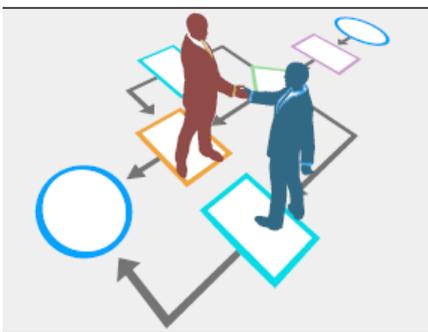


# FAIR TREATMENT AT WORK

## (Teachers & Associated Professionals Procedure)

August 2016 & Version 2



# FAIR TREATMENT AT WORK

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## 1.0 PURPOSE

- 1.1 This procedure underpins the Council's [Fair Treatment at Work Policy](#) and has been put in place to deal with complaints of unfair treatment so that they are dealt with in a fair and consistent manner.
- 1.2 This procedure guides managers and employees through the steps required to submit and deal with any complaint. Detailed guidance on all aspects of this procedure is available in the [Fair Treatment at Work Guidance](#).
- 1.3 Employees are encouraged to raise concerns early as resolution is much more effective. Managers must act quickly to consider a complaint to minimise the need for more formal procedures.
- 1.4 All concerns must be treated seriously and employees should provide as much information as possible to support any complaint. . A [template form](#) has been developed to help capture information about the complaint.

## 2.0 THE LEGAL FRAMEWORK

- 2.1 There is no legal definition of bullying. However, if bullying amounts to harassment (i.e. the unfair treatment related to a protected characteristic within the Equality Act 2010) then this would be covered by employment legislation.
- 2.2 There are a number of other legal principles which may impact on allegations of bullying, such as breach of contract (implied term of trust and confidence); Employment Rights Act 1996 for constructive unfair dismissal; Health and Safety at Work Act 1974; and Human Rights Act 1998.

- 2.3 The Equality Act 2010, places a specific responsibility on the Council to protect employees in circumstances where bullying, harassment, victimisation and discrimination occurs. The Council is committed to meeting the requirements of the Equality Act 2010 which simplifies streamlines and strengthens existing equality legislation and protects people from discrimination on the basis of:

### PROTECTED CHARACTERISTICS

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race (including ethnic or national origins and nationality)
- religion and belief
- sex
- sexual orientation

## 3.0 WHAT CONSTITUTES UNFAIR TREATMENT

- 3.1 Bullying and harassment are not associated with normal management standards where legitimate, justifiable and fair criticism and monitoring of an employee's performance or behaviour at work takes place. The following definitions apply:-
- 3.2 **Bullying**  
Bullying is normally persistent and repeated behaviour which is targeted, offensive, intimidating, malicious or insulting. It can include the abuse or misuse of power intended to undermine, humiliate, or injure.
- 3.3 **Harassment**  
Harassment is unwanted conduct (related to a 'protected

characteristic' under the Equality Act 2010), which has the purpose or effect of violating a person's dignity or creates an intimidating, hostile, degrading or offensive environment for that person. In this respect, it is the effect of the behaviour on the recipient, not how it was intended, which is key in determining whether or not the behaviour constitutes harassment. Harassment may be a single incident or persistent and may affect one person or a group of people.

### 3.4 **Victimisation**

Victimisation is subjecting a person to a detriment because they have, in good faith, complained (formally or otherwise) that someone has been bullying or harassing them, or someone else, or supported someone to raise a concern, given evidence relating a concern.

3.5 Bullying, harassment and victimisation can occur in many forms ranging from jokes/banter and offensive language to physical contact and abuse of power. A non-exhaustive list of examples is contained at **Appendix 3**.

## 4.0 **RIGHTS, ROLES AND RESPONSIBILITIES**

### 4.1 **Council**

This procedure is designed to provide a fair and transparent framework in which unfair treatment concerns can be raised by individuals and appropriate action taken.

4.2 The Council's [Fair Treatment at Work Policy](#) sets out firm commitments to value openness, communication, teamwork and trust and honesty to promote a culture of respect and dignity at work. It also promotes the values set out within the Workforce Charter as detailed in our [Workforce Strategy](#) that

concerns in the workplace must be addressed as quickly as possible in line with the procedure.

4.3 The stages of the procedure should be followed in sequence, however, in circumstances where unfair treatment has recently been considered at Stage 1 and further concerns are raised then consideration can be given to progress the matter directly to Stage 2.

4.4 Employees who use this policy to progress a complaint can use mediation (See Section 5) to help resolve workplace issues.

### 4.5 **Employees**

Employees are responsible for their own behaviour within the workplace or any work-related setting outside the workplace. Employees must consider how their behaviour or actions may be affecting those around them and no employee should practice, encourage or allow any form of unfair treatment to take place.

