Respect at Work

Bullying, Harassment, Victimisation or Discrimination in the Workplace

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1. Introduction

Highways England values diversity. We are building an inclusive culture and creating a diverse workforce that reflects the communities we work in, and are committed to maintaining a work environment free of bullying, harassment, victimisation and discrimination where everyone treats each other with dignity and respect.

We have a legal duty under the Equality Act 2010 to ensure we actively promote equality of opportunity and we also recognise that maintaining a working environment free from bullying, harassment, victimisation and discrimination will make Highways England a better organisation, and better equipped to provide a key public service.

This policy and procedure have been developed to protect our employees, and to stop undesirable behaviour by sending out a clear message that Highways England will not tolerate any kind of bullying, harassment, victimisation or discrimination. It takes account of the Equality and Human Rights Commission guidance on Sexual Harassment and ACAS guidance, and supersedes the Dignity at Work Policy (chapter 2.16 in the pre-15 employee handbook).

These are serious issues, and where an employee is found guilty of bullying, harassment, victimisation or discrimination, they may face disciplinary penalties up to and including dismissal (appendix 2). Anyone found guilty of harassment could be personally liable to pay compensation in legal claims. Serious harassment may also be a criminal offence (under the Protection from Harassment Act 1997).

2. Who does this cover?

This policy and procedure cover everyone who works for Highways England, regardless of their pay band or grade, whether full or part time, fixed term contract or permanent, agency or contractor.

It has been shared with supply chain partners, and if the alleged bully/harasser or the person making the complaint are not employed by Highways England, e.g. if they have a contract with an agency/they are hired as a company delivering our services, this policy and procedure will apply with any necessary modifications. This may include requiring them to stop working for Highways England, after investigation and disciplinary proceedings have been undertaken by the agency/contracting company.

3. What are bullying, harassment, victimisation and discrimination?

Highways England has a duty of care to protect our employees at work, and will be legally liable if we do not take reasonable steps to prevent harassment and discrimination.

This policy and procedure covers bullying, harassment, victimisation and discrimination in the workplace and at any work-related setting outside the workplace, e.g. business trips and work-related social events. They also cover the use of other communication tools such as social media and messaging methods e.g. text, postings.

3.1 **Bullying** can be threatening, aggressive, offensive, intimidating, malicious, abusive, cruel, vindictive or insulting behaviour. It can also be an abuse or misuse of power that is meant to undermine confidence, humiliate, denigrate or demean the intended recipient. This includes making unreasonable demands of people in their work, and negative behaviours that are repeated and persistent, and deliberately targeted at a particular individual.

3.2 **Harassment** is unwanted conduct (e.g. intimidating, hostile, degrading, offensive behaviour) related to relevant protected characteristics as defined in the Equality Act 2010, which cover sex, gender reassignment, race (which includes colour, nationality and ethnic or national origins), disability, sexual orientation, religion or belief, age, marriage and civil partnerships, pregnancy and maternity. The conduct that is considered by the recipient to have the effect of violating their dignity, even if this effect was not intended by the person responsible for the conduct, may be classified as harassment.

Something intended as a "joke" may offend another person. Different people find different things acceptable.

A single incident can be harassment if it found to be sufficiently serious. All bullying, victimisation and harassment is misconduct and will be dealt with under the Highways England disciplinary policy. Bullying or harassment may constitute gross misconduct, which can lead to dismissal without notice. All allegations of bullying, victimisation, harassment or discrimination will be thoroughly investigated before a formal disciplinary hearing is held, and will take account of how the recipient has been left to feel and what the effects have been. This will include speaking with anyone who may have witnessed any actions or has any evidence which may contribute to a fair hearing.

Serious bullying or harassment may amount to a civil offence, under the Protection from Harassment Act 1997, or a criminal offence of assault.

3.2.1 There are two specific definitions of sexual harassment which are:

• conduct of a sexual nature that has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment; and

• less favourable treatment related to sex or gender reassignment that occurs because of a rejection of, or submission to, sexual conduct.

Behaviour that is likely to offend will be harassment even without the recipient having to make it clear in advance that the behaviour is not acceptable to them e.g. unwanted touching, or offensive or intimidating language.

It may not be so clear in advance that some other forms of behaviour could be unwelcome to another employee e.g. certain banter (including terms of endearment), flirting or asking someone for a private drink after work. Conduct that unintentionally causes offence may not be harassment in the first instance, but it will become harassment if the behaviour continues after it has been made clear that it is unacceptable to them.

3.2.2 Harassment may also be where an employee engages in unwanted conduct towards another because they perceive them to have a protected characteristic when they do not (e.g. a perception that they are gay or disabled).

