



Dignity at Work policy and procedure

Incorporating the provisions of the Equality Act 2010

Standards for England is the operating name for the Standards Board for England. The name Standards Board for England is still used for all legal and financial documents, including the employment contract. For the purpose of this policy, Standards for England will be used.

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1 Policy statement

- 1.1 In accordance with our policy on equal opportunities and diversity at work policy, Standards for England encourages an environment in which everyone is entitled to work without harassment, victimisation or bullying for any reason including age, disability, sex, gender reassignment, pregnancy, maternity (including breastfeeding mothers), race (which includes colour, nationality and ethnic or national origin), sexual orientation, religion or belief, or because someone is married or in a civil partnership. These are known as 'protected characteristics'.
- 1.2 Standards for England recognise that individuals who are harassed often feel vulnerable and are reluctant to complain. This policy aims to ensure fair treatment and dignity of all employees at work. The organisation prohibits all forms of harassment and bullying whether or not they amount to unlawful discrimination on the basis of any of the protected characteristics.
- 1.3 All allegations of harassment will result in an investigation. The results of the investigation may lead to the Standards for England disciplinary policy & procedure being invoked. In serious cases, Standards for England will treat such behaviour as gross misconduct which, if proved, will warrant summary dismissal. Furthermore, in some extreme cases, perpetrators of harassment may find themselves subject to criminal sanctions.
- 1.4 In drafting this policy, reference should be made to the HR service impact assessment which covers the impact of all HR policies and services and provides scope for investigating any negative impact.
- 1.5 This policy has been reviewed and revised in April 2011 in line with The Equality Act 2010.

2 Policy scope

- 2.1 This policy applies to all employees, agency workers, all job applicants and any third parties providing services to Standards to England.

3 Principles of the policy

- 3.1 To effectively implement this policy, Standards for England will take steps to ensure that:
 - The work environment is free of harassment and bullying where everyone will be treated with dignity and respect.

- All employment policies, procedures and practices, including this one, will be reviewed and impact assessed to ensure that they are, and remain, non-discriminatory.
- All managers and others involved in the implementation of organisation's employment policies will receive appropriate training including diversity, performance management etc.

4 Responsibilities

4.1 The Chief Executive and line managers have the following responsibility to:

- Demonstrate commitment to creating a work environment free of harassment and bullying, where everyone is treated with dignity and respect.
- Take appropriate action where there are any incidents of harassment of which they are aware or ought to be aware.

All employees have the responsibility to:

- Not discriminate against or harass fellow employees or a member of the public in the provision of its service.
- To assist Standards for England in meeting its commitment to treating everyone with dignity and respect.
- Have due regard to equal opportunities in the work they do and decisions they make.
- Promote diversity in the workplace.
- Be aware of the serious problems which harassment and bullying can cause.
- Share a responsibility to ensure that a harmonious working environment is maintained in which the dignity of all is respected.
- Must ensure that their behaviour is beyond reproach and consistent with the organisation's open culture.

5 Procedure to follow

5.1 The informal stage

5.1.1 If an employee thinks they are being bullied or harassed, the matter may be able to be sorted out informally. The alleged person may not know that his or her behaviour is unwelcome or upsetting. The employee may feel able to approach the person themselves, or with the help of someone else at Standards for England. If this was the employee's preferred initial approach, he/she should tell the person what behaviour they find offensive and unwelcome, and say that the behaviour should stop immediately.

- 5.1.2 If an employee is involved in an informal discussion of this kind, he/she should keep a confidential note of the date and of what was said, since it may be required as evidence should they wish to make any subsequent allegation of harassment or bullying.

5.2 Formal approach

- 5.2.1 If an informal approach does not resolve matters, or the employee thinks the situation is too serious to be dealt with informally, they can proceed to making a formal complaint.
- 5.2.2 This complaint must be made in writing to their line manager (or, if the complaint relates to the manager, another unconnected manager). The letter should set out clearly the nature of the complaint providing examples.
- 5.2.3 The line manager supported by a HR adviser will carry out an investigation into the allegation, in order to determine its seriousness. This will include conducting interviews with the employee, the alleged perpetrator (a separate meeting will be held) and any other witnesses. The HR adviser will attend all meetings. The line manager, once in possession of all the facts, reach a conclusion about what action, if any, should be taken.
- 5.2.4 This policy should be specifically used in the case of a complaint made if an employee thinks they are being bullied or harassed. You will not be penalised for raising a complaint, even if your complaint is not upheld, unless your complaint is both untrue and made in bad faith.
- 5.2.5 If, after full investigation, the evidence tends to suggest that inappropriate behaviour has occurred, this will be deemed reasonable grounds for invoking the Standards for England's Disciplinary Procedure and may potentially be treated as gross misconduct. Under the Standards for England's Disciplinary Procedure, a hearing will be held, at which the alleged perpetrator of the harassment/ bullying will be given a full opportunity to make representations.
- 5.2.6 If the investigation reveals no grounds for invoking the Standard for England's Disciplinary Procedure, the line manager will write to both parties, within five working days of the conclusion of the investigation, to confirm its findings and the reason why no action will be taken.