4.6 If an employee feels that they are being unfairly treated they should seek help, advice and support.

4.7 Help, advice and support is available from line managers, work colleagues, Trade Unions and Organisational Development & Human Resources (OD&HR).

4.8 Should an employee be aware of a colleague who may be subject to such unfair treatment, they should raise these concerns with an appropriate manager as soon as possible. In some circumstances the employee may wish to discuss these concerns with a colleague, Trade Union or OD&HR in order to seek advice on the best approach to raising any issues.

#### 4.9 Employee Rights/Responsibility Summary

Employee Rights	Employee Responsibilities
To be treated with dignity and respect To be treated fairly and without discrimination	To treat others with dignity and respect To report or challenge (where appropriate) inappropriate behaviours in others (Also see 4.8)
To present alternative views on work issues	To respect authority and decisions of others
To provide constructive challenge to work issues	To deal with conflict constructively
To be consulted on decisions that affect their work	To recognise the needs of the business and others
To have their contribution recognised	To thank and recognise the efforts of others

4.10 Comprehensive guidance is available on our OD&HR Policy page on GLOW. A full list of links can be found at the end of this procedure.

#### 4.11 **Managers**

Managers have a duty to prevent unfair treatment taking place within areas under their control. They are responsible for setting and maintaining standards of acceptable behaviour expected of staff and for fostering a safe and productive working environment, free of unfair treatment.

4.12 Managers must ensure that any allegations of unfair treatment are taken seriously and dealt with speedily and sensitively. Failure to take action may constitute a failure to carry out the full responsibilities of the job and may result in disciplinary action.

4.13 Managers should recognise that not all acts perceived to be unfair treatment are intentional and it is possible that an individual may be unaware of the impact of their behaviour.

4.14 There can be links between unfair treatment and sickness absence and managers should be aware that this may be a causal factor.

### 5.0 MEDIATION

5.1 Mediation is a voluntary and confidential process in which the mediator assists two (or more) people in a dispute to find a solution to which the parties can agree.

5.2 The mediator is not there to judge and does not take sides or tell the parties what to do. Mediation is most likely to be successful if both parties:

- understand the purpose of mediation;
- enter into the process voluntarily
- are seeking to preserve or restore the working relationship

5.3 Mediation is effective in providing an informal and speedy solution to workplace conflict and disagreements.

5.4 Where mediation is appropriate and agreed by the parties involved, a suitably trained mediator will be appointed.

### 6.0 TRAINING

6.1 Internal conflicts can arise in any workplace and it's essential that managers are trained to deal with these matters effectively.

6.2 The Council has developed online training for managers to support

them in dealing with complaints and resolving conflict.

6.3 The training will provide managers with:-

- an understanding of what constitutes unfair treatment
- an understanding on how to deal with a complaint and how to apply the policy and procedure
- confidence to resolve complaints earlier

## 7.0 FAIR TREATMENT AT WORK PROCESS.

7.1 It is essential that Managers and staff feel able to informally discuss and resolve concerns relating to unfair treatment out with this procedure and if possible resolve these without the need to invoke the Fair Treatment at Work procedure.

7.2 Where informal discussion does not result in the resolution of concerns or it is not appropriate to informally consider matters (i.e. concerns are serious) then the Fair Treatment at Work procedure can be invoked. The procedure has 3 distinct stages; Stage 1, 2 and 3.

7.3 Employees who wish to raise unfair treatment concerns should complete the [Fair Treatment at Work Stage 1 Form](#). This is available to download from GLOW and within the [Managers Guidance](#) (Appendix 8). Employees may also wish to seek guidance and support from a trade union representative to help with the completion of the form.

7.4 When raising concerns through the Stage 1 procedure the template form (Stage 1 form) aids discussion on the main issues of concern.

7.5 All concerns must be raised promptly.

## 8.0 STAGE 1

8.1 This stage enables issues to be resolved quickly and effectively between both parties nearest to the point of origin and to restore positive relationships at work. Employees are able to receive support from a work colleague or trade union representative to help them through the Stage 1 process.

8.2 Supporting guidance on all aspects of the managing and conducting the Stage 1 process is available in the Fair Treatment at Work Guidance.

8.3 The complainant has a choice of options:

- **Direct discussion** with the person who is the subject of the complaint, which can be made independently or with the support of a work colleague or trade union representative. Where the complainant wishes for a support person to attend a meeting then an appropriate manager must also be present. Stage 1 requires the complainant to explain clearly, to the person, with examples, what it is that makes them feel they are being treated unfairly. The person being complained about is able to respond to those concerns.
- **Indirect approach** by requesting someone else talk to the person who is the subject of the complaint; i.e. approach to management who may be able to assist; approach OD&HR for advice and assistance; Request facilitation where the manager explores the possibility of bringing in an independent person (from another department) to try to work between parties and resolve the problem (requires co-operation from both parties).

