

Behaviour in the Workplace Policy

Scope

This policy applies to all employees of Leicestershire County Council, with the exception of those based in schools and colleges. It also applies to individuals who may be working on behalf of the Council (e.g. placement students, volunteers, casual workers).

Complaints of unacceptable behaviour directed at an employee by a third party (e.g. contractors, agency workers, customers) are also covered by this policy and should be dealt with using the process detailed below under [Third Party Harassment](#).

Purpose

Leicestershire County Council is committed to creating and maintaining a working environment where people are treated with courtesy, consideration and respect. Employees, and others working on the Council's behalf, are therefore required to conduct themselves in a professional and acceptable manner at all times.

This policy is designed to encourage employees to consider their own behaviour and how this may be perceived by others. It also provides examples of the types of behaviour that the Council considers unacceptable and sets out the informal and formal approaches that will be used to address such behaviour.

The Council's [Code of Conduct](#) and [Organisational Values](#) set out the minimum standards of behaviour expected from its employees. Managers and employees should ensure that they read this policy in conjunction with these documents.

What constitutes unacceptable behaviour?

Unacceptable behaviour is any unwanted action or behaviour which could reasonably be described as:

- Bullying - offensive, intimidating, malicious or insulting behaviour, and/or an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient;
- Harassment - unwanted conduct related to a relevant protected characteristic (i.e. age, disability, gender reassignment, race, religion or belief, sex, sexual orientation) 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;
- Victimisation - subjecting a person to a detriment because they have, in good faith, made, or supported someone to make, a complaint of discrimination or harassment or given evidence in relation to a complaint.

Unacceptable behaviour does not necessarily have to be face-to-face; it can also be via telephone or written communications. The behaviour can be persistent or an isolated incident. Employees are able to complain of behaviour that they find offensive even if it is not directed at them. They need not possess the relevant characteristic themselves and can complain of behaviour they find offensive because of their association with a person who has a protected characteristic, or because they are wrongly perceived to have one, or are treated as if they do. It is the impact of the behaviour on the recipient which is important and, if the recipient feels that they have been subjected to unacceptable behaviour, the complaint must be taken seriously and, where appropriate, investigated.

Examples of the different types of unacceptable behaviour can be found in [Appendix A](#).

The Council is opposed to any incident or behaviour which could reasonably be classified as unacceptable behaviour, whether explicitly stated within the definitions contained within this policy or not. Incidents involving colleagues that take place outside of the work place (e.g. work-related social events held either on or off the Council's premises, bullying comments made via social media) will also fall within the remit of this policy.

Counter Complaints

Managers who are using Council procedures to address an employee's performance, attendance or conduct will not be regarded as demonstrating unacceptable behaviour unless there is evidence to show that they have acted inappropriately. Where a complaint is solely or largely related to the commencement of these procedures, the manager's manager will meet with the complainant to discuss their concerns. The complaint will only be investigated further under this policy if evidence is provided which suggests that the manager has acted inappropriately or the concerns raised are not a consequence of the instigation of these procedures. Complaints that relate to disciplinary or performance management proceedings should be raised as part of those proceedings and/or any related appeal process.

How you can help prevent unacceptable behaviour

Both employees and managers have an important role to play in supporting the Council's commitment to creating and maintaining a working environment free of unacceptable behaviour. There are a number of steps that individuals can take to help do this, including:

- Being aware of how their own behaviour may be perceived by others and if necessary, changing it;
- Treating colleagues with dignity and respect;
- Taking a stand if inappropriate jokes or comments are being made;
- Making it clear to others if they find their behaviour unacceptable;
- Intervening, if possible, to stop unacceptable behaviour and providing support to recipients;

- Reporting unacceptable behaviour and supporting the Council in the investigation of any complaints.

Managers also have a particular responsibility to:

- Set a good example by their own behaviour;
- Ensure that employees are aware of the standards of behaviour that are expected of them;
- Intervene as early as possible to put a stop to unacceptable behaviour;
- Take complaints of unacceptable behaviour seriously and take appropriate action to address them.