3.2.3 An employee may feel harassed even if the unwanted conduct is not directed towards them or related to a protected characteristic. For example, it may be harassment where they are offended by the display of an inappropriate calendar, or hear or witness inappropriate behaviour.

3.2.4 If an employee is subjected to unwanted conduct from a third party, such as a customer, representative of a supplier or visitor, they should report it to their manager immediately, who will take appropriate action and contact Human Resources (HR) for advice.

3.2.5 Where a third party is subjected to unwanted conduct by a Highways England employee it will be investigated and, where necessary, dealt with through the disciplinary procedure.

3.3 **Victimisation** is retaliation against someone who has disclosed some sort of wrong doing (see Raising Concerns at Work policy, appendix 2) or has supported someone else's complaint about discrimination or harassment i.e. they have been punished because they have complained about discrimination or because they have helped someone else who has been the victim of discrimination in the workplace. Victimisation is defined in the Equality Act 2010.

If you genuinely believe that what you are saying is true, you have a right not to be victimised for raising anything in relation to a complaint of bullying, harassment or discrimination. Highways England will take appropriate action to deal with any

alleged victimisation, which may include disciplinary action against anyone found to have victimised you.

3.4 **Discrimination** is when someone is treated unfairly because of a protected characteristic (see 3.2) or receives less favourable treatment (when compared to real or hypothetical comparators) because of a protected characteristic. This includes less favourable treatment because of a person's association with someone who has, or is believed to have, the protected characteristic, or because a person is wrongly thought to have the protected characteristic. Employees are protected from discrimination in the workplace under the Equality Act 2010.

Discrimination can also be indirect, where the less favourable treatment in relation to a protected characteristic disadvantages a particular group because a considerably smaller proportion of that group is able to comply with it.

3.5 Making a complaint that you know to be untrue, or giving evidence that you know to be untrue, may lead to disciplinary action.

4. What can I do to help stop bullying, harassment, victimisation and discrimination?

We all have a responsibility to help create and maintain a work environment free of bullying, harassment, victimisation and discrimination. You can help to do this by:

- living our values and behaviours, and setting a good example
- being aware of how your own behaviour may affect others and changing it, if necessary - you can still cause offence even if you are "only joking"
- treating with respect your colleagues and everyone you come into contact with;
- intervening to stop bullying or harassment and taking a stand if you think inappropriate jokes or comments are being made
- making sure colleagues know what standards of behaviour are expected of them
- making it clear that you find harassment and bullying unacceptable when you witness or experience it
- reporting harassment, bullying or victimisation to your manager, or to HR if your manager is the subject of your complaint, and supporting in the investigation of complaints; and
- not prejudging or victimising the complainant, when a complaint of harassment or bullying is made

5. What should I do if I think I am being bullied, harassed, victimised or discriminated against?

5.1 Keep a record of the dates and what was said and done, and report it as soon as you possibly can. This evidence will be important if the unacceptable behaviour continues and you do wish to make a formal complaint.

5.2 You may be able to sort out matters informally yourself, if you feel comfortable to do so. The person may not know that their behaviour is unwelcome or upsetting. Tell the person what behaviour you find offensive and unwelcome, that you would like it to stop immediately, and help them to understand the effects of their behaviour, which can often make them change how they behave.

5.3 If you do not feel able to raise it with the person yourself, an alternative approach could be made on your behalf by Human Resources, a manager, trade union representative or a colleague. They can explain that if the behaviour continues, a formal complaint will be raised.

5.4 An independent third person or mediator can sometimes help resolve a complaint of bullying, harassment or discrimination, and Highways England has several ACAS trained mediators. It is a voluntary process, which can be adopted at any stage where it is felt to be appropriate. The mediator helps two (or more) people in dispute to find a solution to the issue that they can both agree to. The mediator does not take sides or tell those in dispute what to do. Mediators are usually employees trained to act as internal mediators in their own workplace in addition to their day jobs, or they may be from an external mediation provider, such as ACAS.

5.5 If an informal approach does not resolve matters, or you think the situation is too serious to be dealt with informally, you can make a formal complaint, which should be raised within 3 months of the last incident, by using the grievance procedure (appendix 2).

In such cases, the normal grievance procedure is modified so that you can choose whether to raise your grievance with your manager or HR, who will ensure your complaint is dealt with appropriately. In cases of bullying, harassment, victimisation or discrimination, you are not required to submit a grievance proforma, however you will be asked to provide sufficient information, such as to dates and times and an account of what the alleged behaviour was, to enable the complaint to be investigated as promptly as possible.