- **Talk through options** by approaching any of those listed within Stage 1 process for advice only i.e. not to inform or discuss the matter with the person who is the subject of the complaint
- Raise the complaint with the appropriate manager utilising stage 1 form and submitting to the appropriate manager.

#### 8.4 Stage 1 – Outcomes

The Stage 1 process is expected to:-

- Foster a safe and constructive environment where both parties can engage in open and honest dialogue
- Encourage both parties to move away from their initial positions by appreciating each other's point of view, personal interests and underlying needs
- Provide opportunities to consider and explore the causes and impact of conflict with each other
- Explore all the issues in full, reach a consensus and conclusion and agree an action plan for future work relationships
- Where the situation remains unresolved, then the complainant can request to move to mediation or Stage 2 of the process
- Managers must complete a Stage 1 response
- If it appears that the Council's disciplinary rules have been broken, then the matter should normally be referred to other procedures e.g. the Disciplinary Policy
- The appropriate manager must communicate the outcome of the complaint to the employee who is the subject of that complaint in writing.

#### 8.5 Stage 1 Timescales

All concerns should be acknowledged (verbally or in writing) within 5 working days. The expectation is that matters are dealt with promptly and concluded within 10 working days of the employee raising concerns unless agreed by all parties.

- 8.6 When concluded, the outcome must be communicated, in writing, within 5 working days

### 9.0 STAGE 2

- 9.1 If the complainant believes their concerns have not been adequately addressed at Stage 1 and/or mediation was unsuccessful then this stage allows for a formal investigation or a formal Stage 2 meeting.
- 9.2 Employees who wish to escalate their unfair treatment complaint to Stage 2 should notify the Head of Service within 10 days of receiving the outcome from Stage 1 and complete the [Fair Treatment at Work Stage 2 Form](#) available on Glow. Employees may also wish to seek guidance and support from a trade union representative to help with the completion of the form. ( Appendix 9 of the managers guidance.)
- 9.3 A Stage 2 complaint must be supported by all information collected e.g. examples of where perceived unfair treatment took place including dates, times, situations, conversations etc.
- 9.4 When an investigation is required the Head of Service must appoint an Investigating Officer within 5 working days of receipt of the Stage 2 form to look into the complaint thoroughly. The Investigating Officer must notify Organisational Development & Human Resources of the

commencement date of the investigation.

9.5 Any investigation or Stage 2 meeting will be conducted as quickly as possible and consistent with conducting a fair and thorough investigation. The complainant should be kept informed of progress.

9.6 Guidance on the conduct of the investigation is contained within the Fair Treatment at Work Guidance.

9.7 The complainant will be entitled to be supported at any investigatory meeting by a work colleague or Trade Union representative.

#### 9.8 THE STAGE 2 MEETING

On completion of the investigation (if required), the Head of Service must notify OD&HR and then convene a Stage 2 meeting.

9.9 The Head of Service will invite the complainant and the person who is subject of the complaint to a meeting to discuss the complaint. The decision to meet both parties in one meeting or two separate meetings will be at the discretion of the Head of Service. The Trade Unions will be consulted (where appropriate) and any discussion will take into account the seriousness and sensitivity of the case. The purpose of the meeting will be to seek to understand the facts of the case through discussion and reviewing the Stage 2 submission and investigation report.

9.10 The complainant and the person who is the subject of the complaint will be entitled to a copy of the Stage 2 investigation report including all statements and documents in advance of the meeting.

9.11 The complainant will be entitled to be represented at the Stage 2 meeting by a work colleague or

Trade Union representative. A Human Resources Officer and the Investigating Officer will also be present.

9.12 Guidance on the conduct of the Stage 2 meeting is contained within the Fair Treatment at Work Guidance.

#### 9.13 Stage 2 - Outcomes

The Stage 2 process is expected to:-

- Reach a determination as to how the complaint can best be resolved.
- The outcome will be sent, in writing, to both parties within 5 working days of the conclusion of the Stage 2 meeting(s). The complainant will be notified of their right of appeal.
- Whether the concerns raised are Bullying Harassment, victimisation and/or discriminatory
- Where appropriate put an action plan in place
- Where mediation has not been explored, consideration of whether this should be offered
- If it appears that the Council's disciplinary rules have been broken, then the matter should normally be referred to other procedures e.g. the Disciplinary Policy
- The appropriate manager must communicate the outcome of the complaint to the employee who is the subject of that complaint in writing.