What to do if you witness unacceptable behaviour

Anyone who witnesses behaviour which they deem to be unacceptable should take action rather than ignoring what they've observed. This could include:

- Speaking directly to the perpetrator of such behaviour to make them aware of how their behaviour has been perceived;
- Speaking directly to the recipient of such behaviour to offer support and encourage them to address the issue;
- Reporting their observations to their manager.

The individual should make a detailed note of the behaviour witnessed and the action they took as this may be required if they are asked to provide information as part of a formal investigation.

Managers who witness unacceptable behaviour, or have an issue reported to them, should ensure that they take action rather than dismissing the problem. Intervening at an early stage can put an end to behaviour and stop it escalating.

Managers have a legal duty of care to protect their employees from unacceptable behaviour and should therefore ensure that they deal with any such complaints as quickly as possible. Failure to do this may result in action being taken against the Council or specific individuals.

If the recipient requests that no action is taken, the manager will need to assess the seriousness of the reported unacceptable behaviour and determine what the next steps should be (e.g. monitor the situation, speak to the individual concerned, instigate a formal investigation, etc.).

Informal Procedure

What to do if you feel you are being subjected to unacceptable behaviour

An employee who feels that they are being subjected to unacceptable behaviour may find it useful to discuss the details with an independent person (e.g. a work colleague, Trade Union representative, manager) in the first instance. Having a second opinion can help the employee to determine whether they have reacted reasonably or if they may have misinterpreted the situation.

If the employee still believes that they are being subjected to unacceptable behaviour, they should attempt to resolve the matter informally by raising it with the person subjecting them to the behaviour. The employee should explain that they found the behaviour offensive and/or unwelcome and request that it is not repeated. This initial approach can be made either in person, by email or by telephone. If the employee feels unable to make the approach on their own, they can ask their manager (or the next most relevant manager if the complaint is about their manager) to make the approach on their behalf.

Once the initial approach has been made, both parties should meet to discuss the situation and agree a way forward. Depending on the nature of the complaint, it may be beneficial for a third party (e.g. a manager) to be involved to help facilitate the meeting and reach a solution. If the matter involves employees from two different teams, consideration should be given to as to which manager will facilitate this meeting or whether it would be more appropriate to involve another independent manager.

The employee should keep a record of the action they have taken and the response. If the unacceptable behaviour continues or reoccurs, this information could be used as evidence in any formal investigation.

If an informal approach does not resolve the situation, or the complaint is too serious to be dealt with informally (e.g. threatening behaviour), the employee can raise a [formal complaint](#). In very serious cases, a criminal offence may have been committed and the employee may also wish to report the matter to the police as well as their manager.

Employees should note that any formal investigation may result in both parties being required to attend a mandatory meeting to agree strategies to repair their working relationship. Individuals are therefore encouraged to engage in any mediation meetings offered during the informal or formal process in order to try and resolve the matter at the earliest opportunity.

What happens if you are accused of unacceptable behaviour?

If an employee is approached informally about their behaviour, they should not simply dismiss the complaint without giving it consideration. Although there may be occasions where a complaint is found to be malicious, the employee should assume that any approach received is genuine until established otherwise.

As a way of resolving the matter informally, it may be necessary for both parties to meet to discuss the matter and agree a way forward. Possible outcomes of this meeting could

include providing the other party with an apology, an explanation and/or reassurance that the behaviour won't happen again. Provided it is not repeated, no further action should need to be taken. Employees may want to discuss any complaint with their manager for advice and/or support.

However, if the behaviour continues after the informal approach or the complaint is of a serious nature (e.g. threatening behaviour) then it will be necessary to undertake a formal investigation under the [Formal Complaint Procedure](#), details of which are set out below.

What support is available to employees during the process?

Where a manager has been informed of an issue involving a member of their team, it is their responsibility to take steps to support the individual to resolve the matter informally. However, individuals may also benefit from seeking additional support from one of the following whilst the situation is being resolved:

- The Employee Wellbeing Service - its qualified accredited counsellors can provide a confidential, impartial listening service to employees but are not able to raise complaints on their behalf;
- Disabled, Black or LGBT Workers Groups;
- Trade Union;
- Independent manager;
- Work colleague.