All complaints will be passed to an internal manager, trained to carry out investigations, and where necessary, disciplinary proceedings will be instigated. You will have the right to be accompanied by a trade union representative or fellow employee at any meeting dealing with your complaint, in accordance with the grievance policy. Due to the sensitive nature of the procedure, you may request to be accompanied by another suitable person (such as a friend or relative). The HR Manager (ER) will keep you informed of the general progress of the

investigation and, subject to data protection requirements, the outcome of any disciplinary proceedings taken as a result.

Highways England will treat all complaints sensitively and maintain confidentiality to the maximum extent possible. The investigation of allegations will normally require limited disclosure on a "need to know" basis. For example, your identity and the nature of the allegations must be revealed to the person you are complaining about, so they are able to respond. Some details may also have to be given to potential witnesses, to ensure a fair and thorough investigation can take place. The importance of confidentiality will be emphasised to witnesses. If the complaint is upheld, and the person is not dismissed, other managers may need to be given some information where this is necessary, both to support you and to prevent the risk of further harassment by that person.

Confidentiality will be required throughout, and breaches will be investigated and may lead to disciplinary proceedings. Documentation relating to a case will be saved securely on the case management system.

5.6 We will try to ensure that you and the person you have complained about are not required to work together while the complaint is under investigation. In the case of serious allegations, the person may be suspended or moved (department and/or location) while investigation and any disciplinary proceedings are under way.

5.7 There is a variety of support available from the company to help protect your wellbeing. Our Employee Assistance Programme (appendix 2) is available 24/7 and we recommend talking to them about how you are feeling. They can also offer coping strategies to manage any stress the situation is causing you and provide free telephone or face-to-face counselling if needed.

Our mental health first aiders (appendix 2) are trained volunteers who are available to listen and signpost you to the support available to help you.

You can also contact representatives from the recognised trade unions, PCS and Prospect, for additional support, and to accompany you at any interviews (appendix 2).

6. What happens if I am accused of bullying or harassment?

6.1 All formal complaints will be fully investigated by an independent, trained investigator, and you will be able to request a fellow employee or trade union representative to accompany you at any interview. You will have the right to be informed of the allegations against you. Depending on the outcome of the investigation, the disciplinary procedure may be implemented at the appropriate stage for the seriousness of the allegation.

6.2 Wherever possible, we will try to ensure that you are not required to work together while the complaint is under investigation. If the allegation is of potential gross misconduct, you may be suspended on full pay during the investigation and, if a disciplinary hearing is to be called, until disciplinary proceedings have been concluded. Any suspension or action taken during the investigation process (grievance or disciplinary as appropriate) is to safeguard you and the complainant, and to ensure that a full and fair investigation can be carried out. It is not any indication of the outcome of any grievance or disciplinary process.

6.3 Complaints of bullying and harassment may often constitute gross misconduct. If the complaint against you is upheld, the disciplinary penalty may be up to and including dismissal, depending on the seriousness of the offence and all relevant circumstances. If the complaint is upheld, but you are not dismissed, it may be decided to transfer you to another post.

6.4 Some types of bullying or harassment may constitute unlawful discrimination and allegations may give rise to other civil claims or criminal proceedings against you, for which you would be personally liable.

6.4 Live disciplinary warnings will be considered as part of assessing the demonstration of values and behaviours within the performance management process, and may affect your performance rating.

7. Making this policy work

7.1 Highways England provides training to all existing and new employees to help them understand their rights and responsibilities under this policy, and how they can help create a working environment free bullying, harassment victimisation and discrimination. Additional training will be given to managers to enable them to deal more effectively with complaints of bullying and harassment.

7.2 Complaints of unacceptable behaviour reported to the HR team will be escalated to the Senior HR Business Partner of the originating directorate, who will own the case and work with the assigned HR Manager (Employee Relations), who will support the trained internal manager allocated to carry out the investigation.

7.4 As your employer Highways England has a legal duty under the Health and Safety at Work Act to protect the health and safety of our employees at work. In line with guidance, risk assessments will be completed when an incident is investigated. We also have a duty under the Equality Act 2010 to eliminate harassment, victimisation and discrimination.

7.5 Casework statistics are provided to SHRBP's monthly to share with their Directorate Leadership Teams. This will enable the identification of areas of concerns, so plans can be developed to address them, in a timely manner.

Highways England reserves the right to change this policy and procedure from time to time, to adhere to business or legislative requirements. A formal review will take place at least annually, to consider further safeguards that may be required to protect employees that, and we will discuss any changes with the TUS as required.

8. Appendices

Appendix 1 Examples of Discriminatory Behaviour and Harassment
Direct Discrimination

Rebecca, a Unit Head, turns down Tony's application for a job share traffic officer position in a small outstation which would allow him to manage his working time to enable him to volunteer on a weekly basis at his local temple. Tony who is Asian learns that Rebecca did this as she believes that he will not 'fit in' to the team as the outstation does not have any BME staff and the team would be uncomfortable around him because of his race. This is direct discrimination on grounds of race.