#### 9.14 Stage 2 Timescales

A Stage 2 meeting will typically take place within 10 working days from the completion of the investigation.

9.15 It is difficult to predict the length of time taken to investigate a complaint due to the potential seriousness and complexity involved. However,

Investigating Officers must be given the time to carry out their investigations as quickly as possible. If timescales go beyond 20 working days then this matter must be raised directly with the Head of Service. Organisational Development and Human Resources will monitor the timescales and liaise with services to encourage prompt resolution

9.16 The outcome will be sent, in writing, to both parties within 5 working days of the conclusion of the Stage 2 meeting(s).

## 10.0 STAGE 3 - APPEAL TO EMPLOYMENT AND APPEALS SUB-COMMITTEE

10.1 If the complainant is not satisfied with the decision of the Head of Service/Service Manager there is a right of appeal to the Employment and Appeals Sub-Committee.

10.2 An appeal must be lodged within 10 working days of the outcome of Stage 2 and all written requests must be sent to the Head of Organisational Development and HR. The decision of the Appeals Sub-committee is final and binding on all parties.

## Glossary of Terms

Reference	Interpretation
Bullying	As outlined within the policy, bullying at work can be defined as offensive, intimidating, malicious or insulting behaviours, and/or an abuse or misuse of power that is meant to undermine, humiliate or injure the person on the receiving end.
Harassment	As outlined within the policy, harassment is unwanted conduct related to relevant protected characteristics that violates a person's dignity or creates an intimidating, hostile, degrading or offensive environment for that person.
Victimisation	As outlined within the policy, victimisation is subjecting a person to a detriment because they have, in good faith, complained (formally or otherwise) that someone has been bullying or harassing them, or someone else, or supported someone to raise a concern, given evidence relating a concern.
Mediation	A voluntary but structured and controlled way of effectively resolving disputes between two or more parties
Investigating Officer	The person commissioned to lead on and conduct a formal investigation into the allegations and compile a written report to present to nominated officer.
Disciplinary Procedure	Disciplinary would be used by the Council to deal with cases of misconduct (such as bullying, harassment or victimisation).
Disciplinary Hearing	A formal meeting chaired by a nominated officer to ascertain whether or not disciplinary action is required against an employee who has had allegations made against them.

Unreasonable conduct within the workplace (or any work-related setting outside the workplace) can be defined as bullying, harassment or victimisation.

<p><b>Bullying and harassment</b> can occur in many <b>forms</b>, including:</p>	
<p>physical contact jokes offensive language gossip slander songs posters graffiti obscene gestures emblems</p>	<p>isolation or non-cooperation coercion for sexual favours pressure to participate in political/religious groups intrusion by pestering spying and stalking abuse of organisational power personal insults (such as humiliating or demeaning comments) intimidation</p>
<p><b>Bullying</b> can range from extreme <b>forms</b>, such as violence and intimidation, to less obvious actions, and can be split into two categories:</p>	
<p><u>The obvious:</u> Shouting and swearing at people in public and private Persistent criticism Ignoring or deliberately excluding people Persecution through threats and instilling fear Spreading malicious rumours Constantly undervaluing effort Dispensing disciplinary action that is totally unjustified Spontaneous rages, often over trivial matters</p>	<p><u>The less obvious:</u> Withholding information or supplying incorrect information Deliberately sabotaging or impeding work performance Constantly changing targets Setting individuals up to fail by imposing impossible deadlines Levelling unfair criticism about performance the night before an employee goes on holiday Removing areas of responsibility and blocking applications for holiday, promotion or training imposing menial tasks</p>
<p><b>Examples</b> of different <b>means</b> of bullying and harassment:</p>	
<p>Verbal communication such as: face to face telephone conversations Written communication such as: documents e-mails mobile telephone text messages internet sites (including social networking and blog sites) Visual images such as: pictures of a sexual nature embarrassing photographs</p>	
<p><b>These lists of examples are not exhaustive. They are representative of many types of behaviour that others may object to; find offensive, or which could create an intimidating working environment.</b></p>	

# HR & OD POLICIES

Human Resources & Organisational Development



## Document History

### Policy

Version	Revision Date	Previous Revision Date	Summary of Changes
1	November 2013	N/A	
2	August 2016	November 2013	Updated specific to teaching staff. Updated to reflect that teaching staff may also use Grievance policy as alternative to FTAW. The specific timescales for lodging a complaint is different and the requirement for evidence to be provided is different

### Committee Approval

Version	Committee	Committee Date
1	Policy & Resources	November 2013
2	LNCT	August 2016 AGREED by LNCT 17 January 2017

### Distribution

The approved version of this document is distributed to:

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