

## MARLFIELDS PRIMARY ACADEMY

### HARASSMENT & BULLYING - CODE OF PRACTICE (ADULTS)

THIS SECTION APPLIES TO ALL CATEGORIES OF EMPLOYEES - please note it does not refer to our pupils but is relevant for parents who deal with our staff.

#### *Why is this important?*

It is inevitable that from time to time all organisations will encounter problems of staff harassment which may cause distress to individuals as well as disrupting the operation of the organisation. It is important, therefore, that schools adopt policies and practices which will avoid and/or minimise the dangers of staff harassment, and deal with it sensitively and efficiently if it should occur.

#### *Standard*

Each governing body **MUST** adopt a fair and lucid code of practice for dealing with staff harassment and make it available to all staff during school hours.

#### *Status of this Section*

This Section embodies a code of practice which has been agreed with the appropriate trade unions/associations and is commended to governing bodies for application to all categories of staff.

#### *GENERAL*

The Trustees of the Academy believes that harassment/bullying in the workplace cannot be tolerated. This policy/procedure aims to raise awareness of the problem and provide clear, easily accessible procedures for dealing with it if it does occur. It also forms part of Academy's commitment to equal opportunities.

### POLICY AND PROCEDURE

#### *1 POLICY*

##### *INTRODUCTION*

This Policy and Procedure have been adopted and are published as part of the staffing policy in relation to all teaching staff employed at the School.

##### *POLICY STATEMENT*

The Governing Body will strive to ensure that all staff employed at the school are treated with dignity and respect whilst at work, irrespective of race, colour, nationality, ethnic or national origins, sex or marital status, disability, sexual orientation or age.

The Governing Body is committed to creating an environment of positive working relationships and one in which it is clear to all that behaviour which may cause offence is not acceptable and may, in some cases, be against the law.

This policy is concerned primarily with the prevention of harassment/bullying (see Appendix A) in the workplace and aims to find a remedy for unjustifiable or unreasonable behaviour. It aims to address harassment/bullying in the workplace wherever it may exist. It is not intended to inhibit reasonable management of staff or the maintenance of a happy working environment. This policy will apply to all teaching staff employed at the school.

By adopting and implementing this policy the school aims to ensure that no teacher or parent is ignorant of the unacceptability of harassment/bullying. All teachers and parents in the school will be made aware that harassment/bullying will not be tolerated so that no teacher or parent will be able to claim ignorance of the school's policy as a defence against an act of harassment/bullying.

## **HARASSMENT & BULLYING POLICY AND PROCEDURE**

### ***PROCEDURE***

The complainant and the alleged harasser/bully, may, at all times, be advised and supported by a trade union/professional association or other representative.

#### ***STAGE 1***

##### ***INFORMAL***

The Governing Body requires that any allegations of harassment/bullying should, wherever possible, in the first instance, be pursued through less formal channels with the assistance, if requested, of a trained person.

- 1(a) Employees should try to make it clear, either orally or in writing, to the person who is harassing/bullying them that their behaviour is unwelcome and must stop.

Employees should keep records of incidents of behaviour which they consider to be harassment/bullying, noting the date and time of the incident and details of any witnesses.

- (b) Should the unacceptable behaviour persist, complainants should, if appropriate, approach the Headteacher.

- (c) If both of these approaches are inappropriate or fail to resolve the problem (or the alleged harasser/bully is the Headteacher), complainants should seek advice from their trade union/professional association representative and/or, if necessary, a named, trained, investigator. At the request of the complainant or their representative, arrangements should be made for an independent investigator to address the complaint.

- 2 The independent investigator dealing with the complaint of harassment/bullying will, in the first instance, informally discuss the complaint with the alleged harasser/bully and give them the opportunity to respond. It may now be possible for the independent investigator to resolve the problem alone or by mutual agreement.

- 3 If it is acknowledged a problem exists, a plan or action to rectify the problem and prevent recurrence should be agreed and given in writing to both parties and, if necessary, a date agreed for a review.