5.3 Appeals procedure

- 5.3.1 If the individual making the complaint is not happy with the outcome of the investigation, they may appeal in writing to their respective Head of Department normally within five working days of receiving written confirmation of the results of the investigation.

5.3.2 The appeal hearing will take place as soon as is possible following receipt of the written appeal and will be conducted by a more senior manager not previously involved in the case. The decision of the appeal hearing is final and will be confirmed in writing to the individual normally within five working days and shall be deemed the final statement of the Standards for England's position.

5.4 The right to be accompanied

5.4.1 All those involved in a formal complaint of harassment (both the employee making the complaint and the person or people against whom the allegation is made) have the right to be accompanied by a Standards for England colleague at any stage in the process.

5.4.2 Their role is as outlined in both the Standards for England's disciplinary and grievance policies.

5.5 The rights of the individual accused of unacceptable behaviour

5.5.1 The person against whom the complaint has been made has the right to talk to a HR adviser for procedural advice.

5.5.2 Employees have a right not to be victimised for making a complaint in good faith, even if the complaint is not upheld. However, making a complaint that the employee knows to be untrue may lead to disciplinary action being taken against them.

6 Confidentiality

6.1 Standards for England will treat complaints of bullying and harassment sensitively and maintain confidentiality to the maximum extent possible.

Appendix A

Law relating to this document

In understanding this policy, the following appendix is useful in defining and providing examples of behaviour.

Equality Act 2010

Health and Safety at work etc Act 1974

Protection from Harassment Act 1997

Management of Health and Safety at work Regulations 1999 (SI 1999/3242)

The Equality Act 2010 makes it explicit that harassment is unlawful across all the protected characteristics (with the exceptions of marriage and civil partnership, and pregnancy and maternity). Harassment is defined as unwanted conduct related to a relevant protected characteristic that has the purpose or effect of:

- violating a person's dignity; or
- creating an intimidating, hostile, degrading, humiliating or offensive environment.

The Act sets out two specific definitions of sexual harassment, which are:

- conduct of a sexual nature that has the purpose or effect of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment; and
- less favourable treatment related to sex or gender reassignment that occurs as a result of a rejection of, or submission to, sexual conduct.

In determining whether or not the unwanted conduct has the effect referred to, the factors that must be taken into account are:

- the perception of the complainant;
- the other circumstances of the case; and
- whether or not it is reasonable for the conduct to have that effect.

Employers will be liable for discriminatory acts of harassment committed by their employees against other employees or customers in the course of their employment unless they can show that they took such steps as were reasonably practicable to prevent those acts. There is no limit on compensation for unlawful discrimination, which includes compensation for injury to feelings and personal injury.

The European Commission Recommendation 92/131/EEC and Code of Practice on the protection of the dignity of women and men at work made recommendations on how employers, trade unions and employees should combat sexual harassment. The Code of Practice defines harassment as

"unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work".

The Protection from Harassment Act 1997 created a new statutory tort of harassment and provided a civil remedy for those subjected to harassment at work or outside work. Section 1 provides that a person must not pursue a course of conduct that amounts to harassment of another and which he or she knows, or ought to know, amounts to harassment of the other. For these purposes, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think that the course of conduct amounted to harassment of the other.

Harassment is not precisely defined, but includes "alarming the person or causing the person distress". A course of conduct involves conduct on at least two occasions and includes speech. The Act also makes harassment a criminal offence.

Harassment may constitute other criminal offences, eg rape, indecent assault, assault or grievous bodily harm.

It may also give rise to other civil liabilities under common law, eg assault and battery or personal injury caused by negligence. An employer can be liable in damages for foreseeable personal injury, which could be mental and/or physical, suffered as a result of its negligence.

The Health and Safety at work etc Act 1974 requires employers to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all their employees. The Management of Health and Safety at work Regulations 1999 place specific obligations on employers including the duty to assess risks to the health and safety of their employees at work and to identify the measures that they need to take to comply with health and safety requirements. Bullying and harassment could be risks recognised in the workplace. There are criminal sanctions for failure to comply with health and safety obligations.

The Public Sector Duties (sometimes referred to as the three arms of equality duty) are:

1. **Eliminate discrimination, harassment, victimisation** and any other conduct that is prohibited by the Act.
2. **Advance equality of opportunity** between persons who share a relevant personal characteristic and persons who do not share it.
3. **Foster good relations** between persons who share a relevant personal characteristic and persons who do not share it.

These new duties came into force on 6 April 2011.

Definitions of unacceptable behaviour

Some harassment is unlawful discrimination and serious harassment and bullying, where everyone is treated with dignity and respect.

