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Acceptable Behaviour Policy

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For more information on how to obtain this policy in a different format
please contact 01803 207374

1 Introduction

Torbay Council is fully committed to creating a work environment that is supportive and where everyone is treated with dignity and respect. A working environment which encourages improved performance, understanding, trust and co-operation between individuals, teams and services is essential for the Academy. In order to encourage such trust and co-operation it is the responsibility of all to ensure that fellow employees are treated with dignity and respect and that acceptable behaviour becomes the norm for all people working within Torbay Council.

Unacceptable behaviour is harmful and will not be tolerated by the Council, whether at work or outside of work (if it has a bearing on the working relationship). Such acts will not be ignored and could result in disciplinary action, which could lead to dismissal.

Employees have the right to complain if they perceive that any form of unacceptable behaviour is taking place and should feel confident that any complaint will be taken seriously and fully investigated. Employees will be protected against victimisation or retaliation for bringing a complaint. Victimisation will be treated as a disciplinary offence.

A complaint about unacceptable behaviour can be pursued through informal or formal procedures, depending upon the degree of perceived seriousness of the actions.

Managers retain the right to manage and ensure that employees are performing effectively; it is not intended that this policy should alter or affect appropriate management behaviour.

1.1 Scope

This policy applies to all employees of Torbay Council, contractors, agency staff and anyone else engaged to work at the Council. Agency Workers will be covered by this policy and will be expected to adhere to it, however, reference should also be made to their own policies and procedures – please see Agency Induction Handbook. Separate arrangements exist for Elected Members which are covered within the 'Code of Conduct for Members' and 'Local Protocol on Member and Officer Relations', which can be obtained from Democratic Services.

1.2 Equality Statement

This policy applies equally to all employees of Torbay Council, contractors, agency staff and anyone else engaged to work at the Council regardless of their age, disability, sex, race, religion or belief, sexual orientation, gender reassignment, pregnancy and maternity, marriage or civil partnership. Care will be taken to ensure that no traditionally excluded groups are adversely impacted in implementing this policy.

2 Definition and Effects of Unacceptable Behaviour

Unacceptable behaviour is any action which is perceived to be discrimination, harassment or bullying by the recipient or any other person irrespective of the intention or motivation of the perpetrator. Unacceptable behaviour can occur at any level within an organisation and is costly, counter-productive, and has a devastating effect on those involved. It drains the organisation's productive and committed people.

These statements are supported by substantial research evidence, which indicates that it is happening in many workplaces. Further definitions and a list of indicators are included in Appendix 1 of this policy.

2.1 Key Questions

Often those who are subject to unacceptable behaviour find it difficult to recognise and may feel too afraid or intimidated to do something about it. It is important that they recognise the problem as soon as possible in order for them to feel confident to take action. The key questions to ask are:-

- Is the person experiencing distress, discomfort or unhappiness at work or at home as a result of work related events?
- Is this the result of another person's unacceptable behaviour at work?

If the answer to these questions is yes, then it is likely they are being subject to unacceptable behaviour, bullied, discriminated against and/or harassed. The perpetrators (defined as those people alleged or accused of unacceptable behaviour) can be anyone that an individual comes into contact with at work. In many cases, the perpetrator is unaware that their behaviour is causing distress to others or that it may be considered as unacceptable.

3 Responsibility for Acceptable Behaviour

It is the responsibility of all to ensure that fellow employees are treated with dignity and respect and that acceptable behaviour becomes the norm for all people working within Torbay Council.

People behave acceptably when they:-

- Afford dignity, trust and respect for everyone and ourselves;
- Have awareness of the effects of their behaviour on others and only make reasonable and manageable demands;
- Communicate honestly and openly, clearly stating what we need and expect of others;
- Provide and are receptive to honest feedback based on evidence;
- Challenge discriminatory language and behaviour;
- Start from the assumption that everyone is working to the best of his/her abilities, considering his/her current stage of personal and professional development and awareness.
-

Line Managers have several responsibilities for promoting acceptable behaviour and dealing with unacceptable behaviour at work, which includes:

- Playing a positive role in its prevention (e.g. communicating to employees that unacceptable behaviour will not be tolerated – particularly at Induction stage, setting an example through their own behaviour)
- Providing employees with the necessary information about what action to take if they have a problem
- Taking action to stop any behaviour seen to be unacceptable.

The consequences of not dealing with unacceptable behaviour, and not taking appropriate action, may result in disciplinary action against a line manager. Employment Tribunals are also able to place penalties upon individuals for their actions.

Employees have the right to stop unacceptable behaviour at work through these procedures. Employees (including managers) who are subjected to unacceptable behaviour should make it clear to the perpetrator that they will take action – they may be helping others who may not have the courage to speak out. Employees can also help stop unacceptable behaviour by challenging the behaviour of colleagues who appear to be distressing others and by reporting incidents to management. You do not have to be the victim to report unacceptable behaviour, but full support will be provided to help any individual who may be affected to feel confident in coming forward. This support may be provided through a range of different routes, e.g. discussion with the line manager, Trade Union representatives, Human Resources or via the Council's professional counselling service.