Formal Complaint Procedure

If an informal approach does not resolve the issue or the complaint is too serious to be dealt with informally (e.g. threatening behaviour), a formal investigation will be undertaken. Any investigation will be handled in a manner that respects the confidentiality of those involved.

An employee who wishes to raise a formal complaint should do so in writing to their Head of Service. The Head of Service will be the Decision Maker in relation to the complaint, unless the Council considers it is inappropriate in the circumstances.

If a complaint relates to a Head of Service or Assistant Director then any complaint should be made to the employee's Assistant Director or Director respectively. Any complaints in relation to Directors should be made to the Assistant Director (Corporate Services and Transformation). In these situations an appropriate manager may be delegated to be the Decision Maker.

The complaint should set out, in detail, the names of parties involved, the nature of their complaint, the date(s) and time(s) that any alleged conduct occurred, the names of any witnesses and what action has already been taken to attempt to resolve the issue. Any supporting evidence should be provided together with the complaint. It should also identify how the employee feels the issue can be resolved. Employees should note that a copy of the complaint (excluding the names of any witnesses) will be provided to the alleged perpetrator at the start of the investigation process.

Generally it will be for an employee to decide whether they wish to raise a formal complaint. However, the Council has a duty to protect all employees and reserves the right to commence an investigation into complaints raised informally, even where the employee has not made a formal complaint, if it is considers it appropriate to do so.

Confidentiality

Complaints of unacceptable behaviour will be dealt with sensitively and confidentiality will be maintained where possible. However, there may be circumstances in which this will not be possible. Details of the investigation and the names of the person making the complaint and the person accused must only be disclosed on a “need to know” basis. Breach of confidentiality in this respect may give rise to disciplinary action under the Council’s [Disciplinary Policy and Procedure](#).

Employees should note that information relating to a complaint by or about an employee may be placed on the employee’s personal file where the complaint is founded or where it is found that the complaint has been raised maliciously. A record of the outcome and of any notes or other documents compiled during the process may also be retained on the employee’s personal file.

Process

On receipt of a complaint, the Decision Maker should:

- Determine whether the complaint relates to a third party. If so, refer to the section on [Third Party Harassment](#) for further information;
- Review what action has already been taken by the complainant to resolve the situation. If [informal action](#) has not been attempted but would be considered appropriate, the employee should be encouraged to consider pursuing this option before any formal investigation is commenced;
- Acknowledge receipt of the complaint as soon as possible and advise the complainant that they will be invited to attend a Formal Investigatory Meeting;
- Contact the alleged perpetrator to advise them that a formal complaint has been made against them and that they will be invited to attend a Formal Investigatory Meeting. Where the alleged perpetrator is in another service or department, this contact should be made via the employee’s manager;
- Consider whether the working arrangements (including reporting lines) of the complainant and alleged perpetrator need to be altered to limit their contact during the investigation or whether either employee may benefit from more [flexible working arrangements](#) whilst the issue is resolved;
- Remind both the complainant and the alleged perpetrator that support is available from the Employee Wellbeing Service.

Investigation

An 'Investigating Officer' will be appointed to establish the facts and explore the full details of the complaint. Wherever possible, this individual should be employed in a different Service or Department to the complainant or alleged perpetrator and should be someone with appropriate experience and no prior involvement in the complaint. The investigation should be thorough, impartial and objective and carried out with sensitivity and due respect for the rights of all parties concerned. Strategic HR may be available, on occasion, to undertake investigations on behalf of a Service or Department.

The Investigating Officer will endeavour to complete the investigation in a timely and confidential manner.

Managers should note that they have a legal duty of care to protect their employees from unacceptable behaviour and should therefore ensure that any such complaints are resolved as quickly as possible. Failure to do this may result in action being taken against the Council or specific individuals.

As part of the investigation, the Investigating Officer will:

- Check whether the alleged perpetrator has been spoken to previously, either informally or formally, about the same or similar behaviour;
- Interview the complainant to ascertain the full details of their complaint and obtain copies of any supporting evidence and/or names of witnesses;
- Interview the alleged perpetrator to give them the opportunity to respond to the allegations against them and provide copies of any supporting evidence and/or names of witnesses. The individual should be provided with a copy of the complaint;
- Interview any individuals who may have witnessed the alleged unacceptable behaviour or have evidence which either supports or contradicts the allegations. In order to maintain confidentiality, questions will only be asked of individuals who can provide evidence in relation to the alleged behaviour; speculative interviews of individuals will not be conducted. The importance of confidentiality will be emphasised to any witnesses interviewed;
- Adopt an objective and balanced approach to the gathering of information;
- Assess objectively whether they believe, on the balance of probabilities, that the alleged behaviour did take place and if it could reasonably be deemed as offensive.

