one which is raised with the intention of causing harm, for example to defame a colleague or manager and is based upon rumour, gossip or fabrication. Complaints which are found to have been raised with the sole intention of delaying or disrupting a disciplinary process will also be considered to be malicious.
- 9.2. If, during the process of considering a complaint, the manager has concerns that it may be malicious, they should seek advice from the HR team as to whether there is sufficient evidence to substantiate these concerns.
- 9.3. Complaints of bullying and harassment can be deeply held and serious consideration will be given to the merits of each individual case and the evidence available.
- 9.4. If it is believed that there is sufficient evidence that the complaint is malicious, it may result in no further action being taken on the complaint and/or, in the worst case, disciplinary action being taken against the employee who raised the complaint.

10. Formal Procedure

- 10.1. Where it hasn't been possible to resolve issues informally or where the employee is uncomfortable raising it informally, they should raise their complaint in confidence with their manager, or a member of the HR team or their trade union representative for advice and assistance. If their manager is the subject of their complaint, or they would be more comfortable raising the matter with someone else (e.g. someone of the same sex), employees should raise their complaint with a more senior manager.
- 10.2. The employee should set out the details of the complaint in writing confirming:
 - the name of the alleged bully/harasser,
 - the nature of the behaviour and if possible outlining specific examples
 - the dates and times of when the bullying or harassment took place,
 - the names of any witnesses or other individuals they believe to have been subject to the same behaviour
 - what action, if any, they have taken to date to seek to address the issue.
 - what outcomes they might be looking for.
- 10.3. The manager receiving the complaint will be the person to consider it, in most cases. If, for any reason, this is not appropriate, the manager in receipt of the

¹ This may be the manager in receipt of the grievance or it may be passed to another manager, depending on the circumstances of the case.

- complaint will contact HR and an alternative manager will be identified. This may be a manager at the same or a higher level to the manager who received the complaint.
- 10.4. A meeting will be arranged as soon as is reasonably practicable, normally within ten working days of receipt of the complaint. The purpose of this meeting is for the employee to explain their complaint in more detail, what outcome they are seeking and how they think it should be resolved. The employee will have the right to be accompanied by a trade union representative or workplace colleague at this meeting.
 - 10.5. Where appropriate, the manager may adjourn the meeting in order to undertake further investigations. In most cases, it will be the manager who is considering the case who will also undertake the investigation but in exceptional circumstances, another suitable manager/employee may be asked to investigate. This is only likely to be in cases where the situation is particularly complex and doing so is likely to expedite the process.
 - 10.6. As part of this investigation, the employee(s) with complaints made against them will be provided with the details of the complaint(s) that are relevant to them, up to and including full disclosure. This will be provided in advance of an investigatory meeting at which they will be given the opportunity to respond. They will also be provided with support from another manager not involved in the process or a member of the HR team who they can contact should they wish to talk to someone, access information etc.
 - 10.7. Following the meeting and any subsequent investigation, you will be informed of the outcome in writing as soon as is reasonably practicable and, wherever possible, within five working days.
 - 10.8. Where appropriate, you will also be informed of any action that the Council proposes to take as a result of your complaint but the progress and outcome of any subsequent actions or processes will not be shared.
 - 10.9. Whilst the outcome of the hearing and any investigation will remain strictly confidential, employees involved with the investigation will be advised when the process has completed and the manager responsible for the process will discuss any aspect of the outcome that is relevant to them.
 - 10.10. In cases where allegations of bullying and/or harassment have been upheld or partially upheld; the manager who has considered the case will make a recommendation for action in accordance with the disciplinary policy and procedure. This may be at the informal or formal stage, depending upon the circumstances and the recommendation will be made to the manager of the employee against whom the allegation has been made. The process will then transfer over to the Disciplinary Policy and the employee's manager should seek advice from HR as to whether additional investigation is required prior to the implementation of any formal disciplinary action.