Additionally, to make a complaint about unacceptable behaviour, you do not have to be subjected to the unwanted conduct yourself but simply be affected by it.

Consider your own language and attitudes to others, and think before making personal comments. Are you being fair? Are you being respectful? Are you behaving like a good role model?

4 The effects of unacceptable behaviour

The signs of unacceptable behaviour in the workplace can include conflict, hostility, rapid staff turnover, rising sickness and absenteeism rates, otherwise inexplicable decline in productivity, lack of motivation, low morale for the team and loss of respect for management. It may also result in time-consuming, expensive legal cases and damage to the organisation's reputation.

The effect on individuals can include a range of physical and/or emotional symptoms such as stress, fear, anxiety, sleep problems, depression, physical sickness, digestive and/or nervous disorders, severe weight gain or loss, excessive drinking or smoking, difficulty in concentrating, unstable emotions and reduced motivation. People who are subject to unacceptable behaviour can also lose confidence in themselves and their abilities.

People who are accused of behaving unacceptably have the right to have the matter dealt with in confidence, particularly if a formal investigation is to be carried out. In addition, those who want to improve the way they work with others, have the right to receive support, where appropriate.

5 First Stage - Informal Procedure

The informal route is provided to deal with matters in a speedy and open way, with the opportunity for any issues to be shared and agreement to be reached amicably. The decision as to whether a complainant uses the informal or formal procedure will mainly depend upon the seriousness of the incident and rests solely with the person who is subject to the unacceptable behaviour.

The exception to this is when an assault/violent attack has taken place, even if the employee does not want to take it further. This is because a criminal act has taken place. Employees could also refer the

issue directly to the police themselves if appropriate. Human Resources or a Trade Union representative can advise on the most appropriate route.

Often the person who is accused of unacceptable behaviour is unaware that their comments or actions are causing a problem to others. The complainant should therefore make contact with the person who they believe is behaving unacceptably to discuss their concerns and to give them the opportunity to consider their behaviour and the effect it is having on others. They may choose to do this alone or with the support of a colleague, line manager or Trade Union representative. The complainant (or their representative) should provide the person with a copy of these procedures and any other information to support the process at the informal stage.

Contact could be face-to-face or in writing, with the purpose of making it clear that the behaviour is unwelcome.

If the complainant anticipates that this will be too stressful, then any of the other individuals identified above can make the approach on the complainant's behalf.

5.1 Making use of Mediation

To support informal resolution, mediation may be appropriate; Human Resources should be contacted to arrange this process. Mediation Guidelines are available from the Human Resources intranet page.

Mediation refers to neutral and objective facilitation by a third party to help the parties communicate with each other and come to an agreement.

5.2 Acceptable Behaviour Contract

An acceptable behaviour contract may also be agreed between the parties involved and used at the informal stage to help towards early resolution of the issue. The contract should be a voluntary agreement between the parties involved and may cover how the employees will conduct themselves in the working environment, who they should go to if there are any minor disputes and setting out clear standards of acceptable behaviour which the employees have agreed between themselves. The use of an Acceptable Behaviour contract can be suggested by any of the parties involved directly in the issue and/or by those who are supporting any of the parties at this stage, i.e. line manager, Trade Union representative, etc.

Acceptable Behaviour Contracts can also be used as a follow-up to the Formal Procedure – see further section on Acceptable Behaviour Contracts for further details.

5.3 Self Help

There is a range of help and support available to individuals that they are able to access independently. Information is available from the intranet, the internet and also through the range of contacts listed at the end of this policy. Employees can access further help through Trade Unions, the Council's professional counselling service, Human Resources, line managers and are also encouraged to seek support they may have outside of work, e.g. friends/family.

5.4 Failure to resolve the matter informally

If agreement cannot be reached, the unwelcome behaviour continues, or it comes to light that this is not an isolated incident (i.e. others come forward)*, it may be necessary to move to the formal procedure.

The employee must not feel pressurised to dispense with the matter informally if they are not satisfied that the matter has been successfully resolved at this stage.

*At no time should the complainant carry out an investigation or interview others: in such cases the formal route (**second stage**) should be used.

Even if the case goes no further, the complainant should keep a personal record of the details of the alleged harassment or bullying and their contact with the individual in the event that this information may be required at a later date. No information will be placed on an employee's personal file.

6 Second Stage – Formal Procedure

The second stage is the formal route. The formal procedure is used when the case is particularly serious, if the complainant does not feel they can use the informal route, or when informal procedures have failed to resolve the problem.

An employee wishing to complain formally about unacceptable behaviour should request a meeting with their direct line manager and set out the nature of their complaint in writing. The complaint will be dealt with under the Council's formal Grievance Procedure and where the employee has either attempted to deal with the matter informally, or the matter is more serious, this will be dealt with at Stage Two of the process. A copy of the Grievance procedure can be obtained from the Council's Human Resources intranet page.