#### ***STAGE 2***

##### ***FORMAL***

- 4 If, in the view of the complainant, the matter is not resolved by Stage one of the procedure the Headteacher (or the Chairperson of Governors if the Headteacher is the alleged harasser/bully) will start an investigation.

Dependent on the circumstances, it may be appropriate for the investigation to be conducted by an independent investigator (if not already involved), who would report back to the Headteacher or Chairperson of Governors.

- 5 Following any investigation under paragraph 4, the conclusions of the investigator will be confirmed in writing to the complainant and the alleged harasser/bully.

The conclusions may result in

- (a) reinforcement of planned action and monitoring (para 3)
- (b) no further action
- (c) disciplinary action

- 6 If, following an investigation the complainant or the alleged harasser/bully claims that the matter has not been properly investigated or appropriate action has not been taken they may raise this as a grievance through the formal stage of the Grievance Procedure.
- 7 Harassment/bullying are disciplinary offences. Any formal investigation which reveals acts of harassment/bullying will be considered in accordance with the school's Disciplinary Procedure.

### **3 COMMENTARY**

The Commentary should be read in conjunction with the Policy and Procedure. The numbering of the paragraphs coincides with the numbering of the paragraphs in the Policy and Procedure. Further "General" issues about the application of the Procedure follows those paragraphs.

#### **(1) POLICY**

The Governing Body recognises the sensitive nature of complaints of harassment/bullying and that staff subjected to it may feel very vulnerable and distressed and, therefore, too afraid to make a complaint. Consequently, Governors will not tolerate intimidation, victimisation, retaliation or discrimination against an individual for making a complaint or for assisting in an investigation - whether or not the complaint is upheld. Where such action is alleged, the matter will be dealt with in the same way as an allegation of harassment/bullying. The Governing Body therefore requires that any allegations of harassment/bullying are dealt with seriously and confidentially. Lack of confidentiality can harm both the complainant and also the alleged harasser/bully.

NB: The procedure cannot be used as a defence against normal management action(s) e.g. action under capability or disciplinary procedures. Such procedures will not be automatically suspended where a complaint of harassment/bullying is made (and cannot be invoked in order to challenge or delay the operation of the disciplinary or capability procedures). For example, allegations that the use of the Capability Procedure is an act of harassment/bullying must be part of the 'defence' in such a process and cannot be the subject of a separate complaint/investigation.

This Policy will only apply to incidents taking place on or after this date. Retrospective applications will not be considered. However, where an incident takes place on or after this date which leads to an allegation of harassment/bullying, the consequent investigation may encompass and consider any relevant incidents which took place before this date.

This Policy does not address harassment/bullying of or by persons other than employees of schools. If there are complaints about or by non-employees these will be dealt with under other appropriate procedures. A procedure to cover non-employees (e.g. Governors, parents etc.) is under separate consideration.

Definitions of the terms used in the Policy and Procedure are provided in Appendix A to this Commentary. The legislative context is set out in Appendix B to this Commentary.

#### **2) PROCEDURE**

The Policy is supported by a Procedure which is intended to -

- (i) give clear guidance to all concerned in harassment/bullying situations;
- (ii) enable complaints of harassment/bullying to be resolved as efficiently and quickly as possible;
- (iii) minimise the prospects of damage to relationships at the school and to any and all individual employees involved.

It should be noted that every employee has the right to receive help and support, including professional counselling, if, appropriate, in whatever role he or she is cast in a situation covered by this procedure.

NB Application of the Procedure does not negate the complainant's statutory rights, including those set out in Appendix B, or the right to seek advice from his/her union/association or any other party. Indeed, it is believed that the Policy and Procedure is compatible with and complementary to such rights.

In normal circumstances, it is expected that the procedures will be applied sequentially.