In certain circumstances it may be necessary to suspend or temporarily redeploy the alleged perpetrator whilst the investigation is completed. Suspension is not a disciplinary penalty and does not pre-determine the outcome of the investigation. The details of any suspension should be confirmed in writing to the employee. There may also be situations where consideration will need to be given to temporarily redeploying or altering the

reporting lines of the complainant (e.g. where a complaint is raised against a number of employees in the same team or the complaint is against the employee's manager).

The Council will also consider any requests made by the complainant or alleged perpetrator for changes to their working arrangements (e.g. change of hours) during the course of the investigation to avoid or minimise any contact between the relevant parties.

The Investigating Officer should refer to the [Disciplinary Guidance](#) for further information on undertaking an investigation, conducting formal investigatory interviews and producing an investigation report.

In situations where the complainant or the alleged perpetrator refuses to attend an investigatory interview due to ill health, it may be necessary, depending on the length of and reason for the absence, to conclude the investigation without this evidence. In such cases, it may be appropriate for an occupational health referral to be made regarding the employee's fitness to attend any meetings relating to the complaint.

Potential Outcomes

The Investigating Officer will produce a report for consideration by the Decision Maker as to what action should be taken. The standard of proof for any investigation and any subsequent disciplinary hearing will be "on the balance of probabilities".

The potential outcomes of the investigation are:

- There is nothing to suggest that any unacceptable behaviour took place. In these circumstances no further action will be taken;
- It is believed that unacceptable behaviour took place and further action is required. Depending on the severity of the behaviour, it may be appropriate to deal with the matter informally (e.g. an apology, reassurance of no repeated harassment, training, counselling, instigating capability proceedings, as appropriate). However, in serious cases it will be necessary to refer the matter to a formal disciplinary hearing (see Stage 3 of the Disciplinary Policy for further information). It **will not** be necessary to undertake another investigation as the Investigating Officer's report and evidence, including witness statements, can be used for the basis of the disciplinary. A copy of the Investigating Officer's report should be included in the disciplinary hearing folder.

Regardless of the outcome of the complaint, the Council will consider how best to manage the relationship between the employee and persons concerned which may include some form of mediation or counselling or change to duties, working locations or reporting lines of one or both parties.

Any employee who deliberately provides false information or otherwise acts maliciously in the course of an investigation may be subject to action under the Council's [Disciplinary Policy and Procedure](#).

Confirming the Outcome

As soon as possible following the conclusion of the investigation, the Decision Maker should meet separately with the complainant and the alleged perpetrator to provide them with the outcome. During the meetings, the Decision Maker should provide a detailed summary of the investigation's findings and confirm the outcome of the investigation and what action, if any, will be taken. The contents of the discussion should then be confirmed in writing. A copy of the investigation report should **not** be provided to either party at this stage. If the matter progresses to a disciplinary hearing, the alleged perpetrator will be provided with a copy of the investigation report as part of the hearing paperwork.

Right of Appeal

The complainant has the right to appeal if they are not satisfied with the outcome of the investigation. An [appeal registration form](#) must be submitted to the Decision Maker within 5 working days of receiving the outcome letter. When completing the registration form the employee should specify the grounds for their appeal (e.g. procedural flaw, new evidence) and attach any supporting evidence.

The appeal hearing should be convened as soon as possible. For the majority of employees, the appeal will be heard by a panel of three officers, chaired by a senior manager and accompanied by two other panel members; another independent manager and a representative from Strategic HR. However, appeals for those employed under the Conditions of Service of the Joint Negotiating Committee for Chief Officers of Local Authorities will be heard by a panel comprised of at least three elected Members

The appeal will not be a reinvestigation of the original complaint but rather a consideration of the points raised in the appeal and whether the original conclusion reached by the Decision Maker was appropriate. New evidence will only be considered if it is relevant and there was a good reason why it was not provided as part of the original investigation.