6.1 Instances when the Line Manager is involved

In cases where the line manager is directly and personally involved in the allegations made, or is the principal witness to any event which is alleged to have occurred, the complaint should be made to the next level of management in order for another line manager to be appointed to hear the grievance. If this is not possible, for any reason, the person should not hesitate to make their concerns known to Human Resources or to a Trade Union representative. A contact number for Human Resources is listed at the end of this policy.

A suitable person will be identified to hear the complaint. Should the allegation be against the employee's direct line manager and working relationships become untenable, alternative working arrangements will need to be discussed and agreed between the parties, if only as a temporary measure, until the complaint has been dealt with and any issues have been resolved. It is the responsibility of the manager dealing with the complaint, with guidance from HR, to put alternative working arrangements into place.

6.2 Representation

The complainant, alleged harasser or bully, and witnesses may seek support from a Trade Union representative or work colleague during any part of the process, investigations or any meetings.

All parties should be provided with a copy of this policy and the Grievance Procedure and any other information/support to assist the process.

6.3 Suspension

An Executive Head, or their representative, may suspend an employee from work, on full pay, at any time before or during the investigation into the alleged unacceptable behaviour. Suspension is not a disciplinary penalty, nor an indication that a complaint is proven. However, it is a step to be taken when it is felt that it would be better for the employee (the alleged harasser/bully) not to remain at work while the investigations are taking place and in cases which could potentially lead to summary dismissal. The Disciplinary Procedures (Suspension from Duty) will be followed in the case of any suspension.

6.4 Balanced view

In order to obtain a balanced and reasonable view of events, it may be appropriate to involve (a) suitable member(s) of the opposite sex, minority ethnic community, disabled or Gay/Lesbian/Bi-/Trans community etc. in making a decision about whether harassment or bullying on discriminatory grounds has occurred. For further information, please contact Human Resources.

6.5 Duty to Investigate

In some situations it may be necessary for the Council to investigate allegations of unacceptable behaviour, even if an individual(s) has not raised a complaint directly. This is necessary in order for the Council to fully exercise its duty of care to employees and to ensure that any unacceptable behaviour can be dealt with at the earliest opportunity. If there are concerns raised informally that the law has been breached, for example involving Health and Safety or serious harassment, then the Council will investigate. The need to use the Whistle blowing policy to report illegal or grossly unprofessional behaviour may apply.

6.6 Response Time and Communication

Involvement in a process of this nature is usually an anxious and stressful time for all involved. It is therefore necessary to ensure that the process is dealt with as promptly as possible, without undue delay and that all those involved in the process are kept regularly up-to-date by the manager dealing with the complaint.

As detailed under the Grievance procedure, the line manager (or other manager dealing with the complaint) will normally arrange to meet with the individual bringing the complaint within 10 working days and then formally respond within 5 working days (should an investigation be necessary, this may take up to an additional 10 working days). Should it be necessary for timescales to change, these should be agreed with both parties in advance.

Both the complainant and accused person should be regularly kept informed of a likely response date should an investigation become protracted. If this is the case, it is recommended that both the complainant and accused person are updated on a weekly basis by the line manager, or person responsible for dealing with the complaint. A preferred method of communication should be agreed, i.e. telephone, email.

6.7 Acceptable Behaviour Contracts

There may be circumstances where the line manager feels that having investigated concerns about unacceptable behaviour, there is not enough evidence for any formal disciplinary action, or it may be that the line manager has observed concerns personally about the ongoing working relationship between employees or an employee's conduct.

The use of an Acceptable Behaviour Contract should be considered and employees consulted in order to draw up a contract. This should be a voluntary agreement between the parties involved and cover how the employees will conduct themselves in the working environment, who they should go to if there are any minor disputes and how they should be escalated and also setting out clear standards of acceptable behaviour between the employees concerned. The contract will only be for use between the parties involved in the issue.

It may also be necessary to write to the employees concerned, setting out what has taken place so far in order to try and resolve issues, eg record of meetings, mediation etc. This letter may also warn that disciplinary action could be considered in the future, if employees' behaviour continues to impact on the day to day working relationship. Whilst this would not be a formal warning, a copy should be kept on the personnel file and may be referred to at a later date if the unacceptable behaviour continues and there is a need to investigate more formally or take formal action.

6.8 Group Grievances of Bullying and Harassment

Where a group of employees share the same concerns about bullying or harassment they may choose to raise them as a group. Please refer to the Grievance Procedures on 'group grievances'.

7 Outcome and Follow-up Action

7.1 Outcome

If, following an investigation, it is found that harassment or bullying has occurred (whether or not it was intentional) the Disciplinary Procedure may be invoked against the individual. The complainant should be informed by the line manager or individual dealing with the complaint of any outcomes/action taken and the reasons why. The complainant cannot be involved in any decision affecting the alleged harasser or bully following a disciplinary hearing.