11. Appeal

- 11.1. If you are dissatisfied with the outcome of the formal process, you can appeal the decision.
- 11.2. An appeal must be made in writing to HR within five working days of receipt of the written outcome. This must detail the grounds of appeal i.e. the basis on which you

think that the result of the formal process was wrong or that the action taken as a result was inappropriate.

- 11.3. A manager not previously involved in the process of the same level or more senior to the manager who considered the formal complaint will consider the appeal.
- 11.4. Depending on the circumstances of the case, the appeal may be dealt with as a paper exercise taking into consideration the content of the written appeal and the details of the outcome or an appeal hearing may be arranged. Either way, the approach to be taken will be confirmed in writing as soon as reasonably practicable and usually within five working days of receipt of the appeal. This will include either the timescale in which the manager will consider the appeal or an invitation to an appeal hearing which will be as soon as is reasonably practicable.
- 11.5. The appeal is not a rehearing of the original case but a consideration of whether the conclusion reached in the original hearing was appropriate and the action taken within a range of reasonable responses. If there is an appeal hearing, the manager considering the appeal may, therefore, confine discussions to those specific areas rather than reconsider the whole matter afresh.
- 11.6. The outcome of the appeal may be to overturn or uphold the original decision or apply a different resolution.
- 11.7. The outcome of the appeal is final and will be confirmed in writing as soon as is reasonably practicable but usually within five working days of the appeal being considered.

12. Right to be accompanied

- 12.1. Employees have the right to be accompanied by a fellow worker or trade union representative at any formal meeting or subsequent appeal during this process.
- 12.2. The automatic right to be accompanied does not apply at any informal stage of this procedure but if requested then it will be allowed, provided that it does not cause any delay to the process.
- 12.3. The council reserves the right to refuse accompaniment by a person who is deemed to be unsuitable by the HR team. Examples of unsuitability would include someone who has a vested interest in the outcome of the grievance and anyone who has previously behaved inappropriately during a hearing.
- 12.4. If the chosen companion is not available on the given hearing date, the employee can request an alternative date provided that it does not unduly delay the process. If the chosen companion is not available for the alternative date, the employee may choose an alternative companion or proceed without one.
- 12.5. Employees who are interviewed as part of an investigation into allegations raised in a grievance do not have a statutory right to be accompanied. They may, however, request a colleague or trade union representative to accompany them at the investigatory meeting and it will be for the manager considering the case to determine whether or not it is appropriate. If the employee is allowed to be accompanied, the role of their companion will be to provide moral support and not to speak on behalf of the employee. In determining whether or not to allow the employee to be accompanied, the manager will consider any potential conflict of interest such as whether the requested companion has had any prior involvement with the case and will ensure that they agree to maintain confidentiality.

13. Confidentiality

- 13.1. During this procedure (and after it is completed) the need to maintain confidentiality is of paramount importance. All employees have a personal responsibility for ensuring that information they receive remains confidential whether it is written or verbal and whether it is received directly or indirectly. This should be advised and reiterated to all those involved in any hearings or investigations.
- 13.2. Access to confidential information should be limited to those who 'need to know'. For example, witnesses who are interviewed as part of an investigation need only be informed of the aspects of the grievance that are relevant to them. This is to enable them to provide an accurate statement and ensure they have a fair opportunity to respond to any allegations made against them.

14. Records

Records should be kept of the nature of the complaint raised, meetings held, the manager's response, any action taken and the reasons for it. These records should be kept confidential and retained in accordance with the HR Retention Schedule. Copies of any meeting records should be given to the individual concerned although in certain circumstances some information may be withheld, for example to protect a witness. Copies of all documentation should be sent to HR for retention on the employee's file.

15. Equality Statement

The Council is committed to promoting equality, valuing diversity and combating unfair treatment. The Council will endeavour to ensure equal access to its policies and procedures and will combat discrimination or less favourable treatment on the grounds of any irrelevant consideration, in accordance with the Equality Act 2010.