## **STAGE 1 - INFORMAL**

The School and the recognised trades unions/associations believe that, wherever possible, it is desirable that all allegations of harassment/bullying be resolved informally. It is recognised that the use of formal procedures may result in emotional rather than objective and professional responses. Resentment and animosity can grow and harden, thereby making the problem worse. Every attempt should be made, at this stage, to apply reason, understanding and objectivity; the role of the 'trained person' may be crucial. Compromise should never be ruled out at this stage. However, if the matter cannot be resolved at the Informal Stage, the complainant(s) cannot be denied the right to invoke the Formal Stage.

1(a) If the complainant does not feel able to approach the alleged harasser/bully personally, then a third party could act on his/her behalf. Alternatively, the complainant or his/her representative may prefer to write to the alleged harasser/bully stating what has happened and that if it does not stop, action under the Procedure will be taken (a copy of the letter should always be retained). Such a letter or any other approach to the alleged harasser will constitute the initial use of the procedure. It is hoped that, in any case, this action may resolve the problem.

1(b) & 1(c)

It may be that, with trade union/professional association support, the complaint can be resolved quickly and informally without the involvement of other parties. However, if not resolved, the complainant/trade union/professional association may wish to call upon the services of a trained investigator. Investigations should normally be carried out by a trained investigator who may not be associated with the establishment.

The investigator will approach the investigation in a serious, sensitive and open-minded manner with the sole aim of establishing the facts. Where sexual harassment/bullying is alleged, the parties will be given the opportunity to speak to a person of their own sex. It is important to note that if the harassment/bullying is taking place outside the workplace (between colleagues) it will still fall within this procedure.

2. The investigator will ensure that all investigatory interviews take place in private and respect the confidentiality of both parties. The alleged harasser will be entitled to be accompanied by a friend or representative at the interview.

It may be possible, at this stage to resolve the problem. It is likely that, in some cases, the alleged harasser/bully may not have been aware that his/her actions were causing distress and/or concern. The actual invocation of the procedure could lead to acceptable apologies and a commitment to a future change of behaviour. The case may end there.

Equally, the investigator may have established that the allegations are unfounded or unsubstantiated e.g. that actions by the alleged harasser/bully may have been misunderstood or misinterpreted. In such circumstances s/he may be able to agree that no further action is necessary.

3. If a meeting is necessary, it will be arranged, normally within 10 working days, to agree any plan or action aimed at rectifying the problem and preventing its recurrence. The investigator may consider and recommend various remedies. (At this stage, it is desirable that, wherever possible, the matter should be resolved by the use of normal managerial mechanisms, e.g. written agreements, management instructions, rather than recourse to formal procedures.) After any plan or action has been implemented, there may be occasions when it is agreed and/or necessary to undertake a review at a mutually acceptable date.

Where it is accepted that it is difficult for a Headteacher (or Chairperson of Governors, if the Headteacher is the alleged harasser/bully) to act directly to resolve a specific case, s/he could organise awareness sessions for all staff within a department/school. This approach can be effective in preventing future harassment/bullying without identifying or damaging personal relations and reputations. It may also alert staff to the existence of the Procedure and it may improve general attitudes and behaviour within the department/establishment.

## **STAGE 2 - FORMAL**

This stage will only be necessary where it is felt or established that Stage 1 has been exhausted or has not resolved the complaint(s) to the satisfaction of the complainant and any independent investigator. Timescale may be an issue but it is anticipated that this will be agreed between the parties at the outset. At this stage, attitudes will inevitably harden and conflicts and challenges will emerge. Sensitive but firm management of the process at this stage is therefore essential. If the Chairperson of Governors has not previously been informed about the case, s/he must be informed and asked to agree that the Formal Stage should start.

