

ANNEX 1: BULLYING & HARASSMENT INVESTIGATIONS GUIDE (REVISED MAY 2015)

Introduction

This Investigation Guide is intended to be used in conjunction with the *Workplace and work-related bullying and harassment model policy and procedure for all staff in schools with delegated budgets*.

The advice contained in this document is designed to assist in the carrying out of investigations and is not intended to be followed in every case and in all circumstances. It is designed to give Investigating Officers assistance in the different stages they will be involved in when investigating a formal complaint of harassment or bullying at work.

Advice in relation to the conduct of bullying and harassment investigations can be obtained from representatives of the Schools HR Team.

An investigation commences at Section 7 of the Procedure when the following conditions are satisfied:-

- I. the complainant requires that formal action be taken
- II. a copy of the complaint has been sent to the Headteacher/Chair of Governors of the School. The school may wish to keep a record of any such complaints that are received.

Within this guide, any reference to the Headteacher/Chair of Governors means the person who the complaint is initially forwarded to, who is responsible for ensuring that the complaint is investigated. In most cases this will be the Headteacher. However if the complaint is against the Headteacher, it will be forwarded to the Chair of Governors.

Formal or informal?

The model procedure sets out at Section 6, the possibility of dealing with a complaint informally.

The advice given in this Investigation Guide is in the main directed towards dealing with investigating formal complaints under Section 7 of the model procedure. However, consideration of the advice in this pack may also be useful in handling informal complaints.

The role of the Headteacher/Chair of Governors

The Headteacher/Chair of Governors must take responsibility for the following: (on occasion these responsibilities may be delegated).

- Acknowledging the complaint in writing and informing the respondent of the detail of the complaint (via Section B of the Complaint Form)
- Identification of an appropriate Investigating Officer (either within school, the governing body or outside of school)
- Agreeing the investigation timetable and any subsequent variations
- Ensuring that all parties to the complaint (including the respondent/bully and witnesses receive a copy of the Procedure.
- Consider the investigation report and its conclusions in order to take a decision on the outcome of the investigation.

The role of the Investigating Officer

The investigating officer's role is to:-

- investigate the complaint on behalf of the Headteacher/Chair of Governors.
- produce a report establishing whether or not there is substance to the allegation/s made, for the Headteacher/Chair of Governors to consider possible outcomes as per paragraph 7.9 of the procedure.

The purpose of the investigation is to determine whether or not there has been harassment or bullying. The investigation should therefore conclude with advice to the Headteacher/Chair of Governors as to whether or not harassment or bullying has been found to have taken place.

Who should investigate?

School-based Investigating Officers should:-

- be of an appropriate level of seniority
- be available to commence and complete the investigation within the specified time limits.
- not be in an immediate line management role of either the complainant or the respondent so as to be objective.

Confidentiality

Section 3 of the model procedure refers to confidentiality in dealing with bullying and harassment complaints and investigations.

Right to representation and support

Throughout the procedure both the complainant, the respondent and any witnesses have the right to be represented at any stage and must be informed of this right. The representative could be their trade union representative or work colleague, providing that the representative is not involved in the investigation in any other way (i.e. complainant, respondent, witness etc).

It is important that all parties are fully aware of the range of support mechanisms potentially available to them in addition to their own representation. The School should provide information and support from the outset of the investigation to ensure that work tasks continue where this does not conflict with the proper conduct of the investigation. The Investigating Officer should satisfy him/herself that arrangements have been made. It is not, however, their role to directly provide such support.

Procedural time limits

There are formal time limits to be observed in the investigation, as follows:-

- The complaint should be formally acknowledged *within 5 working days of receipt of the Complaint Form*
- The respondent should receive a copy of Section B of the complaint form *within a further 5 working days*
- If the complaint is against the Headteacher, the Clerk to Governors should forward a copy of the complaint form to the Chair of Governors and the Head of Schools HR *within 5 working days of the formal acknowledgement*
- The investigation process should commence *within 10 working days of receipt of the complaint form*
- The investigation process should last *no longer than 30 working days from the receipt of the complaint form*

- The School/Service response to the complainant and the respondent must be sent *within 5 working days of the decision being reached*

In exceptional circumstances, or where one party is absent from work, it will not be possible for these time limits to be met. In such cases, the Headteacher/Chair of Governors must ensure that both parties are aware of any delays.