If the investigation shows that there is no case, evidence or conclusion that harassment or bullying has taken place, both parties should be provided with a full explanation by the line manager or other manager dealing with the complaint. If further action is recommended as part of the formal process, this must be clearly stated in writing to all individuals involved in the process stating clearly who is responsible for any follow-up action and how this will take place.

7.2 Future Working Arrangements

For all individuals involved, it is important to give careful consideration to reviewing future working arrangements and the effect that involvement in the process will have had and working relationships going forward. This may include sensitive management supervision and guidance, however, other support mechanisms such as mediation, professional counselling on an individual and/or group basis, participation in a team building exercise or other forms of training, e.g. assertiveness, stress management should also be considered to help deal with the situation. It is important for the line manager or individual dealing with the complaint to address any concerns or anxiety about ongoing working relationships as soon as possible to reduce stress or anxiety for those involved and in order for working relations to be successfully restored. Support and guidance can be sought from Human Resources.

7.3 Malicious/Fabricated Accusations

If it is found that the allegation was malicious or fabricated, the complainant will be dealt with under the Council's Disciplinary Procedure. Likewise, the Council will not tolerate malicious public accusations of an individual being a bully or harasser if it is unproven.

8 Third Party Harassment

8.1 Measures to prevent third party harassment

Employment legislation imposes a liability on employers to protect their employees from harassment from a third party. Third party harassment occurs where a third party, e.g. customers, clients harass an employee in the course of their employment three or more times and the employer is aware that the employee has been harassed before but fails to take reasonable steps to prevent it. It does not matter whether the third party is the same or a different person in each occasion. An example would be where a service user repeatedly abuses a member of staff and that staff member reports it to their manager but nothing is done to protect them from the ongoing abuse. Third party harassment applies to all protected characteristics under the Equality Act 2010:- sex, age, disability, gender reassignment, race religion or belief, sexual orientation, marriage and civil partnership and pregnancy and maternity.

Following an incident of third party harassment, or where there may be a threat of this, Managers should refer to the Information Governance Team and List of Restricted Contact to check whether the customer/third party is already known to the Council and any specific advice/instructions that may apply. Contact with a customer may be restricted at any time and the manager should make contact with the Information Governance team for further advice. The following link provides further information and contacts:-

<http://insight/index/information/informationgovernance/restrictingcustomerscontact.htm>

Managers should also seek advice from Health and Safety, in particular in regard to risk assessments and the guidance in regard to Violent, Threatening and Aggressive behaviour. Further information can be found about this on the Health and Safety intranet page, as follows:-

<http://insight/hsm-violent-aggressive-threatening-behaviour.doc>

In order to avoid liability and as good practice to promote a safe working environment, the Council will take a 'zero tolerance' approach towards third party harassment and will take practical steps to ensure that employees are protected against it, This may include but not be restricted to the following actions:

- Council visitors should be made aware that the Council is an equal opportunity employer and will not tolerate any form of discrimination or harassment against its employees.
- Line managers should undertake risk assessments and record these accordingly, taking action to eliminate or reduce the risks. (Advice on risk assessments and training is available from the Health and Safety Team).
- All instances of harassment should be reported on the online Health and Safety Accident/Incident Reporting Form and circumstances investigated.
<https://secure.torbay.gov.uk/AccidentReporting/>
- Agree within their Service Area/Department how third party harassment and how individual instances will be recorded.
- Use appropriate signage or statements in standard correspondence or emails reinforcing the Council's stance.
- Some areas have messages at the beginning of a call to inform customers that discrimination or harassment will not be tolerated. If calls are recorded, customers should be informed.
- Where employees are lone workers, and the risk of harassment is particularly high, consideration should be given to the issuing of personal alarms, mobile phones etc or using a buddy system. A booking in/out procedure and out-of-hours communication system must be established. Decisions on controls for lone worker safety and wellbeing should be arrived at through risk assessment.
- Employees should be trained to respond appropriately to unacceptable behaviour e.g terminating a phone call if the caller is threatening or uses foul or abusive language (not just becomes awkward or difficult).
- Review risk assessments on a regular basis and refer to the Health and Safety VATB (Violent and Threatening Behaviour) Management checklist, available from the Health and Safety Team.
- Managers must issue warnings to visitors and have them removed from the premises and/or refuse a service if aggressive behaviour persists.
- If employees have been harassed support should be offered to them, i.e. to be allowed time out/to go home, referral to the Council's counselling service if necessary.