4. It may be the case that the investigator believes that there are grounds for taking formal action, but, for various reasons, the complainant(s) do not wish to take the matter any further. The wishes of the complainant(s) must be given full and very careful consideration, but there may be circumstances/allegations affecting the wider school where the Headteacher (or Chairperson of Governors, if the Headteacher is the alleged harasser/bully) cannot ignore the matter and may be obliged to take appropriate action. The complainant(s) should be advised of this, but there will be no requirement for them to be further involved.
5. There are three possible outcomes to an investigation under this part of the Procedure.
  - a) the matter will be resolved without the need for further referral/formal action. This can be achieved by an agreed, written plan/action which satisfies both parties (the complainant(s) and the alleged harassers/bullies); or
  - b) discussions about the investigation may lead the Headteacher/Chairperson of Governors to conclude that no action is needed - based on the report of the investigator. This will apply where it is found that allegations are unfounded or unsubstantiated. Equally, this may also be agreed between all parties - even at this fairly late stage.
  - c) the Headteacher/Chairperson of Governors may conclude that the allegation(s) are substantiated and warrant consideration under the school's disciplinary procedure. In extreme cases this may lead to the suspension of the alleged harasser/bully whilst a more detailed investigation continues or whilst the appropriate procedures are implemented (see paragraph 7 below).
6. The complainant(s) and/or the alleged harasser/bullies may be dissatisfied with the outcome because, for instance, the action agreed has not been fully implemented or they may allege that the Procedure has not been applied correctly/fairly. If this cannot be resolved within this Procedure, the complainant(s) and/or the alleged harasser/bully(s) will have the right to invoke the formal stage of the school's Grievance Procedure.
7. There may be circumstances where the nature of the harassment/bullying is such that the Headteacher/Chairperson of Governors feels that immediate action is needed to avoid a recurrence or to separate the parties. In such circumstances, suspension of the alleged harasser/bully, normally on full pay, will be appropriate. Before taking this action, the Headteacher (or Chairperson of Governors, if the Headteacher is the alleged harasser/bully) must take advice from Education Personnel.

The Disciplinary Procedure has clear and separate guidance about roles of Governors, Headteachers, staff and LEA representation; it also contains detailed advice about conduct of hearings and potential outcomes/actions.

## **GENERAL**

### **A) Records**

It is not expected that records of incidents of behaviour which employees consider to be harassment/bullying will be logged or kept for extended periods without the complainant's concerns being raised through the processes described in paragraphs (1), (2) and (3) of the Procedure. Complaints which are about sporadic incidents and extend over a period of years cannot be justified for consideration under the Procedure.

### ***B) Timescale***

The complaint will be discussed with the alleged harasser/bully as soon as possible after the complaint has been made. It is expected that there may be instances where the parties to a complaint may accept that some delay in particular circumstances is necessary and/or acceptable. In fact, in some circumstances, a delay may be helpful.

### ***C) Collective Complaints***

A group of employees with the same or similar complaints may be represented by one person. The person dealing with the complaint and/or an independent investigator is entitled to ask for the attendance of all the complainants (separately if deemed appropriate) and must do this if requested by the alleged harasser/bully (or his/her representative) against whom a complaint has been made.

### ***D) Complaints***

- (i) Malicious or mischievous complaints of harassment/bullying will not be condoned. If it is established that complaints are malicious or mischievous then this will be regarded as a disciplinary offence and dealt with in accordance with the school's disciplinary procedure.
- (ii) Unfounded but non-malicious complaints will, subsequently, be dealt with in a sensitive and tactful manner. In certain circumstances it may be necessary to provide other support and help for the complainant.

### ***E) Review of Policy/Practice***

This policy and procedure will be continually monitored and revisions will take place in consultation with the appropriate staff associations and consultative committees. The policy and procedure will, in any case, be reviewed within two years of the date of implementation.

Date September 2010

Reviewed September 2015

Signed on behalf of Trustees:

## DEFINITIONS OF TERMS USED IN THE POLICY AND PROCEDURE

### **"COMPLAINANT"**

This is the employee(s) who is the victim of harassment/bullying who makes the complainant.

### **"ALLEGED HARASSER/BULLY"**

The person(s) who is the subject of a complaint of harassment/bullying.

