

RESOLUTION POLICY

Date policy adopted: 23/03/2020 (replaces previous Grievance and Dignity at work policies)

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1. Purpose and Scope

The Ethical Standards Commissioner (ESC) recognises that from time to time employees may have concerns relating to their employment including individual or collective grievances about aspects of their work or concerns about the behaviour of other employees or others that they might come into contact with in the course of their employment. This policy is intended for the guidance of managers and employees in providing a structure that can help to resolve matters as quickly and as fairly as possible.

As a small office it is proportionate to have one procedure to follow which covers any concerns that someone may wish to raise in respect of grievances (individual or collective) or concerns about behaviour including allegations of discrimination, bullying, harassment and victimisation. As a small office it is also vital that good relations are maintained and any issues of concern are addressed and resolved promptly and as far as possible to the satisfaction of all involved.

ESC may, at any time during the resolution procedure, contract with an external party to carry out part or all of the procedures. This will usually be considered where the issues are particularly complex or sensitive, the concern raised is about the Commissioner or if, given limited resources, there is no-one available internally to carry out the process.

This policy applies to all employees regardless of working pattern or nature of employment contract. It also applies to anyone working within the premises of and / or for the Commissioner where they would be using ESC equipment and privy to ESC records and files (E.g. employed by an agency). The word employee(s) in the context of this policy should be taken to mean all such individuals, unless specifically referred to as being directly employed by ESC. The policy extends to employees in their workplace and when they are attending social or work related events organised through or by ESC.

2. Implementation, monitoring and review of the policy

Overall responsibility for policy implementation, monitoring and review lies with ESC. Everyone covered by the scope of the policy is obliged to adhere to, and facilitate implementation of the policy. Appropriate action will be taken to inform all new and existing employees and others covered by the scope of the existence of the policy and their role in adhering to it. The policy will be reviewed at such times as legislation or a change to the ESC policy position requires it. The policy will be made available to the general public.

3. What does resolution mean?

There are two meanings of the word resolution. The first meaning is that the situation will be resolved to everyone's satisfaction. The second meaning is that the parties involved in the process will resolve (i.e. be determined) to implement the agreement.

A resolution that is secured by the parties themselves is more likely to be mutually acceptable and to endure over the longer term than one that is imposed – with one side perceiving that they have won and the other side perceiving that they have lost.

It is recognised that everyone performs better work in an environment that allows them to be themselves, where work is valued, where they are listened to and where they are treated with respect. This is called a dignified workplace and working toward resolution will help to achieve this.

4. Principles

- Dialogue – building dialogue between people helps them resolve disputes, conflicts and complaints. Informal action will be considered, as far as possible, to resolve problems.
- Fairness – ESC aims to give all employees access to a fair and dignified approach to managing disputes, conflicts and complaints.
- Mutual respect – it is recognised that disputes, conflicts and complaints can be challenging and a respectful approach is encouraged at all times to assist with their resolution. ESC has a duty of care to provide a safe, supportive and discrimination free working environment. This is taken seriously and all employees are expected to contribute proactively to the creation of a working environment in which everyone is treated with dignity and respect irrespective of their sex; gender identity; sexual orientation; racial group (which includes colour, race, nationality, national or ethnic origin); religion, religious belief, or similar philosophical belief (or the absence of any such religion or belief); disability; age; trade union membership status/activities; marital or family status and employment status. Whilst legislation covers only a number of protected characteristics, the ESC commitment to promoting equality and celebrating diversity means that unfair discrimination, victimisation or harassment on any grounds will not be tolerated. All allegations of harassment, victimisation or bullying will be treated seriously and prompt action will be taken to investigate complaints. Where harassment, victimisation or bullying is proven, disciplinary action will be taken which may include dismissal.
- Empathy and kindness – all parties in a dispute, conflict or a complaint are actively encouraged to consider the feelings of others involved in it, to think about how they might be feeling in that person's position and to try to behave with kindness and compassion.
- Collaboration –all parties in a dispute, conflict or a complaint are actively encouraged to work together to identify, agree and implement a shared solution.
- Timeliness –all workplace disputes, conflicts and complaints will be resolved in a timely manner wherever possible, avoiding any unnecessary delays. Generally, any issue should be raised no more than 3 months after the event took place.

5. Concerns relevant to the policy

Any concern that an employee has related to the workplace is relevant. By way of example, the following are examples of the type of issue which may be considered.