The format of the appeal hearing will be in line with the [Appeal Policy and Procedure](#). The Decision Maker will present their reason for reaching their decision and may call the Investigating Officer as a management witness. The employee may be accompanied by a work colleague or Trade Union representative.

Right of Appeal against Disciplinary Sanctions

Where the outcome of the investigation has been referred to a disciplinary hearing and a disciplinary sanction imposed, an employee has the right to appeal against that sanction. Further information can be found by clicking [here](#).

Re-establishing Working Relationships

In situations where the complaint has either not been upheld or the outcome is informal action, the alleged perpetrator and the recipient **must** attend a mandatory joint meeting to discuss what support or action is required to assist them to re-establish their working relationship. The Decision Maker should ensure that this meeting is scheduled to take place as soon as possible after the parties have been advised of the investigation outcome. A third party (e.g. manager, HR representative) should be involved in this meeting to help facilitate a solution.

The meeting should focus on agreeing strategies to assist the parties to resume and repair their working relationship. A potential outline of the meeting might include:

- Explaining the purpose of the meeting (i.e. it is not to revisit the complaint previously investigated, it is about moving forward);
- Identifying potential areas of concern and explore these with the parties;
- Encouraging open and honest communication;
- Confirming the key points agreed to help move forward.

Protection and Support for those involved

Employees who make complaints or who participate in good faith in any investigation must not suffer any form of retaliation or victimisation as a result. Anyone found to have retaliated against or victimised someone in this way will be subject to disciplinary action under the Council's [Disciplinary Policy and Procedure](#).

Any employee that believes that they have been subjected to any such treatment should inform their manager. If the matter is not resolved then a complaint may be made under this policy or the Council's [Grievance Policy and Procedure](#), as may be appropriate.

Malicious Complaints

If it is determined that an employee has made a complaint or given evidence that they know to be untrue, this may lead to disciplinary action being taken against them.

Third Party Harassment

The Council acknowledges that its employees may suffer unacceptable behaviour by users of its services. Unacceptable behaviour directed at an employee of the Council by a third party (e.g. customers, suppliers, contractors, agency staff, member of the public) should be reported immediately to the employee's manager.

The Council will investigate any complaint of unacceptable behaviour made by an employee against a third party and take appropriate action. The manager should investigate the allegation appropriately depending upon the circumstances of the complaint. The investigation should include speaking to the complainant and may include speaking to any witnesses or the alleged perpetrator if possible.

The Council's responses to unacceptable behaviour towards its employees by third parties may be restricted by the lack of applicable sanctions or by statutory duties to provide services. Within these restrictions, however, the following guidelines must be observed by all supervisors and managers of employees who have been subjected to unacceptable behaviour in the course of their employment, by a third party:

- Any employee who has been subjected to unacceptable behaviour must be dealt with sympathetically and supportively by management, and should be offered suitable counselling;

- Managers should deal explicitly with perpetrators with a view to withdrawing their services if appropriate;
- Where the complainant is likely to remain in contact/close proximity with the alleged perpetrator it may be appropriate to make a request to the contractor / agency / supplier for the alleged perpetrator to be temporarily removed from the workplace if possible / appropriate;
- Only where the employee has requested a transfer or has asked not to deal with the third party again, and the Council provides a statutory service to the user, should substitution of staff be considered. Not every case can be covered by such advice and managers must use their discretion in appropriate circumstances. Further advice and support can be obtained from Strategic HR.

APPENDIX A - Definitions of Unacceptable Behaviour

Unacceptable behaviour can occur in all forms of communications including face-to-face, written, visual, electronic, or telephone. The following list provides some examples of possible unacceptable behaviour; this list is not exhaustive:

Bullying

Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, and/or an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient.