### **"INVESTIGATOR"**

Normally, a trained person who carries out the investigation of a complaint of harassment/bullying. In some cases, this may be an independent person who is not directly associated with the establishment.

### **"HARASSMENT & BULLYING"**

To help distinguish between harassment and bullying, the dictionary definitions are as follows -

Harass - (Oxford) Trouble by repeated attacks. Subject to constant molesting or persecution. (Chambers) To distress, wear out, trouble constantly, to annoy, pester.

Bully - (Oxford) Person who uses strength or power to coerce or intimidate weaker persons. To bully - persecute, intimidate, oppress by threats of superior force. (Chambers - similar, "threats" common to both definitions)

"Threat" is the key distinction between harassment and bullying. Brief definitions may be

Harass - to cause distress by constant molestation.

Bullying - to coerce, intimidate or oppress others by the use of threats (spoken or written) and/or threatening behaviour.

Management can be defined as the legitimate strategies undertaken by managers to get staff to undertake particular courses of action.

Harassment is to cause distress by constant molesting or constant troubling i.e. harrying. It may be carried out by managers or non-managers. Harassment is an attempt by one person to change the behaviour of another by non-legitimate means. Where a person is harried for the sake of it, this is bullying.

Bullying implies the use of threatening behaviour. Bullying may be carried out to coerce a person to follow a particular course of action but may also be an abuse of power for reasons of self-gratification.

In practice, the distinction between harassment and bullying is academic, and their effects the same. Therefore, throughout the Policy and Procedure, the term used is "harassment/bullying".

### **EXEMPLIFICATION**

Harassment can be any behaviour in relation to one or more persons and which the recipient(s) find(s) unwelcome, offensive and often threatening. The effect of harassment can be to leave a victim feeling intimidated, humiliated, threatened or suffering disadvantage in his/her employment or working environment. The essential characteristics of harassment are that it is distressing, persistent/unreasonable, unwanted and unreciprocated.

### **Definitions of Sexual and Racial Harassment**

Sexual Harassment can be unwanted conduct of a sexual nature or other conduct based on sex affecting the dignity of men and women.

It can include:-

- Physical conduct of a sexual nature, such as unwanted physical contact, including unnecessary touching, patting or pinching or brushing against another employee's body, assault, coercing sexual intercourse.
- Verbal conduct of a sexual nature, such as unwelcome sexual advances, propositions or pressure for sexual activity, continued suggestions for social activity outside the workplace after it has been made clear that such suggestions are unwelcome, offensive, flirtatious, suggestive remarks, innuendoes or lewd comments.
- Non-verbal conduct of a sexual nature, such as the display of pornographic or sexually suggestive pictures, objects or written materials, leering, whistling, or making sexually suggestive gestures.

Racial harassment can be an act designed to intimidate, humiliate, ridicule or undermine the confidence of a person by reason of the person's race, colour, ethnic origin or national origin.

It can include:-

- ridiculing an individual because of cultural differences;
- embarrassing or derogatory remarks, racist jokes and name calling;
- written abuse and the display of offensive material;
- deliberate physical and/or verbal abuse;
- differential treatment, e.g., unfair allocation of work.

### ***Definition and Effects of Bullying***

Bullying can arise through the misuse of power or position to criticise and condemn unreasonably or unjustifiably; to humiliate and undermine an individual's skills and ability such that s/he becomes fearful, or her/his confidence crumbles, or s/he loses belief in her/himself.

Bullying can derive from supervisor/subordinate relationships in either direction; unacceptable peer pressure or other groups can also amount to bullying.

Examples of bullying may include:

- Open bullying such as displays of rage at staff in public and/or in private, (often over 'trivial' matters), personal insults and name-calling, persistent unjustified criticism and public humiliation.
- Unseen bullying such as setting objectives with unreasonable deadlines, unreasonably removing areas of responsibility and inflicting menial tasks instead, constantly changing working patterns without justification, deliberately ignoring or excluding an individual or talking only to a third party to isolate another.