- Allegations of bullying or harassment
- Allegations of discrimination or victimisation
- Disagreements and disputes between colleagues
- Concerns or complaints about the actions or inactions of the employer, e.g.
 - terms and conditions of employment,
 - health and safety,
 - new working practices,
 - working environment,
 - organisational change,
 - equality of opportunity.

Employees should note that a grievance cannot apply to the merits or judgment of ESC in the exercise of statutory functions unless those are incompatible with other ESC policies.

Concerns related to bullying, harassment and victimisation

Any employee who would like help to understand whether they have experienced bullying, harassment or victimisation and guidance about when and how to raise it should refer to the [ACAS guidance](#) on the subject.

There is also ACAS [guidance for managers](#) who have had a concern reported to them.

Definitions are attached as Appendix 1 to this policy.

Concerns that are in the public interest

If a concern falls into a specific category and would be in the public interest, it might be considered a qualified disclosure under the [whistleblowing policy](#).

Concerns which are relevant to the whistleblowing policy and are a personal or collective grievance may need to be considered under both policies.

6. Procedure

For any situation where the resolution policy is required, the procedure to be followed will be the same. This procedure reflects the [ACAS Code of Practice on disciplinary and grievance procedures](#) and the [ACAS Guide to grievances at work](#).

Informal stage

If an employee has a grievance or complaint to do with any aspect of their work or the people they work with or come into contact with during the course of their work, they should, wherever possible, start by talking it over with their line manager. It may be that a solution can be agreed informally. It will be helpful if the employee has taken some notes about any alleged wrongdoing they have experienced if this has taken place over a period of time.

Formal stage

If the matter is serious and/or the employee wishes to raise the matter formally they should set out their concerns in writing to their manager. The employee should stick to the facts and avoid language that is insulting or abusive.

Where the concern is about the employee's line manager and they feel unable to approach them they should set out their concerns in writing to a different member of the [senior management team](#) instead. This written concern should NOT be sent directly to the Commissioner unless:

1. the employee's concern is related to all members of the senior management team or
2. the employee is a member of the senior management team.

Formal complaint relating to bullying, harassment or victimisation

Where a formal complaint is about bullying, harassment or victimisation it should contain:

- the name of the person about whom the complaint is being made
- the nature of the behaviour which is unacceptable
- examples of instances when this has taken place including dates and times
- a description of any actions already taken to attempt to resolve the issue.

The line manager will acknowledge the employee's complaint, advise them that the nature of their complaint will be shared with the person or persons they are making the complaint about and commence an investigation (see [investigations](#) below). The employee will be invited to contribute to the investigation and will be provided with a copy of the findings.

Formal meeting

The manager to whom the employee has provided the formal concern in writing will invite them to a meeting, normally within five days, to discuss their written concerns and will aim to identify a suitable resolution to the situation. The employee may bring a colleague, Trade Union Representative or friend to this meeting. Another employee or an advisor to the manager may be present in an advisory capacity and/or to record the proceedings. The outcome of the meeting will be a formal recommendation for resolution, which in most cases will be agreed between the parties involved during the meeting.

After the meeting, the line manager will outline the formal recommendation for resolution in writing, where this has been agreed. In cases where there has been no resolution, the manager will outline a summary of the discussions had in attempting to find a resolution alongside their decision as to why resolution was not possible and their decision about the concerns as outlined by the employee in writing and at the meeting. This written outcome will be provided as soon as reasonably practicable and normally within 5 days of the meeting.

Appeal

If the employee is unhappy with the formal recommendation for resolution or the manager's decision and wishes to appeal they should let the line manager know. The manager will arrange for them to be invited to an appeal meeting, normally within five days, and the appeal will be heard by someone other than the manager who was involved in the initial formal meeting. This may be another manager from the senior management team, the Commissioner or an external party. The employee may bring a colleague, Trade Union Representative or friend to this meeting. Another employee or an advisor to the manager may be present in an advisory capacity and/or to record the proceedings.

This meeting will again aim to reach a formal recommendation for resolution which is agreed between the parties involved during the meeting. Where there has been no resolution the manager or Commissioner's decision (which may be based on recommendations from an external party if relevant) will be final. A written outcome of the meeting will be provided as soon as reasonably practicable and normally within 5 days of the meeting.

Investigation

At any informal or formal stage of the procedure where information is missing or resolution could be more easily achieved by receiving further clarification on a matter, the informal or formal stages of the procedure can be suspended in order for the manager (Commissioner or external party) to conduct a relevant investigation. Where this investigation is likely to cause a significant delay, the manager will provide the employee with a written estimate of the likely timescales involved.