Further information is available in the in the Violent, Aggressive and Threatening Behaviour guidelines

on the Health and Safety website:

<http://insight/hsm-violent-aggressive-threatening-behaviour.doc>

The Health and Safety Accident and incident Reporting Policy and Guidance can be found on the Health and Safety website:

<http://insight/accident-incident-investigation.doc>

9 Work-related Social Events

Employees' conduct at work-related social events can be viewed as an extension of work. Therefore, it is important that employees are aware of their behaviour and more importantly, the effect that their behaviour can have upon others. A 'work-related social event' is one where it has clearly been organised by the employer, with their knowledge, for example, an office party, client/customer functions, work conferences and work-organised social events such as leaving parties.

It is important that employees are aware of what constitutes unacceptable behaviour. This may include but not be limited to:-

- Excessive drunkenness;
- The use of illegal drugs;
- Unlawful or inappropriate harassment, e.g. comments/behaviour of a sexual nature, derogatory comments, inappropriate 'jokes';
- Violence;
- Serious verbal abuse;
- Assault of another employee or third party, such as another guest or member of bar/waiting staff.

Although such social events usually take place away from the workplace and outside of normal working hours, the Council's Acceptable Behaviour policy applies to such events. It is in everyone's interests to put certain measures in place to ensure the protection and comfort of all. Specifically, employees who attend work-related social events must adhere to the following:

- Employees should consume alcohol only in moderation at work-related social events. This is to deter the likelihood of irresponsible or offensive behaviour.
- It is strictly forbidden for any employee to use illegal drugs, including cannabis, at any work-related social event whether on Council premises or not.
- The Council's Acceptable Behaviour policy will apply to all work-related social events. Employees should be clear about their responsibilities under this policy and ensure that their conduct is in keeping with this.
- Employees should not say or do anything at a work-related social event that could offend, intimidate, embarrass or upset any other person, whether as a joke or not.
- Swearing and abusive language are unacceptable at work-related social events.
- Employees must not behave in any way at any work-related social event that could bring the Council's name into disrepute.

The above measures are in place for the benefit of all employees and to ensure that everyone can enjoy work-related social events without fear of being made to feel uncomfortable by another employee's conduct.

Any breach of the above will render the employee liable to disciplinary action under the Council's disciplinary procedure, up to and including summary dismissal.

Please also refer to the Council's **Code of Conduct** for further guidance relating to acceptable conduct.

10 Help, Support and Monitoring

Help and support is available to both the complainant and the perpetrators (i.e. those that have been accused of unacceptable behaviour). In some cases the perpetrator may be unaware of their actions or their actions may be a result of stress, themselves being bullied or harassed, or other health problems. Once it is pointed out to someone that their behaviour is bullying or harassing someone, the behaviour should stop. Where appropriate, support should be offered to help them reflect on what has happened and find more suitable ways of working with others. Likewise, those subject to an investigation or informal meeting will also require support during the process.

- If you think you are being harassed or bullied, there is something you can do about it.
- All allegations of unacceptable behaviour will be taken seriously and dealt with confidentially.
- It is important that a written record is kept of any incidents of unacceptable behaviour in case of the need for subsequent action. Records should include the date, time and nature of the incident, including names of any witnesses.
- The best way to stop someone from bullying/harassing is to stand up to them and show them you are not afraid.

It is sometimes also necessary for support to continue following the completion of a formal process. Any recommended follow-up action should be detailed in writing to those involved confirming the outcome of the process, further support that may be needed and who is responsible for ensuring that it happens. There are various forms of support available:-

Human Resources – can provide support and guidance to both employees and management on acceptable behaviour issues. Further advice can be sought from Human Resources.

Trade Union representatives – can provide support and guidance to employees, as well as act as employee representatives in hearings/investigations.

Mediation Service – mediation can help individuals to rebuild their working relationships through neutral facilitation by a third party. Mediation aims to help individuals to communicate with each other effectively and can help them reach an agreement about future working relationships. For further information about mediation and access to the service, please refer to the Mediation Guidance, available from the Council's Human Resources intranet page.

Professional Counsellors - (via the confidential Employee Counselling Service) can provide support and report general issues or concerns to the Council. Counselling provides the opportunity to discuss problems in total confidence with a qualified Counsellor who can help to defuse potentially damaging problems.

This service may also be used to provide counselling for the individual who has been accused of unacceptable behaviour and its importance should not be underestimated. Counselling will assist individuals to face up to the effect that their behaviour is having on other team members.

Anyone involved in any aspect of the process who wishes to access the confidential employee counselling service can contact the Counselling Service Co-ordinator in confidence on 07798 938236.

Health & Safety Team - can provide a service giving support and guidance to both employees and management responsible for carrying out risk assessments.

11 External Support & Guidance

Andrea Adams Trust Bullying at Work Helpline

<http://www.andreaadamstrust.org/>

Bully on Line

<http://www.bullyonline.org/>

Workplace Bullying.net

<http://www.workplace-bullying.net/>

The Trades Union Congress information on bullying at work

http://www.tuc.org.uk/tuc/rights_bullyatwork.cfm

ACAS – Bullying and Harassment at Work: Guidance for Employees

<http://www.acas.org.uk/index.aspx?articleid=797>

For details of Trade Union contacts, please contact the Academy Admin Office.