Bullying can take other forms. For example, what may emerge as a concern initially categorised as "harassment" or "intimidation" or "aggressive management", may, upon investigation, be considered a case of bullying.

Appendix B

## **LEGISLATION**

### ***HARASSMENT/BULLYING AND THE LAW***

#### ***Sex Discrimination Act 1975 and Race Relations Act 1976***

Sexual harassment at work may constitute unlawful sex discrimination under the Sex Discrimination Act 1975. The Act provides that a person discriminates directly against a woman if 'on the grounds of her sex he treats her less favourably than he treats or would treat a man' in comparable circumstances. The County Council will seek to treat male and female staff in the same way in comparable circumstances.

Racial Harassment at work may constitute unlawful racial discrimination, under the Race Relations Act 1976. Direct racial discrimination occurs where a person discriminates against another, if, on the grounds of colour,



race, nationality or ethnic or national origin, such a person is treated less favourably than another person in comparable circumstances.

Indirect racial or sex discrimination is more complex and is based on certain conditions laid down in the Act but fundamentally occurs where an employer applies a condition to a female employee which is a) such that the proportion of women who can comply with it is smaller than the proportion of men who can comply with it, b) is unjustifiable and c) which is detrimental to that person because s/he cannot comply with it. Detriment may include physical and/or verbal abuse, ridicule or differential treatment. The County Council will seek to ensure that no employee is put to any form of detriment. Employers can be liable for discriminating acts of their employees, and, in some cases, third parties.

#### ***Criminal Justice and Public Order Act 1994***

Intentional harassment in the workplace may constitute a criminal offence under the Criminal Justice and Public Order Act 1994. As harassment can be unlawful, employers may be liable for the behaviour of their staff. The offence is committed if a person with intent to cause a person harassment, alarm or distress:

- (i) uses threatening, abusive or insulting language or behaviour, or disorderly behaviour, or
- (ii) displays any writing, sign or other visible representation which is threatening, abusive or insulting, so that another person feels harassment, alarm or distress.

Since the nature of harassment under this Act has not been defined, it appears that all forms of harassment - sex, race, religion, disability, sexual orientation, HIV/AIDS etc., will be covered by the legislation.

#### ***Health and Safety at Work Act 1974***

Under the Health and Safety At Work Act 1974 employers are required to ensure the emotional and physical health of their staff under their "duty of care and responsibility". Research shows that harassment and bullying at work are emerging as significant contributors to workplace stress and can give rise to personal injury claims. This can have detrimental effects on both the staff and the organisation, such as the development of physical and emotional symptoms and a general deterioration in employee relations and morale.

#### ***Employment Rights Act 1996***

Under the Act, an employee may complain of constructive dismissal to an Industrial Tribunal where harassment or bullying has led her/him to leave the organisation.

#### ***Equal Pay Act 1970 & Equal Pay (Amendments) Act 1983***

This legislation makes it illegal to offer less favourable terms of employment to one sex or offer unequal pay for work of equal value.

#### ***Disability Discrimination Act 1995***

This Act makes it illegal to discriminate against a person because of his/her disability, in certain circumstances. Harassment of a disabled person at work may constitute unlawful disability discrimination under the DDA 1995 because they are being treated less favourably. The Act states that a disabled person must not be subjected to any detriment on the grounds of disability.

#### ***EC Code on Protection of the Dignity of Women and Men at Work (Sexual Harassment)***

Although not legally binding on member states, the Code recommends that member states take action to promote awareness of the unacceptability of unwanted conduct of a sexual nature or other conduct based on sex affecting the dignity of men and women at work.

#### ***Protection from Harassment Act 1997***

The Act aims to outlaw "stalking" by providing another avenue for a complainant to seek legal redress for harassment and/or bullying. It is both a civil and criminal offence, and both the individual and employer could be found culpable. It also covers verbal harassment.