Bullying is offensive, intimidating, malicious or insulting behaviour, and/or an abuse or misuse of power that is meant to undermine, humiliate or injure the person on the receiving end. Examples of bullying would include picking on someone or setting him/her up to fail or making threats or comments about someone's job security without good reason.

Harassment is unwanted conduct related to relevant protected characteristics, which are sex, gender reassignment, race (which includes colour, nationality and ethnic or national origins), disability, sexual orientation, religion or belief and age, that:

- has the purpose of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person; or
- is reasonably considered by that person to have the effect of violating his/her dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for him/her, even if this effect was not intended by the person responsible for the conduct.

Examples of harassment would include: physical conduct ranging from unwelcome touching to serious assault; unwelcome sexual advances; demeaning comments about a person's appearance; unwelcome jokes or comments of a sexual or racial nature or about an individual's age; excluding an individual because he/she is associated or connected with someone with a protected characteristic, eg his/her child is gay, spouse is black or parent is disabled; repeated name calling related to an individual's religion or belief, ignoring an individual because he/she is perceived to have a protected characteristic (whether or not he/she does, in fact, have that protected characteristic), eg an employee is thought to be Jewish, or is perceived to be a transsexual; the use of obscene gestures; and the open display of pictures or objects with sexual or racial overtones, even if not directed at any particular person, eg magazines, calendars or pin-ups.

Conduct may be harassment whether or not the person behaving in that way intends to offend. Something intended as a "joke" may offend another person. Everyone has the right to decide what behaviour is acceptable to him/her and to have his/her feelings respected by others. Behaviour that any reasonable person would realise would be likely to offend will be harassment without the recipient having to make it clear in advance that behaviour of that type is not acceptable to him/her, eg sexual touching. It may not be so clear in advance that some other forms of behaviour would be unwelcome to, or could offend, a particular person,

eg certain "banter", flirting or asking someone for a private drink after work. In these cases, first-time conduct that unintentionally causes offence will not be harassment but it will become harassment if the conduct continues after the recipient has made it clear, by words or conduct, that such behaviour is unacceptable to him/her.

A single incident can be harassment if it is sufficiently serious.

Harassment also includes the following:

- **Harassment based on association.** It is unlawful to discriminate against or harass any individual for association with another individual who has a protected characteristic (other than marriage and civil partnership, and pregnancy and maternity). For example, if an employer denies an employee a promotion because she is taking care of a disabled relative and the employer thinks that the employee will not have any time for new duties, this would amount to associative discrimination as disability is one of the specified protected characteristics. Similarly, if an employer harasses an employee because his brother is gay, this would be unlawful as associative harassment as sexual orientation is another of the protected characteristics.
- **Harassment based on a perception.** It is unlawful to discriminate against or harass any individual based on a perception that he or she has a particular protected characteristic (other than marriage and civil partnership, and pregnancy and maternity) when he or she does not, in fact, have the protected characteristic. For example, a male employee may look much older than his age. If the company does not allow him to make presentations to clients because his line manager thinks that he is too old, the employee has been discriminated against because of a perception of the protected characteristic of age, even though he may be relatively young. Similarly, if an employee is called names and made fun of because his colleagues believe that he is a transsexual, he may have a claim for perceptive harassment related to the protected characteristic of gender reassignment, even though he is not a transsexual.
- **Third-party harassment.** Employers can be found liable for harassment of an employee in the course of his or her employment, based on any of the protected characteristics (other than marriage and civil partnership, and pregnancy and maternity), by third parties such as clients or customers. For an employer to be liable: the harassment must have occurred on at least two previous occasions (although not necessarily by the same harasser or suffering the same type of harassment); it must be aware that it has taken place; and it must have failed to take reasonable steps to prevent it from happening again. For example, if a waitress of Asian origin has complained on several occasions to her employer that a particular customer has been making

racist remarks to her, the employer should take steps to protect the employee from such third-party harassment, such as banning the customer from the restaurant or allowing the waitress to take her break when that customer is in the restaurant. Failure to do so will make the employer liable for third-party harassment.

- **Victimisation** occurs where an employee is subjected to a detriment, such as being denied a training opportunity or a promotion, because he or she made or supported a complaint or raised a grievance under the Equality Act 2010, or because he or she is suspected of doing so. However, an employee is not protected from victimisation if he or she acted maliciously or made or supported an untrue complaint. There is no longer a need for a complainant to compare his or her treatment with someone who has not made or supported a complaint under the Equality Act 2010. For example, if a blind employee raises a grievance that the employer is not complying with its duty to make reasonable adjustments, and is then systematically excluded from all meetings, such behaviour could amount to victimisation.

- Subject to limited exceptions in some circumstances for religion or belief and sexual orientation, it is unlawful to discriminate directly or indirectly, harass or victimise a member of the public based on any of the protected characteristics in the provision of services or goods.