12 Legal Framework

The key guiding pieces of legislation in relation to this policy are as follows:

Health and Safety at Work Act 1974

Employers are required to ensure the emotional and physical health of all employees.

Equality Act 2010; Human Rights Act 1998

Acts of harassment or bullying on grounds of the following protected characteristics - race/ethnicity/nationality, religion/belief, disability, age, sex, sexual orientation, marriage and civil partnership, pregnancy and maternity or gender reassignment would amount to unlawful direct discrimination.

Indirect discrimination, associative discrimination, harassment by a third party and discrimination by perception can also happen as a result of bullying, harassment and unacceptable behaviour. In future, claims may also be brought for combined ('dual') discrimination, e.g. race and disability.

Protection from Harassment Act 1997

This Act states that 'a person must not pursue a course of conduct which amounts to harassment, and which he or she knows or ought to know, amounts to harassment.'

Criminal Justice and Public Order Act 1994

Intentional harassment in the workplace may also be a criminal offence, punishable by law.

Employment Rights Act 1996

The offence is committed if a person, in speech or in writing, uses threatening, abusive or insulting language or behaviour, or disorderly behaviour 'with intent to cause a person harassment, alarm or distress'.

13 Compensation

In law, there is no such thing as a claim for unacceptable behaviour or bullying. If a complaint is made it can be brought to an Employment tribunal or Civil Court in one of the following ways:-

- Constructive dismissal
- Discriminatory harassment
- Civil or criminal harassment
- Personal Injury claim

If insufficient steps are taken to protect employees against unacceptable behaviour, including harassment or bullying, the Academy could face claims for compensation and even criminal prosecution. Individuals can also face prosecution, fines or even imprisonment. Compensation in successful claims of unfair discrimination is unlimited. In defending a claim, employers must show that reasonable and effective preventative measures have been taken, including written guidance, training and the implementation of monitoring systems.

14 Policy Feedback

Should you have any comments regarding this policy, please address them to the HR Policy mailbox – HRpolicy@torbay.gov.uk

14.1 History of Policy Changes

This policy was first agreed by members of the TJCC in July 1999.

Date	Page	Details of Change	Agreed by:
21.12.07	4	Reference to sexual orientation/homophobic bullying	TJCC 21.12.08
21.12.07	10	Addition of new section – Mediation and Conciliation	TJCC 21.12.08
21.12.07	11	Change to timescales - Investigation	TJCC 21.12.08
21.12.07	13 & 15	Addition of new Employment Procedures Equality Form	TJCC 21.12.08
21.12.07	13	Removal of reference to Anti-harassment officers	TJCC 21.12.08
21.12.07	15	Addition of reference to corporate reporting form	TJCC 21.12.08
27.3.08	4	Interim change - Addition to definitions of harassment on grounds of transgenderism	HR Policy Review Group 27.3.08
05.06.08	2	Reference to not having to be subject to unwanted conduct to make claim	Presented to TJCC 5.6.08 For Information Only
05.06.08	5	Elaboration of acts made by third parties	Presented to TJCC 5.6.08 For Information Only

05.06.08	4	Change to definition of harassment on grounds of gender or sexual orientation	Presented to TJCC 5.6.08 For Information Only
05.06.08	12,15	Change of job titles due to re-shaping	Presented to TJCC 5.6.08 For Information Only
25.6.09	8	Guidelines on preventing third party harassment.	TJCC 25.6.09
25.6.09	6	Reference to harassment via text & social networking sites	TJCC 25.6.09
9.9.10	Various	Reference to the Equality Act and changes in definitions; re-naming of policy to 'Acceptable Behaviour', changed definitions, scope, procedure.	TJCC 9.9.10
20.4.11	6 & 9	Addition of Acceptable Behaviour Contracts	SSG 10.3.11
28.11.13	Various	Changes to Third Party Harassment. Addition of information re: work-related social events	SSG 3.12.13
December 2016	12?	Change to policy format and reference to online Health & Safety Reporting process	

Policy to be reviewed when operational needs or legislation changes are required.

15 APPENDIX 1 - Definitions

15.1 Harassment

A definition of harassment: **“Unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual”**

ACAS, 2010

The conduct must be “unwanted”. Just one incident can be regarded as harassment if it is serious enough. Employees are able to complain of behaviour that they find offensive even if it is not directed at them and the complainant need not possess the relevant characteristic themselves. However, it would not be recognised if the recipient has been unreasonably over-sensitive. It may or may not be related to an individual’s sex, sexual orientation, race/ethnicity, religion/belief, disability, or age as detailed below.