In the case of a formal complaint of alleged bullying, harassment, discrimination or victimisation being received, a full investigation will be required in order to ascertain the basis of the formal complaint and understand if and what the nature of any alleged behaviour has been. This will take place before the formal meeting and the manager will keep the employee informed as to its progress.

7. Mechanisms to support the procedure

At any stage of the procedure, but particularly in the informal stages, any of the following mechanisms may be considered to help provide resolution to the situation.

Early resolution meeting (individual or team)

This is a simple informal discussion designed to give managers, employees and colleagues the opportunity to discuss situations and/or concerns in a supportive and constructive forum. It is hoped that most concerns can be resolved in this straightforward manner. If it is intended to involve others than the person initially raising the concern, the manager should discuss and receive consent from the person raising the concern before inviting the others.

Facilitated discussion

This is a confidential discussion between all parties that draws on the same principles as mediation. It may be useful where there are conflicting views within a team. The facilitator (who will usually be a member of the senior management team or an external party) will act neutrally and encourage the parties to engage in a constructive dialogue, with the aim of reaching a mutually acceptable outcome. If it is intended to make use of this mechanism the manager should discuss and receive consent from the person raising the concern before inviting others involved.

Mediation

Mediation is a non-adversarial way of resolving difficult situations. It is used as an alternative to formal processes. The mediator is an impartial third party (who will usually be an external party) who helps those in conflict have an open and honest dialogue with the aim of achieving a win/win outcome.

8. Records

Records will be kept at each stage of the formal resolution procedure. All parties involved will have the opportunity to check their accuracy and employees will be entitled to a copy of all records relevant to them. ESC reserves the right to withhold some information from employees where it is necessary to do so to protect the identity of a witness.

Records will be treated as confidential and will be kept no longer than necessary and in accordance with the data protection legislation.

9. Collective Grievance

In a situation where concerns are raised by two or more employees about the same subject matter, this will be considered as a collective grievance (other than for cases relating to behaviours of an individual as these rely on the experience and impact relating to each person experiencing the behaviour). The procedure to be followed will be altered only in that when instigating the formal stage, the employees affected should put their complaint in writing, clearly setting out the nature of the grievance, the outcome that is sought, the names of all those who are raising the grievance and confirmation of voluntary consent on

the part of the employees concerned that the nature of the collective grievance that they wish to pursue is agreed and understood. Employees affected by the grievance should nominate a spokesperson on behalf of the group to take part in the formal stages of the procedure and this person can be accompanied by a colleague, Trade Union representative or friend.

10. Interaction with other policies

Equality, diversity and Inclusion Policy

Any concern raised under this policy which concerns potential discrimination or allegations of bullying, harassment or victimisation should be considered in line with the Equality, diversity and Inclusion Policy.

Mental Health Policy

If any employee finds that they experience mental health challenges as a result of interacting with this policy, they, or their manager may wish to refer to the Mental Health Policy to seek support.

Whistleblowing (Public Interest disclosure) Policy

If an employee raises a concern under the resolution policy which could be considered as being in the public interest, the Whistleblowing (public interest disclosure) policy should also be referred to. It may be that both policies will be relevant to consider.

Disciplinary Policy

If, during an investigation or disciplinary hearing, an employee raises a grievance, the investigation or disciplinary process will normally be suspended to review the grievance and assess its impact on the nature of the investigation or disciplinary hearing prior to taking a decision on how to proceed.

Employees should note that where concerns about potential harassment, bullying or victimisation are raised and during the course of an investigation there is found to be evidence of harassment, bullying or victimisation having taken place then action will be taken against the person engaging in the harassment, bullying or victimisation in accordance with the [Disciplinary Policy](#). This could involve disciplinary action up to and including summary dismissal. Furthermore, harassment linked to a protected characteristic, for example race or sex, are potentially acts of unlawful discrimination. Offenders may be personally liable to prosecution and face possible fines and/or imprisonment.

If allegations made under this policy are unfounded or vexatious then disciplinary action may be taken against the person raising the concern.

Appeal Process

Where policies include a right of appeal (e.g. Discipline or absence) any concern raised by an employee during that process will usually be considered as part of the appeal process, rather than a standalone issue under the resolution policy.

11. Confidentiality

Confidentiality will be maintained at all stages of the procedure where practicable. Particularly when dealing with concerns relating to potential allegations of bullying, harassment or victimisation, a high degree of discretion and sensitivity must be exercised

by all those involved at any stage of dealing with such a concern. This must not act as an impediment to the thorough investigation of such concerns and nor should it undermine the right of all employees to be treated fairly and objectively.