The investigation process

Interviews with complainants, witnesses and the respondent need to be handled in a professional and sensitive way. Any investigation meetings or interviews should take place in a suitable venue, where confidentiality can be ensured. The situation may be highly charged and it is important that investigators are seen to be objective and fair. Observing the following will assist in this process:-

Preparation and planning

Following receipt of the complaint form, and discussion with the Headteacher/Chair of Governors, the Investigating officer should begin to draw up a proposed plan/timeline of the investigation, including a detailed schedule of interviews; meetings and the drafting of the investigation report (see time limits).

Interviewing the complainant(s)

The Investigating Officer should have received a copy of the complaint form. The purpose of the interview with the complainant(s), which should be scheduled at as early a date as is possible, is to determine the factual position from the complainant's perspective and to clearly identify the exact nature of the complaint together with any relevant information necessary to conduct the investigation, e.g. to obtain names of witnesses, times of incidents etc. The questioning of the complainant needs to clearly focus on the areas outlined within the complaint form, and should not be an opportunity for the complainant to add additional elements to their complaint.

During the interview with the complainant, the investigating officer may wish to do the following:-

- acknowledge the difficulty of the situation and any possible embarrassment
- put the complainant at ease
- ensure that the Procedure is fully understood
- ask specific questions to clarify allegations (generalised answers will not be sufficient)
- gather facts, dates, times, confirmation of incidents and identify any facts or gaps remaining
- check if there were witnesses other than those outlined on the complaint form
- ensure that they fully understand the complainant's perspective and what outcome the complainant wants and does not want
- inform them that you may wish to see the complainant(s) again
- remind the complainant(s) of the need to maintain confidentiality

Following the initial interview with the complainant(s), the Investigating Officer needs to decide whether it is more appropriate to interview the respondent(s) or other witnesses.

Following the interview with the complainant(s) the Investigating Officer should prepare a written statement detailing the discussion, and forward to the complainant for him/her to sign it as a correct record/make any minor amendments.

Where the complainant requests substantial amendments, which the Investigating Officer feels unable to accommodate, the complainant should be invited to submit their own signed statement, to sit alongside that produced by the Investigating Officer.

Interviewing the respondent(s)

When interviewing the respondent(s) it is possible that the Investigating Officer will be faced with a highly charged atmosphere – a finding of sexual, racial harassment or bullying will not only make an individual liable for disciplinary action, but would also leave a “stain” on the individual’s character. The purpose of the interview is to give the respondent(s) the opportunity to respond to the allegations. They will have already been provided with a copy of the detail of the complaint and a copy of the Procedure.

During the interview with the complainant, the investigating officer may wish to do the following:-

- Be specific about what the person should and should not do whilst the investigation is still in process, e.g. place himself/herself in situations which could result in further allegations being made
- remind the respondent of the need to maintain confidentiality

Following the interview with the respondent the Investigating Officer should prepare a written statement detailing the discussion, and forward to the respondent for him/her to sign it as a correct record/make any minor amendments.

Where the respondent requests substantial amendments, which the Investigating Officer feels unable to accommodate, the respondent should be invited to submit their own signed statement, to sit alongside that produced by the Investigating Officer.

These actions should also be taken following any witness interviews.

Evidence evaluation

It is possible that the respondent may give a variety of responses to the complainant’s allegations. In the main these are likely (but not always) to fall into one of the following areas:

“I did it, but I thought he/she would welcome it”

The definition of sexual harassment centres on the action/behaviour being unwelcome/unwanted – it is for the recipient to determine what is or is not welcome.

It is important as part of your investigation to determine whether the behaviour was in fact unwelcome at the time.

“I did it, but I didn’t think it would bother him/her”

This is usually the most straightforward of responses to deal with. It implies that the respondent would have behaved differently had they realised or thought through whatever is at issue and leaves unchallenged the recipient’s view that the action was un-welcomed/unwanted.

“I did it but I was under stress/not myself”

This is in effect an admission. The mitigation arguments should be recorded and should be left for the Headteacher/Chair of Governors to consider in deciding the appropriate outcome.

“I didn’t do it”

Absolute denial provides the biggest challenge to an Investigating Officer. Incidents of sexual or racial harassment usually occur in situations without witnesses being present – or where witnesses felt that the action/behaviour was not unwelcome.

In such circumstances your role will be to determine which of the parties – the complainant or the respondent – is the most credible in terms of the balance of probabilities.