Harassment on grounds of sex or sexuality is ‘engagement in unwanted conduct that is related to the sex of that person or that of another person’ that has the necessary purpose or effect of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. It can include:

- Intimidating, humiliating or degrading someone because of their gender, sexual orientation or transgender status. This also includes homophobic remarks or actions
- Embarrassing, offensive or derogatory remarks, sexist ‘jokes’ and name-calling
- Physical conduct of a sexual nature, such as: unnecessary touching, patting, pinching or brushing against another employee’s body; sexual assault
- Verbal or written communication of a sexual nature (including e-mail) such as offensive flirtations, suggestive remarks, innuendoes or lewd comments, unwelcome and persistent advances, propositions or pressure for sexual activity
- 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
- Probing into a person’s private life and relationships
- Refusing to address the person in their acquired gender or to use their new name (if they have undergone gender re-assignment)
- Treating the person less favourably in regard to sickness or other absences

Harassment on grounds of race or religion/belief is an act designed to intimidate, humiliate, ridicule or undermine the confidence of a person by reason of the person's race, colour, nationality, ethnic origin, religion or belief. It can include:

- Intimidating, humiliating or degrading someone because of cultural or physical differences
- Embarrassing, offensive or derogatory remarks, racist ‘jokes’ and name-calling
- Written abuse and the display of offensive material
- Physical and/or verbal abuse

Harassment on grounds of disability is any unwanted act directed at a person who has a disability and which arises because of their disability. It can include:

- Intimidating, humiliating or degrading someone because of their disability
- Mimicking the particular disability
- Embarrassing, offensive or derogatory remarks, images or 'jokes' about someone's disability or disabled people whether in written, verbal or visual format
- Deliberate exclusion from conversation or social activities
- Unacceptable forms of patronising and belittling

Harassment on grounds of age may include the following and may relate to older or younger people:

- Intimidating, humiliating or degrading someone because of their age
- Embarrassing, offensive or derogatory remarks, images or 'jokes' about someone's age, or age in general, whether in written, verbal or visual format
- Deliberate exclusion from conversation or social activities
- Unacceptable forms of patronising and belittling
- It may be about the individual's age or it may be about the age of those who the individual associates.

Criminal definition: Threatening, abusive or insulting language or behaviour, or disorderly behaviour 'with intent to cause a person harassment, alarm or distress. If an employee wishes to make a complaint to the Police, the criminal definition of harassment will apply.

Other forms of harassment can include unnecessary intrusion by following, pestering, spying on*, or stalking someone.

*unless part of a business surveillance act, in compliance with RIPA.

The Equality Act 2010 introduces the following forms of harassment/discrimination:-

Harassment based on association – it is unlawful to discriminate against or harass any individual for association with another individual who has a protected characteristic. For example, if an employee is denied promotion because she is taking care of a disabled relative and the employer thinks the employee will not have time for new duties, this could amount to associative discrimination as the disability is one of the specified protected characteristics.

Harassment based on perception – it is unlawful to discriminate against or harass any individual based on a perception that he or she has a particular protected characteristic. For example, an employee may appear much older than they are and as a result may be prevented from undertaking certain activities because the manager has formed the opinion that they are too old; the employee has been discriminated against because of a perception of the protected characteristic of age, even though they may be very young.

Dual discrimination (to be introduced under the Equality Act in April 2011) – a person may make a discrimination claim based on unfavourable treatment against them because of a combination of two protected characteristics. For example, an employee may believe they have been discriminated against on the basis of their sex and age.

15.2 Harassment via E-mail, Text and Social Networking Sites

Any means of communication has the potential for harassment to occur. Email, text messaging and postings on social network sites are all potential means of harassment and can often be more damaging than traditional forms of harassment. This is due to the potential for the harasser to become anonymous and to therefore become more aggressive in their tactics than those who harass their victims face-to-face. The speed, the informal nature of e-mail and other new technologies and the ability to delete messages can lead users to make ill considered remarks in the heat of the moment. Also the non-confrontational nature of email or other types of message can lead to misuse and result in harassment in the workplace.

It is important that all employees understand that the e-mail system and internet should not be abused and that communications are conducted in a professional manner, as any other. No message should be sent which could be considered abusive, sexist, racist or defamatory. This also extends to the use of the internet/email system outside of the workplace.

15.3 Bullying

Workplace bullying has been defined as **‘offensive treatment through vindictive, cruel, malicious or humiliating attempts to undermine an individual employee, or groups of employees’ ***.

*Andrea Adams, Bullying at Work – How to Confront and Overcome It

Bullying is a sustained form of psychological abuse, with the aim of gradually wearing down the victim – intimidating them (in public or in private), humiliating them, and gradually eroding their sense of self-worth, confidence or initiative. It often consists of a series of incidents which, although may be trivial in themselves, undermine or humiliate an employee over a period of time. These negative attacks are typically unpredictable or irrational.

Bullying can be pressure, which is not constructive or motivating. It can be an abuse or misuse of power.

Bullying does not always derive from supervisor/employee relationships, an employee may bully a colleague on the same grade or a higher grade, and groups of employees may pick on an individual. It can sometimes occur when an individual wants to take on a role as the ‘leader of the pack’ or an individual is viewed as a threat. It should not be assumed that bullying is just a ‘poor management’ issue.