Discrimination by Association

Paul has been successful in gaining a place on the HE Apprenticeship Programme. However, after he tells his boss that he has a disabled child who has frequent medical appointments which he has to attend, his place is withdrawn. This may be discrimination against Paul because an assumption was made that he will need considerable time off due to his association with a disabled person.

Harassment

Sebastian is 17 years old and the youngest employee within his team. Sebastian is being harassed by his manager, Raj, who frequently taunts him about his age and belittles him in the office referring to him as the 'cry baby'. This is harassment directly related to Sebastian's age.

Indirect Discrimination

Ade, a Unit Head, decides that all meetings in his Unit will be held at 8.30am. This is indirect discrimination because although the policy applies to everyone, it has a disproportionate impact on staff with childcare responsibilities the majority of whom tend to be women.

Reasonable Adjustments

Tom speaks to Phil, his manager during a meeting lunch break, explaining he is struggling to follow the meeting. He has a hearing impairment and background noise is interfering with his hearing aide. Phil states someone else had made the arrangements. This can be direct or indirect discrimination. Phil and/or events organisers are required to consider the needs of all team members when making arrangements for events/meetings and even day to day work activity. These are referred to as Reasonable Adjustments. They are intended to make sure that, as far as st reasonable, a disabled employee has the same

access to everything that is involved in doing and keeping a job as a non-disabled employee.

Perception Discrimination

Emma, who is heterosexual, is being harassed by her colleagues and has been 'outed' by a group of colleagues at work who believe her to be a lesbian. Offensive notes have been left on her desk and she is consistently subjected to taunts and abuse. This unacceptable behaviour is based on her colleagues' perception of her sexual orientation and is a form of harassment.

This can also extend to not allocating tasks to specific individuals or considering individuals on the basis that you believe their circumstances may lead to a less than 'successful' completion. Although well intentioned, this could still be viewed as indirect or direct discrimination, albeit in a passive form. It has the potential to impact the respect and value of an employee.

Pregnancy and Maternity

Ann-Marie is a disabled woman who is pregnant and works as a admin support officer within the Control Centre. Her disability and pregnancy cause her to take very frequent toilet and rest breaks. Her manager although aware of her impairment and pregnancy, gives her a formal warning in relation to the frequency of her toilet and rest breaks. This is discrimination in relation to pregnancy and maternity.

Third Party Harassment

Janet manages a project team within a region. Mohammed, one of the assistant project managers within the team, has recently had to take several enquiries from a member of the local authority planning team in a complex case that he is working on. The nature of the phone calls has been increasingly offensive and abusive and Mohammed is extremely unhappy at being the target of this abuse whilst carrying out his daily duties so he complains about this behaviour to Janet. This is an example of third party harassment as it happened on more than two occasions.

Appendix 2 Useful points of reference

ACAS guide
https://archive.acas.org.uk/media/304/Advice-leaflet---Bullying-and-harassment-at-work-a-guide-for-managers-and-employers/pdf/Bullying-and-harassment-in-the-workplace-a-guide-for-managers-and-employers.pdf

Government advice
https://www.gov.uk/workplace-bullying-and-harassment

Citizens Advice
https://www.citizensadvice.org.uk/work/discrimination-at-work/checking-if-its-discrimination/if-youre-being-harassed-or-bullied-at-work/

NHS
https://www.nhs.uk/conditions/stress-anxiety-depression/bullying-at-work/

Highways England Disciplinary Policies
Pre 15: https://he-sc.cx.ukg.oraclecloud.com/app/products/detail/p/155/~/staff-handbook
Post 15: https://he sc.cx.ukg.oraclecloud.com/app/products/detail/p/155/~/staff-handbook

Highways England Raising Concerns at Work (whistleblowing) Policy
https://highways.sharepoint.com/WayWeWork/Pages/fraud-bribery-and-raising-concerns-at-work.aspx

Highways England Grievance Policies
Pre 15: https://he-sc.cx.ukg.oraclecloud.com/app/products/detail/p/253/~/chapter-11-grievance-and-appeals
Post 15: https://he-sc.cx.ukg.oraclecloud.com/app/products/detail/p/448/~/grievance

Employee Assistance Programme and Mental Health First Aiders
https://highways.sharepoint.com/EmployeeResources/Pages/My-mental-health.aspx

Risk Assessment
http://share/share/llisapi.dll?func=ll&objaction=overview&objid=85443242

Trade Unions
PCS: https://www.pcs.org.uk/
Prospect: https://prospect.org.uk/