There are basically two problems that the investigating officer is likely to face when concluding any investigation and writing the report:

- Recognising when you have sufficient evidence/information; and
- Deciding the case in relation to the balance of proof.

The investigating officer needs to be clear that they have carried out a thorough investigation, but at the same time they must ensure that a lengthy and continued investigation is not a mechanism to avoid forming a conclusion.

Some potential responses to an allegation of sexual, racial or other forms of harassment have been discussed briefly above. In some cases it will be a case of one person’s word against that of another (see below).

Evidence evaluation – bullying complaints

In investigating complaints of bullying particular note should be taken of those elements in the definition of “bullying” which differ from those relating to racial or sexual harassment. The definitions of bullying are contained within the Policy Statement.

- “Persistent” is included in the definition and whilst two occasions in a very short period might be argued to meet the minimum requirements it would be a stronger case if a more regular longer term pattern of behaviour was revealed.
- “to undermine an individual’s skills and ability, confidence and self-belief” is part of the definition and allows for a wide range of behaviour to be potentially considered to be “bullying”. The more easily categorised elements include shouting at staff particularly in public, instantaneous rages over ‘trivial’ matters, personal insults and name-calling, public humiliation, in addition to threats or actual violence.
- “to condemn” is part of the definition. This would not include management interventions that are not intended to ‘criticise, humiliate or destroy a subordinate’ but which are designed to address an employee’s performance or behaviour at work and to bring this into line with agreed policies, procedures, statements of principles or standards of conduct. Note should however be taken of the manner and methods used to obtain such outcomes which themselves should be proper and reasonable.

In investigating such complaints it is important to consider carefully the dividing line between what constitutes 'bullying' and the exercise of proper 'management'. To assist in considering where this divide lies, the following may assist.

It may not be bullying if it is solely a:

- strong management style
- proper correction of an individual's mistakes
- critical management intervention

It becomes bullying if:

- it is destructive rather than corrective
- it is criticism of the person rather than their mistakes
- it publicly humiliates rather than privately corrects

Burden of proof

There may be confusions about the extent to which allegations have to be "proved" in an internal investigation (i.e. the burden of proof). In disciplinary cases for example, the respondent or their representative may try to insist on management obtaining proof beyond reasonable doubt, i.e. the same as would apply in any criminal proceedings. However, for employment matters you need only have a reasonable belief following a proper investigation. In other words any decision needs to be based on the balance of probabilities, i.e. is it more likely than less likely that harassment/bullying did or did not take place?

Obviously, evidence from witnesses to the actual incident(s) and or admissions will be of most assistance in reaching a decision. However, in their absence any other corroborative evidence should be considered. This may be provided by persons who observed the complainant soon after the incident(s), it is therefore very important to interview any individual who saw the complainant or with whom the complainant discussed the incident(s), providing that these people have been named by the complainant on the complaint form, or by the respondent during the course of the investigation.

Corroborative evidence **may** include:

- Statements regarding the demeanour of the complainant, e.g. "I remember he/she did seem particularly upset that morning".
- Recorded changes in terms of increased lateness/sickness.
- Requests from the complainant to change work/jobs.
- Information obtained from a visit to the scene of the alleged incident.

It should **not** include:

- Derogatory or judgmental remarks about either the complainant or the respondent, e.g. "It doesn't surprise me, I never trusted x anyway".
- The fact that individuals have received counselling or been offered other support services.

Sometimes, the only additional information you may be aware of is the fact that the respondent may have been previously the subject of a similar allegation. Past records should be examined and if a previous similar complaint was made **and substantiated** it should be taken into consideration. If however a previous complaint was made but not substantiated it should be ignored.

Checklist to determine whether there is a case to answer:

- * What are the facts?
- * What is the balance of evidence as to whether the incidents took place?
- * Does the harassing behaviour complained of meet the definition of bullying and/or harassment outlined within the procedure?

Determining a conclusion

Once the Investigating Officer has determined their view, they need to decide what the recommendations to the Headteacher/Chair of Governors will be. Their first responsibility is to decide if the complaint is upheld, in full or in part or not at all and if the complaint is upheld, is it so serious as to warrant formal disciplinary action? In recommending any outcome, the following should be taken into account:-

- the views/wishes of the complainant.
- the employer's responsibility to protect the interests of all its employees, i.e. to provide a safe and healthy working environment.
- the seriousness of the incident(s) e.g. the complainant may simply wish to ensure there is no repeat of the incident(s), whereas the matter may be too serious to leave with that outcome.