“Bullying can occur for a variety of reasons, such as being envious of other people’s professional or social position, a perverse enjoyment gained from picking on others or making life difficult for more competent work colleagues. However, the primary reason for bullying is a deep feeling of personal insecurity....but because these individuals...do not want to become ‘victims’ themselves, they bully. **”

*Makbool Javaid. Bullying in the Workplace, The HR Director, Issue 6.

The following list of behaviours which, usually occurring over a period of time have been recognised as examples which may constitute bullying:

- Constantly undervaluing another's efforts
- Favouritism towards certain individuals and not others
- Isolation or non-cooperation at work
- Persistent, unfair criticism and 'taking someone to task' over trivial matters
- Destructive innuendo and sarcasm
- Insulting and uncooperative attitude
- Deliberate ignoring and excluding, including exclusion from social activities
- Unreasonable use of appraisal, probation or disciplinary procedures
- Aggression, including threats, shouting abuse and obscenities – which may be over trivial matters
- Removing responsibilities without consultation
- Setting someone up to fail or under-perform, for example - giving responsibilities outside their experience/competence, constantly shifting objectives, or not passing on information
- Unreasonable refusal of requests, for example - leave, training or promotion
- Continuous berating/reprimanding someone in the presence of others

Employees may confuse firm management with bullying, particularly if they do not like being told that they are not performing appropriately. Employees must recognise that managers have the right to discuss with their staff the standards of work, outputs and behaviours expected.

Bullying is not the appropriate management of individuals/teams, which may be firm or critical, but always rational, fair and objective.

16 APPENDIX 2 – Frequently Asked Questions

What can I do to stop unacceptable behaviour?

If you believe you are subject to unacceptable behaviour, this guidance should give you the right help and support in order to deal with the issue. There are external sources of help and information available to you, as detailed above. You can talk to Human Resources or to a Trade Union representative in confidence to discuss your concerns at any time. You are also encouraged to consider using the Academy's free and confidential counselling service and any other forms of informal support you may have outside of work, e.g. friends, family.

If you are witness to behaviour you consider to be abusive or unacceptable, you are also able to raise a complaint under these procedures. If you are a line manager and suspect that unacceptable behaviour is occurring within your team, you have a duty of care to protect the individual who is experiencing any form of abuse or unacceptable behaviour. You should confidentially discuss the matter with them and explain that they have recourse through this procedure. In certain cases, it may be necessary for the Academy to investigate the situation regardless, in order to exercise its duty of care appropriately.

What if I am witness to unacceptable behaviour and the victim does not want to formally pursue it?

Try to talk to the person confidentially to judge how they are feeling and to try and establish whether it is your own perception or theirs. Refer the person to these procedures and explain that there is something they can do about the situation. Encourage them to seek support from Human Resources, a line manager or a Trade Union representative. You can also seek support from these if you feel you need to discuss the matter further or need further advice.

The Line Manager reserves the right to investigate any issues of reported bullying and harassment even if the complaint has not been raised formally.

If it is your own perception and you feel affected by the treatment they are experiencing, you can raise a complaint under this procedure in regard to your perception of the behaviour taking place.

I'm afraid that if I raise a formal complaint against my colleague/line manager, I will be victimised?

The Council has a duty of care to protect any individual who may raise a formal complaint under this procedure. Victimisation of anyone raising a complaint under these procedures will not be tolerated and will be treated as a disciplinary offence.

What if I am accused of unacceptable behaviour?

If someone approaches you informally first to discuss their concerns, try to stay calm and listen to their point-of-view. You will probably want to take some time to reflect upon what the other person has said

and what you can do to change the situation. You may want to note down what you said in response to their concerns.

If the person has made a formal complaint against you via the grievance procedure, you will be contacted by the manager who is dealing with the complaint to explain the process and what will happen next. You may want to refer to the Council's Grievance procedure for further details. Help and support is available to you at any stage in the process via Human Resources, through another line manager (not dealing with the complaint) and Trade Union representatives if you are a member of a Trade Union. The employee counselling service is also available to you should you wish to access it by contacting 07798 938236. You may also wish to access any of the external sources of support that are available, i.e. those listed within this policy and the informal support of friends and family.

How can I be expected to work with that person again?

Whether you are the person who has experienced unacceptable behaviour or have had allegations made about your behaviour, resuming 'normal' working relationships can often be difficult. The situation needs to be handled sensitively and further support may need to be put into place to help individuals, either during the formal process or once it has been completed. If the working relationship is adversely affected during the process, it may be necessary for temporary working arrangements to be put into place. This may involve alternative line management arrangements or work location if necessary.

The formal process will identify any issues that need to be resolved and recommendations for further action are identified as part of this process. This may involve mediation, individual counselling, coaching, training and/or disciplinary action when necessary.

17 Appendix 3– Flow Chart overview of the Process