Possible examples of bullying include:

- Constantly criticised and subjected to destructive criticism;
- Spreading malicious rumours, or insulting someone (particularly on the grounds of age, race, sex, disability, sexual orientation and religion or belief);
- Subjected to nit-picking and trivial fault finding;
- Undermined, especially in front of others, overruled, ignored, sidelined, marginalised, ostracised;
- Isolated and excluded from what's happening;
- Singled out and treated differently;
- Belittled, degraded, demeaned, ridiculed, patronised, subject to disparaging remarks;
- Regularly the target of offensive language, personal remarks, or inappropriate bad language;
- Threatened, shouted at, humiliated;
- Set unrealistic goals and deadlines which are unachievable or are changed without notice;
- Have their responsibility increased but their authority removed;
- Denied information or knowledge necessary for undertaking work and achieving objectives;
- Either over-loaded with work without reason or when others have a much lesser workload, or have their work taken away.

Harassment

Harassment is unwanted behaviour related to a relevant protected characteristic which includes age, disability, gender reassignment, race, religion or belief, sex and sexual orientation or any other personal characteristic which is reasonably considered to have the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

Harassment is normally characterised by more than one incident of unacceptable behaviour. One minor incident will not usually constitute harassment however, a series of incidents, particularly where an employee has expressed a dislike of such behaviour and has asked for it to stop or just one incident if it is sufficiently serious (e.g. threatened or actual violence or threats of dismissal) may constitute harassment.

Harassment includes the following:

- **Harassment based on association.** It is unlawful to discriminate against or harass any individual for association with another individual who has a protected characteristic;
- **Harassment based on a perception.** It is unlawful to discriminate against or harass any individual based on a perception that he or she has a particular protected characteristic;
- **Third party harassment.** Employers can be found liable for harassment of an employee in the course of his or her employment, based on any of the protected characteristics.

Possible examples of harassment include:

Age Discrimination

- Ridiculing or demanding behaviour focused towards people because of their age.

Disability Harassment

- Mimicking the effect of a disability or speech impairment;
- Ostracising, “freezing out”, ignoring and staring;
- Making fun of a disability;
- Use of inappropriate terms;
- Inappropriate personal questions/comments about a disability;
- Belittling or patronising comments/nicknames;
- Moving a wheelchair without the user’s agreement;
- Practical jokes, e.g. hiding a disability aid;
- Touching a visibly impaired person, to annoy.

Sexual Harassment

- Unwanted non-accidental physical contact ranging from unnecessary touching, patting or brushing against a colleague’s body, to assault and coercing sexual relations;
- Unwelcome sexual advances, offensive flirting, propositions or pressure for sexual activity, continued suggestions for social activity within or outside the workplace, after it has been made clear that such suggestions are unwelcome;
- The display of pornographic or sexually suggestive pictures, objects or written materials;
- Leering, whistling or making sexually suggestive comments or gestures, innuendoes or lewd comments;
- Conduct that denigrates or ridicules or is intimidatory or physically abusive because of his or her sex, such as derogatory or degrading abuse or insults which are gender related and offensive comments about appearance or dress;
- Harassment of a sexual nature related to gender reassignment;
- Making decisions on the basis of sexual advances being accepted or rejected.

Racial Harassment

- Conduct that denigrates or ridicules a colleague because of his or her race, such as derogatory remarks, graffiti, jokes. Such conduct can be verbal or physical;
- The display or sending of offensive letters or publications; threatening behaviour;
- Being “frozen out” of conversations;
- Jostling or assault, or other non accidental physical contact;
- Derogatory nicknames or racial name calling or jokes.

Homophobic Harassment

- Conduct that denigrates or ridicules a colleague because of his or her actual or presumed sexuality, such as derogatory remarks, graffiti, jokes. Such conduct can be physical or verbal;
- The display or sending of offensive letters, publications, threatening behaviour;
- Being “frozen out” of conversations;
- Jostling or assault, or other non accidental physical contact;
- Derogatory nicknames or homophobic name calling or jokes;
- Intrusive or inappropriate comments about someone’s personal life or family circumstances.

Religious Discrimination

- Discriminatory behaviour which fails to acknowledge the rights or needs of people with different beliefs or practices.

Victimisation

- Where a person is treated less favourably than other people because, for example, that person has brought proceedings, given evidence, or complained about the behaviour of someone who has been harassing or discriminating against them.

Aids/HIV

- Harassment, ridicule or exclusion of people, due to their real or suspected infection with Aids/HIV.