Format of report

The format of the report to management should be simple and factual. A suggested format is outlined below:

Background - Brief paragraph(s) to set the scene in terms of individuals involved, working arrangements and the date of receipt of complaint, etc.

Nature of Complaint - Outline details of complaint(s) with reference to dates, times and specific incidents where possible.

Investigation process - Describe the actions taken and process used to investigate the complaint.

Respondent's Response - Give details of the respondent's response/explanation for each of the incident(s) and allegations.

Supplementary Evidence - Brief details of any witness statements or corroborative evidence (if available).

Findings and Evaluation - Details of whether the complaint can be supported or not – with reasons, e.g. "Whilst there is no independent witness to support the claim, on the balance of the information available, I feel sexual/racial harassment/bullying has/has not occurred".

Final Recommendations - The recommendation(s) should be clearly stated so that the Headteacher/Chair of Governors can take a view as to the appropriate action s/he needs to consider, given the nature of the complaint, the explanation of the respondent(s) and the views of the complainant(s).

Appendices – the Investigating Officer may append additional documentation to the report for consideration by the Headteacher/Chair of Governors e.g. notes of interviews, witness statements, other documentation that relates to the complaint.

Reporting to the Headteacher/Chair of Governors and follow-up actions

The final report should be passed to the Headteacher/Chair of Governors. The Investigating Officer may be required or wish to brief the Headteacher/Chair of Governors personally or be prepared to add to the investigation any further points which may be necessary. At a later stage in the process of dealing with the outcome of the complaint, the Investigating Officer may also be required to give evidence at a Disciplinary or Appeal Panel.

If it is decided that the matter should be referred through the disciplinary procedure, a separate disciplinary investigation may need to take place, conducted by someone other than the investigating officer that conducted the bullying and harassment complaint.

The appropriate line manager, at a stage when the outcome of the complaint and any subsequent actions are settled should consider the effects of the complaint on the work team and be prepared to take appropriate action designed to assist them to overcome the stresses and tensions that may well have developed.

APPENDIX 1 – SUGGESTED INTERVIEW QUESTIONS

These questions are given as illustrative examples and are not expected to be used in a prescribed manner – only as a guide.

Examples of questions to be asked of the COMPLAINANT(S):

- When and where did the incident(s) take place?
- Who was involved?
- What happened?
- What were the exact words used?
- How did you react?
- Has this or a similar incident(s) occurred previously to yourself or perhaps others?
- Did anyone see this or any previous incident(s)?
- Did you speak to anyone about the incident(s)?
- Is there any physical evidence or documentation of the incident(s)?
- How has it affected your work?
- What outcomes are you seeking in this matter?
- Do you require any support whilst this matter is being dealt with?

Examples of questions TO AVOID:

- What were you wearing at the time?
- Did you do anything to lead him/her on?
- Surely he/she was only joking?
- Are you sure there is not some misunderstanding?
- Do you really want me to take this complaint further?
- Have you considered the effect of this complaint on your career, work relationships, family?
- Are you not being over sensitive?
- Wasn't this just proper criticism of your mistakes?
- Isn't ("example") now an acceptable term to describe your race/nationality?

Examples of questions to be asked of the RESPONDENT(S)

- Are you aware of your right to representation? (where a representative is not present)
- Are you fully aware of the complaints which have been made against you?
- Do you accept that the incident(s) described took place?
- What happened? Please describe the event(s) in your own words.
- What exactly did you do/say?
- Why did you do that?
- What was the reaction of the complainant?
- How do you explain the contradiction between your recollection of the event and the complainant's?
- Have you ever been involved in a similar incident?
- Did you speak to anyone subsequently about the incident?
- Did anyone see the incident or any previous incident?
- Do you require any support whilst this matter is being dealt with?

Examples of questions TO AVOID:

- Any statement which states or implies that you feel the person is obviously lying.
- Any statement which states or implies that an admission will result in a lesser penalty.
- Any suggestion of your own pointing to an alternative explanation of the person's conduct.
- Any question or statement that implies that you feel the complainant was over-sensitive.

WITNESSES

It is important to ensure that witnesses are fully aware of the definitions of bullying and harassment. As part of the interview of any witnesses, they should be provided with detail of the definitions of bullying and harassment and asked whether in their view, the behaviours/actions that they observed could fall under either definition.