12. Legal representation at public expense

ESC will provide legal representation if an employee is sued for damages as a result of actions carried out in the course of their employment. This representation will be by the solicitor acting for ESC. Any damages and/or liability for the other sides' costs will also be met from public funds. This right does not apply if:

- the Commissioner considers that the employee was acting outside the scope of their employment, or
- the employee refuses without good reason to instruct the solicitor in terms required by the solicitor.

ESC will also:

- provide legal advice if the employee is assaulted in the course of their official duty and give assistance with any subsequent proceedings
- allow the employee to be represented by ESC's legal representatives if they are involved in an inquest or fatal accident enquiry as a result of their official duty, provided there is no conflict of interest
- when a formal enquiry might lead to an employee being blamed, consider with its legal adviser whether the employee should be given legal representation at public expense, tell the relevant representative (where appropriate) of its provisional decision and give sympathetic consideration to their views
- provide legal representation if an employee is sued as a result of the findings of the enquiry for actions carried out in the course of their official duty, unless the employee appears to have been guilty of wilful or gross negligence.

If an employee is refused legal representation or assistance with such legal expenses, they may appeal to the Commissioner to have this decision reviewed.

Equality Impact Assessment

Does this policy comply with the general Public Sector Equality Duty (s149 Equality Act 2010)?

This policy applies to all employees and its impact was considered when drafting. We consulted with employees prior to publication to identify and address any issues. The policy specifically mentions definitions of protected characteristics defined within the Act and gives employees a route through which they are able to raise concerns about any detriment.

Data Protection Impact Assessment

Have we considered any effect the policy may have on the collecting, processing and storing of personal data?

The records generated by this policy will contain personal data and may contain sensitive and special category personal data. Suitable retention and destruction policies are in place to manage this material.

Information Security Impact Assessment

Have we considered the impact any policy may have on our cyber-resilience?

This policy should have no impact on our cyber-resilience.

Records Management Impact

Have we considered the impact any policy may have on our ability to manage our records?

This policy should have no impact on our ability to manage our records.

| Version | Description | Date | Author |
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Ethical Standards Commissioner

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|-----|---|------------|-----------------------------|
| 1.0 | Replaces previous Grievance and Dignity at work policies. | 01/04/2020 | Public Appointments Officer |
| 1.1 | Minor tweaks relating to phrasing and language | 01/06/21 | Public Appointments Officer |

APPENDIX 1

Definition of Bullying

Bullying at work can take many forms and we describe bullying at work as harassing, socially excluding or negatively affecting someone's work tasks. In order for the label bullying to apply, the behaviour has to occur repeatedly and regularly (for example every week) and over a period of time (for example, over a month). Bullying is a process that escalates, and can result in the person being bullied ending up in an inferior position and the target of systematic negative social actions.

Bullying can be carried out by one individual or a group of individuals. When a group of people are behaving in a way that would be described as bullying behaviour against an individual, this is called 'mobbing'.

Definition of Harassment

Harassment is defined as "unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them, or is frightening or in any way distressing". ESC defines harassment as any unwelcome behaviour that has the purpose or effect of creating an intimidating, hostile or offensive working environment for another employee, or that interferes with their work performance. It may be persistent or an isolated incident and may be directed at one person or many people.

Harassment can include bullying.

At its simplest level, behaviour clearly becomes harassment when it is not welcomed by an individual and is considered by that individual to be personally offensive. Employees should note that this means that behaviour becomes harassment where it is perceived as such by the individual being harassed, regardless of the intention of the perceived harasser. The key is that the actions or comments are viewed as demeaning by the recipient. Employees are asked to acknowledge that what may seem harmless to one person can be offensive to another.

Definition of Victimisation

Victimisation is defined as when an individual is treated less favourably because they:

- have made a complaint or intend to make a complaint about discrimination or harassment or bullying under equal opportunities legislation or any of other ESC policies or
- have given evidence or intend to give evidence or support to an individual relating to a complaint about discrimination, harassment or bullying or any other breach of ESC policies.

APPENDIX 2 Resolution Flowchart

What is your concern about?

If there has been a detriment on the basis of: gender; gender identity; sexual orientation; racial group (which includes colour, race, nationality, national or ethnic origin); religion, religious belief, or similar philosophical belief (or the absence of any such religion or belief); disability; age; trade union membership status/activities; marital or family status; or employment status then **DISCRIMINATION** may also be relevant to your concern.

